LAWS OF CROSS RIVER STATE FEDERAL REPUBLIC OF NIGERIA 2004

VOLUME 4

LAWS OF
CROSS RIVER STATE
FEDERAL REPUBLIC
OF NIGERIA
2004

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LAWS OF
CROSS RIVER STATE
FEDERAL REPUBLIC
OF NIGERIA

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BY

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THE CHAIRMANSHIP OF

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VOLUME 4

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CHAPTER E5

ENVIRONMENTAL PROTECTION AGENCY LAW

The House of Assembly of CROSS RIVER STATE OF NIGERIA hereby makes the following—

LAW

(25*th April*, 1996)

[Commencement.]

PART I

Establishment and functions of Agency

1. Establishment of the Agency

(1) There is hereby established an agency to be known as the Environmental Protection Agency.

(2) The Agency shall be a body corporate with perpetual succession and common seal and with power to sue and to be sued in its corporate name and to own, hold and dispose of property whether moveable or immovable.

2. Functions of the Agency

The functions of the Agency shall be—

(*a*) to prepare and update periodic master plans for the development of environmental science and technology and advise the Government on the material and financial requirements for the implementation of such plans;

(*b*) to initiate and promote policies, programmes and research for the development of environmental science and technology;

(*c*) to liaise routinely and ensure effective harmonisation with the Federal Environmental Protection Agency in order to achieve the objective of the National Policy on environmental protection and conservation;

(*d*) to co-ordinate the activities of ministries, parastatals, local government councils, departments, statutory bodies and research organisations on matters relating to environmental protection and conservation;

(*e*) to identify the ecological problems of the State including the devastating erosion and flood, brief the Government on their causes and effects and find solutions to them;

(*f*) to establish mechanisms to prevent ecological disasters, identify the problems of drainage and sewage systems and carry out measures to improve, protect and remedy their ecosystems;

(*g*) to monitor and determine degradations of coastlines, river basins and estuaries and carry out measures to protect and remedy their ecosystems;

(*h*) to identify water, air and soil pollution and their sources and carry out measures to prevent them;

(*i*) to monitor the implementation of Environmental Impact Assessment (EIA) and Environmental Audit Report Guidelines and Procedures on all policies and projects within the State;

(*j*) to organise and carry out public enlightenment and environmental education for the protection and promotion of a healthy environment;

(*k*) to protect the general ecosystems including flora and fauna by the encouragement of proper agricultural practice and forest conservation; and

(*l*) to carry out other activities that are necessary or expedient for the protection and sustainable development of the environment and for the full discharge of functions of the Agency.

3. Power of Agency

Without prejudice to the provisions contained in section 2, the Agency shall have the power to—

(*a*) collect and make available through publications and the mass media, and in co-operation with public or private organisations, basic scientific data and other information pertaining to pollution and environmental protection matters;

(*b*) enter into contracts with public and private organisations and individuals for the purpose of performing its functions under this Law;

(*c*) establish, encourage and promote training programmes for its staff and other individuals for the public and private sectors on environmental protection;

(*d*) establish such procedures for individual and agricultural activities as may be necessary to minimise damage to the environment by such activities;

(*e*) subject to the terms and conditions approved by the Agency, to engage such staff, agents and other workers as the Agency may require for the purpose of performing its function under this Law;

(*f*) develop and promote such processes, methods, devices and material as may be necessary for environmental protection and development;

(*g*) establish laboratories for the testing and analysis of pollutant substances that the Agency considers necessary;

(*h*) monitor, survey, and control gaseous, liquid and solid waste discharge into the State environment;

(*i*) assess building plans for new industries in order to ensure that they are properly fitted with adequate provision for waste management facilities;

(*j*) ensure strict compliance with the relevant provision of the Factories Act in respect of worker protection and noise control;

[Cap. F1. LFN.]

(*k*) demand and collect the pollution discharge fees;

(*l*) ensure in collaboration with the relevant ministries that industries producing harmful waste and noise are not situated in or near residential areas;

(*m*) advise on the appropriate compensation payable to communities and persons affected by environmental pollution natural disasters;

(*n*) in collaboration with the State Environmental Sanitation Department and the local government council, control the sitting and management of landfill and waste dump sites;

(*o*) monitor, regulate and oversee the installation and pollution control device waste treatment method, or waste disposal system and management;

(*p*) design and encourage the establishment of sewage systems and provide maintenance service for such systems; and

(*q*) do such other thing and act as the Agency may deem necessary for the performance of its functions under this Law.

PART II

Establishment and functions of Board

4. Establishment and membership of Board

(1) There is hereby established for the Agency a board to be known as the Board of the State Environmental Protection Agency (hereinafter known as "the Board").

(2) The Board shall consist of—

(*a*) the Secretary to the State Government of the State who shall be the Chairman;

(*b*) the Commissioner charged with the responsibility for—

(i) Agriculture, Water Resources and Rural Development;

(ii) Works, Housing and Transport; Industries, Business Development and Tourism, Education, Health and Social Services and Town and Country Planning;

(*c*) the Director of the Environmental Protection Agency;

(*d*) four other part-time members to be appointed by the Governor one of whom shall be an environmental scientist.

5. Tenure of members

A member other than an *ex officio* member shall hold office for a period of three years but shall be eligible for reappointment for another term of 3 years only.

6. Vacation of office

The office of a member who is not an *ex officio* member shall become vacant if—

(*a*) he, by letter under his hand addressed to the Governor, resigns his appointment; or

(*b*) the Governor at any time revokes the appointment.

7. Remuneration

A member of the Board other than an *ex officio* member shall be paid such remuneration and allowances as the Governor may determine.

8. Functions of Board

Subject to this Law, the Board shall—

(*a*) advise the Governor on general environmental matters, through its Technical Committee;

(*b*) identify and evaluate technically, the environmental and ecological problems requiring solutions and recommend the same to the National Council on Environment and to the Government for necessary action;

(*c*) clarify and reinforce the policy on the role of Local and State administrations in the management of waste and other forms of pollution and environmental degradation;

(*d*) be responsible for the formulation of all environmental policies in the State.

9. Power of Board to delegate its functions

(1) The Board may appoint standing or *ad hoc* committees as the case may be, to perform on its behalf such functions as it may determine—

(*a*) for the appointment, promotion, transfer and discipline of staff;

(*b*) regarding the conditions of service of the staff of the Agency;

(*c*) relating to the performance of its functions under this Law.

(2) No decision of any committee appointed under subsection (1) of this section shall have effect unless it is ratified by the Board.

PART III

Funds and accounts

10. Funds and accounts

The funds of the Agency shall consist of—

(*a*) grants from the Federal Government Agencies and other national and international organisations;

(*b*) grants from the State Government;

(*c*) revenue received by the Agency for its services;

(*d*) funds generated from the registration of environmental and refuse companies and annual pollution discharge charges;

(*e*) fines from environmental defaulters and waste discharge fees;

(*f*) grants, donations, endowments and other gifts;

(*g*) moneys accruing to the Agency from other sources whatsoever.

11. Bank account

(1) The Agency shall keep and operate a bank account in any reputable bank and all moneys received on behalf of the Agency shall be paid into the account.

(2) No withdrawal shall be made from the said account unless the cheque or other instrument in respect of such withdrawal is signed by the Director and Accountant.

12. (1) The Agency shall keep proper books of account in respect of the revenue and expenditure of each financial year.

(2) The Agency shall immediately at the end of each financial year submit to the Governor—

(*a*) a report of its activities for that financial year;

(*b*) the profit and loss account of the Agency.

(3) The report of the State Auditor-General on the said account shall be submitted to the Cross River State Executive Council.

13. Borrowing power

The Agency may subject to such terms and conditions approved by the Governor borrow such amounts as it may from time to time require for the performance of any of its functions under the Law.

14. Investment

The Agency may subject to such terms and conditions as may be approved by the Board invest its funds or any part thereof in such securities as it may decide.

15. Estimates

The Agency shall not later than the 31st day of October in each year submit to the Governor its budgetary requirements for the next succeeding financial year.

PART IV

Meetings

16. Convening of meeting

(1) The Board may at such date, time and place as the Chairman may decide hold any meeting for the transaction of its business, provided that the Board shall meet at least once every three months.

(2) The Chairman may at any time on his own motion or shall upon the requisition of any three members convene a meeting.

17. Presiding of meetings

(1) The Chairman shall preside at any meeting of the Board and in his absence the other members present shall appoint one of their members to preside at such meetings.

(2) The person presiding at such a meeting shall have a casting vote.

18. Co-option

Where upon any occasion, the Board desires to obtain the advice of any person on a particular matter, the Board may co-opt such person to be a member for such meeting as it may deem fit and such person shall have the powers and privileges of a member except that he shall not be entitled to vote on any question or count towards the quorum.

19. Proceedings

The validity of any proceedings of the Board shall not be affected by any vacancy in the membership of the Board or defects in the appointment of any member or by reason that a person not so entitled has taken part in such proceedings.

20. Quorum

Notwithstanding section 16 of this Law, a meeting of the Board shall not proceed to business unless a quorum is formed and three members present at such meetings shall form a quorum.

21. Standing orders

The Board may make standing orders to regulate its own proceedings and those of any of its committees.

PART V

Pollution control, and offences and enforcement powers

22. Power of authorised officer

(1) Any officer of the Agency duly authorised in writing by the Director of the Agency shall have power to enter any place or premises in which manufacturing, industrial or other business activity is taking place for the purpose of enforcing the provisions of this Law.

(2) The officer so authorised shall in particular have power to—

(*a*) enter and search and if need be seize any item or substance occasioning or reasonably suspected to occasion an offence under this Law, and issue written receipt for the seized item;

(*b*) perform tests on any sample of the item so seized;

(*c*) arrest or cause to be arrested any person reasonably believed to have committed an offence under this Law;

(*d*) enter any land, inland water, building, vehicle, tent, vessel, floating craft or any other structure whatsoever which he has reason to believe or suspect that there exists pollution or environmental degradation of any kind;

(*e*) examine appliances, devices or other instruments used for the interest of protecting the environment;

(*f*) require to be produced and examined and take copies of any licence, permit, certificate or any other document required under this Law;

(*g*) enter and inspect any premises or land where industrial or business activity is being carried out to ascertain environmental pollution levels and where necessary, collect samples, wastes or pollutants for further investigations;

(*h*) apply enforcement measures to combat environmental pollution and degradations.

23. Obstruction of authorised officer

Any person who—

(*a*) wilfully obstructs any authorised officer in the exercise of any powers conferred on him by this Law; or

(*b*) fails to comply with any lawful enquiry or requirements made by any authorised officer in accordance with the provision of this Law commits an offence and shall on conviction be liable—

(i) in the case of a natural person, to a fine not exceeding ₦10,000 (ten thousand naira) or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment; and

(ii) in any other case, to a fine not exceeding ₦100,000 (one hundred thousand naira).

24. Authorised officer to produce letter of authorisation

An authorised officer shall on demand, declare his office and produce to any person against whom he is taking action, his letter of authority duly signed by the Director of the agency.

25. Prevention of industrial pollution

(1) Industry—

(*a*) which emits obnoxious gas which is injurious to the health of the people; or

(*b*) which generates a lot of noise;

shall not be sited in or near a residential area.

(2) Any industry that discharges toxic matter in the form of liquids, or discharges any industrial effluent liquid waste or other industrial waste shall make adequate arrangements for the disposal of the toxic matter or industrial waste, including, where necessary, the provision of treatment plants which shall treat any such liquid matter before it is finally discharged into the ground:

Provided that the arrangements made for the disposal of the toxic or other industrial waste shall in all material particular conform to the standards and guidelines set by the Agency pursuant to this Law.

(3) It shall be an offence for any industry—

(*a*) to discharge any toxic matter or other industrial waste other than in conformity with the provisions of subsection (2) of this section; or

(*b*) to discharge any waste liquids into streams, river, creeks or lakes or unto streets, roads, highways or land.

(4) Nothing in this Law shall authorise any person or body of persons corporate or incorporate to construct or use any public or other sewer or any gutter or drain for the purpose of conveying any foul water or other obnoxious liquid into any natural or artificial stream, water course, canal, pond or lake until the water or other liquid had been so treated as not to affect the purity and quality of the water in the stream, water course, canal, pond or lake.

(5) Any person or body of persons whether corporate or incorporate, who discharges any waste into the environment of the State in contravention of the standards and guidelines set by the Agency under this Law commits an offence.

26. Use of chemical and explosives for fishing and farming

Except such as approved by the Federal or State Environmental Protection Agency for the purpose, the use of any chemical substance or explosives by any person or body of persons whether corporate or incorporate for fishing or farming purposes shall be an offence.

27. Punishment for offences under sections 25 and 26

Anybody who commits an offence under sections 25 and 26 of this Law, shall in the case of a natural person, be liable on conviction to a fine not exceeding ₦10,000.00 (ten thousand naira) or to imprisonment for a term not exceeding 2 years or both, and in all other cases be liable to a fine not exceeding ₦250,000.00 (two hundred and fifty thousand naira).

28. Waste discharge from on-shore and off-shore facilities

(1) Except where the owner or operator of a vessel or an on-shore or off-shore facility proves that a waste discharge was caused solely by a natural disaster or an act of war or by sabotage, such owner or operator of the vessel or on-shore or off-shore facility from which the waste discharge emanates in contravention of section 25 shall, in addition to the penalty specified in section 27, be liable for—

(*a*) any cost incurred by the State, Local Government, individual or their agent in the abatement or removal of the discharge;

(*b*) any cost incurred by the State or Local Government in replacing any damaged property or in restoring the affected environment.

(2) The owner or operator referred to in subsection (1) of this section shall upon the occurrence of the discharge—

(*a*) promptly take steps to mitigate any damage;

(*b*) give immediate notice to the Agency of the occurrence of the discharge;

(*c*) promptly commence clean up operations by using the most effective and efficient method at his disposal and promptly comply with such directions as the Agency may give.

29. Sealing up of premises

The Agency may initiate proceedings in the High Court for the sealing up of any premises including industrial and business, when the Agency is satisfied that any person or corporate body has failed to take sufficient steps to meet the environmental standards set by the Federal Environmental Protection Agency or set in pursuance of this Law, or if any person or corporate body has neglected to comply with the specification of a letter from the Agency requesting that an environmental pollution be abated or mitigated.

30. Registration of environmental institutions

The Agency shall from the commencement of this Law register all environmental institutions and companies operating or intending to operate in the State and shall collect registration fees as specified in Schedule 1 to this Law.

31. Payment of annual pollution discharge levy

(1) As from the commencement of this Law any person or body whether corporate or not, engaged in any industrial manufacturing or economic venture listed in Schedule II to this Law, shall not later than the 31st day of January of each year pay an annual pollution levy in the amount specified in the said Schedule.

(2) Failure to pay the levy at the time stipulated in subsection (1) of this section shall attract an additional charge of one-tenth of the amount due for the year as penalty.

PART VI

Miscellaneous Provisions

32. Quarterly returns

(1) The Agency shall, at the end of each quarter, submit to the Governor a report of its activities and operations during that quarter.

33. Submission of annual report

(1) The Agency shall not later than the 31st day of December of each year submit through the Chairman of the Board to the Governor and the National Council on Environment a report on its activities during that year.

(2) The annual report shall be in such form and contain such particulars as the Governor and the National Council on Environment may direct.

34. Directions by the Governor

The Governor may give to the Board directives of a general or specific nature with respect to the performance of the functions of the Agency and the Board shall comply with the directives.

35. Representation in court

In any civil action or proceedings, the Agency may at any stage be represented in court by a State Counsel or a Legal Practitioner nominated by the State Attorney General.

36. Director of Agency

(1) There shall be appointed by the Governor an Environmental Scientist with wide knowledge and practical experience in Environmental Protection matters as the Director of the Agency.

(2) The Director of the Agency shall be the Chief Executive and Accounting Officer of the Agency and shall be subject to the general guidelines laid down by the Board—

(*a*) be responsible for the management of the day-to-day affairs of the Agency;

(*b*) manage the implementation of the functions and enforce the power laid down by this Law; and

(*c*) carry out such other activities as may from time to time be directed by the Chairman, the Governor or the National Council on Environment.

(3) The Director shall be paid such salary and remuneration as is applicable to officers of the same rank in the State Civil Service.

37. The Secretary of the Board shall be appointed by the Board from within the State Civil Service and shall have the duty of—

(*a*) making arrangements for meetings of the Board;

(*b*) preparing the agenda of, and recording the minutes of proceedings of the meetings of the Board;

(*c*) performing such other functions as the Agency, the Chairman of the Board or the Director may from time to time direct.

38. Authentication of document

(1) The common seal of the Agency shall not be used or affixed to any document except in pursuance of the resolution of the Board, duly recorded in the minutes of such meeting.

(2) The affixing of the common seal of the Agency shall be authenticated by the signatures of the Chairman and the Director of the Agency or of such other members as are generally or specifically authorised in that behalf by the Board.

(3) Any contract or instrument which would not be required to be under seal if entered into or executed by a person may be entered into or executed as the case may be on behalf of the Agency by any person generally or specifically authorised in that behalf by the Board.

(4) Any document purporting to be a document duly executed under the common seal of the Agency shall be received in evidence and shall unless the contrary is proved, be deemed to be executed.

39. Regulations

The Board may, subject to the approval of the Governor make regulations for carrying into effect the provisions of this Law and without prejudice to the generality of the foregoing provisions, the Board may, in particular make regulations with respect to—

(*a*) water quality standard;

(*b*) air quality standard;

(*c*) effluent limitation;

(*d*) atmospheric protection;

(*e*) ozone protection;

(*f*) control of hazardous substances and their removal methods;

(*g*) pollution charge;

(*h*) environmental impact assessment of new projects and auditing for the old ones;

(*i*) wild bush burning and devegetation of banks of natural water bodies;

(*j*) any other matter relating to environmental protection.

40. Location of Agency

The Agency shall be under the superintendency of the Governor's office.

41. Departments, units

(1) For the purpose of carrying out its functions the Agency may establish and maintain divisions and units to include—

(*a*) administration;

(*b*) finance;

(*c*) planning and research;

(*d*) environmental quality;

(*e*) ecological preservation;

(*f*) internal audit unit; and

(*g*) public enlightenment and mobilisation.

(2) In addition to the above Divisions or Units, the Agency shall establish additional Divisions or units as it may deem necessary.

42. Power of the Agency to demand environmental impact assessment

(1) The Agency shall request for environmental impact statement for any new project likely to affect the environment, which may include alternatives for the purpose of protecting the environment of the State.

(2) The development of the project to which the statement in subsection (1) of this section relates shall commence only after the Agency has certified that the project is not likely to cause damage to the environment if sited.

(3) Where the Agency is not satisfied, it shall request that the project will be redesigned with alternatives, which shall protect the environment.

(4) The Agency when satisfied with the impact assessment shall—

(*a*) carry out further assessment to ensure that the specifications in the statement are followed;

(*b*) stop the project where there is an alteration in the development plans that is likely to cause harm to the environment.

(5) Where the developer of any project fails to furnish the Agency with a written impact statement and proceeds to develop a project, the Agency may enter upon such premises and stop any further construction.

(6) The development project stopped under subsection (5) above shall resume only after a proper impact statement is approved by the Agency.

43. Service pensionable

Service under the Agency is pensionable.

44. Repeal

(1) The Cross River State Environmental Protection Agency Law 1994 is hereby repealed.

(2) All assets and liabilities which immediately before the commencement of this Law were vested in the defunct Cross River State Environmental Protection Agency shall on the commencement of this Law, be transferred to the Agency and shall by virtue of this Law without any further assurance vest in the Agency.

(3) Any proceedings or cause of action pending or existing immediately before the commencement of this Law for or against the defunct Agency may on the commencement of this Law by continued or commenced as the case may be by or against the Agency instead of the defunct Agency, to the same extent that the proceedings or cause of action ought to have been continue or commenced by or against the defunct Agency if this Law had not been made.

45. Interpretation

In this Law, unless the context otherwise requires—

"Agency" means Cross River State Environmental Protection Agency established under section (1) of this Law;

"asset" includes property (movable or immovable) resources and funds;

"authorised officer" means an employee of the Agency who has a written authority of the Director of the Agency for the purpose of any matter mentioned in the letter of authority and any police officer acting at the instant of the said Director;

"ecological problem" includes all types of erosion, flood, water, land and air pollution, deforestation, extinction of wildlife and aquatic species, and all natural disasters;

"environment" means the water, land and air of Cross River State and all human beings and other creatures whether terrestrial, aquatic or amphibious living therein;

"Governor" means the Governor of the State;

"member" means member of the Board;

"natural person" means a human being;

"off-shore facility" means any structure, device, equipment or in whether mobile or immobile located on, in, under or over the land area of the State;

"owner" includes occupier;

"pollution" means any harmful or hazardous discharge into the environment caused directly or indirectly by man whether it be gaseous, liquid or solid;

"State" means Cross River State;

"task force" means the Task Force established under the Environmental Sanitation and Protection Task Force Law 1984;

"waste" means any unwanted or unused product in whatever state whether liquid, solid or gas from any source whatsoever discharged into the environment and having a present or further harmful or obnoxious effect.

46. Short title

This Law may be cited as the Environmental Protection Agency Law.

SCHEDULES

SCHEDULE I

Registration of Environmental Institutions

CATEGORY A – (₦20,000.00)

(i) Drainage Contractors;
(ii) Sewage System Contractors;
(iii) Environmental Consultants;
(iv) Industrial and hazardous waste and pollution contractors;
(v) Oil spillage control contractors.

CATEGORY B – (₦5,000.00)

(i) Refuse contractors;
(ii) Refuse management consultants;
(iii) Environmental Laboratory and Technology consultant/companies.

SCHEDULE II

Pollution discharge charges

CATEGORY A – (₦20,000.00 – ₦40,000.00 PER ANNUM)

(i) Cement/Asbestos manufacturing companies;
(ii) Petroleum refining and producing companies; and
Petroleum products manufacturing companies;
(iii) Aluminium producing companies;
(iv) Asphalt Bitumen and quarrying producing companies;
(v) Rubber Tyre manufacturing companies;

(vi) Fertiliser/Ammonia/Urea manufacturing companies;
(vii) Petro-chemical/Synthetics fibre companies;
(viii) Fibre, pulp and wood processing companies;
(ix) Gas producing companies;
(x) Battery manufacturing companies;
(xi) Cable, electrical and electronics manufacturing companies;
(xii) Cars/motorcycles assembly plants;
(xiii) Plants manufacturing companies;
(xiv) Pharmaceutical manufacturing companies;
(xv) Industrial machinery manufacturing companies;
(xvi) Brewery companies.

CATEGORY B – (₦10,000.00 – ₦20,000.00)

(i) Carpet and rug manufacturing companies;
(ii) Petroleum product marketing companies;
(iii) Chemical manufacturing companies;
(iv) Food processing/food canning companies;
(v) Beverage producing companies;
(vi) Paint manufacturing companies;
(vii) Flour Mills;
(viii) Palm Oil Mills;
(ix) Rubber processing factories;
(x) Detergent and soap manufacturing companies.

CATEGORY C – (₦5,000.00 – ₦10,000.00)

(i) Mechanical companies;
(ii) Solid Waste Disposal companies;
(iii) Abattoirs and Lairags;
(iv) Printing and Publishing companies (including State and Federal Government owned);
(v) Oil/oil products containnering companies;
(vi) Saw Mills and other medium scale wood/furniture works or factories;
(vii) Animal Feed Mills;
(viii) Match manufacturing companies;
(ix) Sewage collecting agencies; including septic tanks;
(x) Wood and furniture companies;
(xi) Photographic industries, marketing and processing companies.

CATEGORY D – (₦1,000.00 – ₦5,000.00)

(i) Government-owned hospitals, clinics, dispensaries, health centres, etc., with more than two beds;
(ii) Poultry farms with 2,000 or more birds;
(iii) Piggeries with 1,000 pigs and above.

CATEGORY E – (₦2,000.00 – ₦5,000.00)

(i) Hotels with over 10 rooms;

(ii) Petrol filling stations;

(iii) Laboratories (Medical or photography, where chemicals are used in considerable quantities;

(iv) Packaging companies;

(v) Sewage treatment companies;

(vi) Bakeries;

(vii) Private hospitals and clinics with more than two beds;

(viii) Mechanical tools marketing servicing companies.

CHAPTER E5

ENVIRONMENTAL PROTECTION AGENCY LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER E6

ENVIRONMENTAL SANITATION ENFORCEMENT (URBAN AREA) LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Appointment of sanitation officers.
2. Functions of sanitation officer.
3. Payment of sanitation fees.
4. Prohibition of structure on footpath, etc.
5. Provision of toilet facilities.
6. Failure to comply with section 5.
7. Provision for holding tank and industrial waste treatment facilities and penalty.
8. Throwing or discharge of refuse or sewage effluents into the streets or drains or open spaces prohibited.
9. Entry and examination of tenement for nuisance.
10. Notice of execution of work to prevent recurrence.
11. Penalty for obstructing sanitation officer.
12. Owner or occupier provides approved waste receptacle.
13. Maintenance of waste receptacle.
14. Obnoxious or poisonous waste.
15. Authority to designate refuse disposal sites.
16. Spillage of sand, refuse, etc., from vehicles.
17. Prohibition of burning of industrial waste etc.
18. Dumping refuse or waste.
19. Obstruction of drain.
20. Unauthorised parking of vehicle.
21. Illegal posting of handbills.
22. Litter from vehicle.
23. Parking at undesignated area.
24. Sale of goods at junctions etc.
25. Removal of silt or other materials.
26. Prohibition of deposit of building materials etc., on road.
27. Power to seal tenement for nuisance etc., and to inspect etc.
28. Inspection, etc. and general works on drains etc.
29. Demolition of structure.
30. Commission of nuisance and jurisdiction.
31. Commencement of proceedings.
32. Power of sanitation officer to prosecute.
33. Arrest without a warrant.

34. Penalty.
35. Regulations.
36. Repeal.
37. Interpretation.
38. Short title.

SCHEDULES

CHAPTER E6

ENVIRONMENTAL SANITATION ENFORCEMENT
(URBAN AREA) LAW

A Law to provide for the Enforcement of Environmental Sanitation Laws within Urban Development Authority Areas in Cross River State and for other matters connected therewith.

(27*th February*, 2003)

[Commencement.]

1. Appointment of sanitation officers

The Urban Development Authorities established by section 1 of the Urban Development Authority Law shall designate within their operational areas some of their officers of suitable grades as sanitation officers for the purpose of implementing this Law.

2. Functions of sanitation officer

The functions of a sanitation officer shall be—

(*a*) to enforce the provisions of all laws relating to Environmental Sanitation within the area of the respective Urban Development Authorities; and

(*b*) to carry out any other duties as may be directed by their respective Urban Development Authorities towards the maintenance of a clean and well developed Urban Environment.

3. Payment of sanitation fees

(1) Upon the commencement of this Law, every owner or occupier of each tenement situate and lying within the jurisdiction of any Urban Development Authority shall pay a sanitation fee of ₦50.00 every month.

(2) Every driver of a commercial vehicle within the urban areas shall purchase a sanitation emblem annually at the cost of ₦500.00 and such an emblem shall be pasted to the body of his vehicle or produced on demand by a sanitation officer.

4. Prohibition of structure on footpath, etc.

(1) It shall be unlawful to construct or put any structure on the footpath or on the required setback from the road.

(2) Every owner or occupier of any tenement shall—

(*a*) clean and keep free from the street at the front, back or either side of each tenement; and

(*b*) clean and keep free from the drain, gutter or channel on such street,

all filth, rubbish and refuse or waste of all description.

5. Provision of toilet facilities

The owner or occupier of a tenement shall:

(*a*) provide toilet facilities and adequate drainage;

(*b*) maintain and provide the said toilet facilities and drainage running through or by such tenement in sanitary condition; and

(*c*) clean and keep free from the drain, gutter or channel on such street, all filth, rubbish and refuse or waste of all description.

6. Failure to comply with section 5

Any owner or occupier who fails to comply with the provisions of section 5 commits an offence and shall on conviction be liable to a fine of three thousand naira (₦3,000.00) or imprisonment for three (3) months.

7. Provision for holding tank and industrial waste treatment facilities and penalty

(1) Every person generating industrial waste in his tenement shall provide within the said tenement a suitable holding tank for such waste which shall be regularly carried away for disposal by the person generating the waste.

(2) Every person generating toxic waste in any tenement shall provide within the said tenement suitable waste treatment plant for treating the industrial waste emanating from the said tenement before its discharge into any public sewage.

(3) Any person who fails or neglects to comply with the provisions of this section is guilty of an offence and shall on conviction be liable to a fine of two thousand naira.

(4) Where a person guilty of an offence under this section is a corporation or a body corporate or unincorporated shall be liable on conviction to a fine of not less than twenty thousand naira (₦20,000.00) only.

(5) Where it is proved that the offence committed under this section by a corporate or a body corporate or unincorporated has been so committed with the consent of the manager, secretary or other similar officer of the said body (or any person purporting to act in any such capacity) the Director, manager, secretary or other similar officer of the corporation or body corporate or unincorporated is guilty of an offence and shall be liable on conviction to a fine of one thousand naira or to imprisonment for six months.

(6) In addition to the penalty imposed for committing an offence under this section a duly authorised officer of an Urban Development Authority may seal up any tenement for contravention of the provision of this section.

(7) The tenement sealed up under subsection (6) of this section may remain sealed up until the requirement under subsection (1) of this section have been met.

(8) The penalty imposed under this section for contravening the provision of this section shall be in addition to any penalty that may be imposed under section 34 of this Law of commission of nuisance under any other provision of this Law.

8. Throwing or discharge of refuse or sewage effluents into the streets or drains or open spaces prohibited

(1) No person shall throw or deposit on any street, open space, gutter, drain or drainage system or tenement whether occupied or not, any can, litter, loose refuse or waste of any description except at such places as may be authorised by any Urban Development Authority.

(2) No person shall cause or knowingly permit any refuse or sewage effluents or liquid waste to be discharged into any drain or drainage system, road gorges, water courses or any part thereof except at such places that may be authorised by an Urban Development Authority.

(3) Any person who violates the provisions of this section commits an offence and shall on conviction be liable to a fine of ₦3,000.00 (three thousand naira only) or imprisonment for three (3) months.

9. Entry and examination of tenement for nuisance

(1) In each Urban Development Authority area within the State, a sanitation officer or any person authorised by the Urban Development Authority in writing either generally on specifically in that behalf may enter and terminate between the hours of six in the morning and four in the evening with or without assistance to examine any tenement or frontage or back or either side of such tenement in order to ascertain the existence of any nuisance.

(2) The sanitation officer or any person authorised by him if satisfied of the existence of a nuisance shall serve notice as specified in the First Schedule for the abatement of a nuisance on any person by whose act the nuisance arises or continues or if such person cannot be found, on the owner or the occupier of the tenement on which the nuisance arises requiring him to abate the same within three days after the service of the notice.

10. Notice of execution of work to prevent recurrence

The sanitation officer may also by the service of other notice served on such person, owner or occupier require him to do what may be necessary to prevent the recurrence of the nuisance and may specify steps to be taken for that purpose notwithstanding that such nuisance may have been abated for the time being.

11. Penalty for obstructing sanitation officer

Any person who obstructs or assaults any sanitation officer or any person authorised in that behalf or any person engaged in carrying out the provision of this Law or any act authorised by this Law shall be guilty of an offence and on conviction shall be liable to a fine of two thousand naira or to imprisonment for six months.

12. Owner or occupier provides approved waste receptacle

Every owner or occupier of a tenement shall provide approved waste receptacle which shall be kept within the tenement to be used for depositing refuse.

13. Maintenance of waste receptacle

Every owner or occupier of a tenement shall maintain in good condition the waste receptacle mentioned in section 12 of this Law and shall replace same when it is worn out.

14. Obnoxious or poisonous waste

(1) No obnoxious, toxic or poisonous waste shall be deposited in the waste receptacle.

(2) Any person who violates the provisions of this section commits an offence and shall on conviction be liable to a fine of ₦3,000.00 or imprisonment for three months.

15. Authority to designate refuse disposal sites

For purposes of this Law the Urban Development Authority in conjunction with the Local Government Council of the Area shall designate refuse disposal sites for deposit of refuse or waste.

16. Spillage of sand, refuse, etc., from vehicles

(1) As from the commencement of this Law the driver of any moving vehicle carrying sand, laterite, gravel, refuse, waste or material capable of spillage shall cover such vehicle with tarpaulin or plastic to prevent spillage of such material on the highway or other road in the State.

(2) Any driver of any vehicle mention in sub-section (1) of this section who fails to cover such vehicle as prescribed in sub-section (1) of this section shall be guilty of an offence and on conviction shall be liable to a fine of two thousand naira (₦2,000.00) or to three (3) months imprisonment.

17. Prohibition of burning of industrial waste etc.

The burning of any industrial and commercial waste within the premises of any tenement is hereby prohibited.

18. Dumping refuse or waste

No person shall dump at any place other than the designated refuse disposal site any refuse or waste.

19. Obstruction of drain

No person shall throw or deposit in any drain anything capable of obstructing a free and uninterrupted flow of the drain.

20. Unauthorised parking of vehicle

No person shall keep, deposit or leave in any street or sidewalk or public place any vehicle whether serviceable or broken down in a manner capable of—

(i) obstructing traffic; or

(ii) obstructing, hindering or otherwise affecting the proper use by any other member of the public of such street, sidewalk, public place or any part thereof.

21. Illegal posting of handbills

No person shall paste, or cause to be pasted any handbills, posters, banners, etc., on any public buildings, artifacts, road/street sign posts, roundabouts or road junctions.

22. Litter from vehicle

No person shall throw food items, wrapping, empty cans, paper or other waste products or litter of any description out of a moving vehicle onto any public highway, roads, lanes or public places.

23. Parking at undesignated area

No person shall park any vehicle, trucks or bicycles at unauthorised locations, provided that such unauthorised locations shall be clearly designated by the Urban Development authority of the area and a "NO PARKING SIGN" conspicuously displayed.

24. Sale of goods at junctions etc.

No person shall sell, offer or display for sale or consumption any food, food items, goods or other articles for trade or consumption by any person in a road junction, roadside, set-off or any other place prohibited by this or any other Law.

25. Removal of silt or other materials

Any person who in the process of any construction or repair of any drain excavates or removes any silt, earth or other material from such construction or drain, or any person engaged in any other exercise of removing any silt, earth or other material from drainage system shall carry away such silt, earth or other material from such site.

26. Prohibition of deposit of building materials etc., on road

(1) No person shall in the process of any construction at any site deposit on any road, road verge, or drain, sand, laterite, gravel, iron-rod, plank or any building material.

(2) For the purpose of this section any person or any builder responsible for any construction of any site shall confine the deposit of the material mentioned in subsection (1) of this section to within the parameter of the site of the construction.

27. Power to seal tenement for nuisance etc., and to inspect etc.

(1) For further effective implementation of this Law it shall be lawful for a duly authorised officer of a Urban Development Authority to seal up any tenement in respect of which a nuisance has been committed and the owner or occupier has refused or neglected to abate the nuisance in spite of due notice being given to abate the said nuisance.

(2) The tenement referred to in subsection (1) of this section shall remain sealed up until the nuisance committed is abated.

28. Inspection, etc. and general works on drains etc.

The Urban Development Authority of the area may authorise any if its officers—

(*a*) to inspect, clear, or clean a drain, open space, public place, recreation ground, drain or drainage system; or

(*b*) carry out any other work in a lawful manner on a drain or drainage system for the continuous flow of such drain or drainage system or any part thereof.

29. Demolition of structure

An Urban Development Authority may—

(*a*) demolish or remove without payment of compensation any structure on the footpath or on the required setback from the road, or which is so placed as to cause an impediment to the clearing, cleaning, construction, inspection or continuous flow of a drain or drainage system or any part thereof;

(*b*) carry out any other work in a lawful manner on a drain or drainage system for the continuous flow of such drain or drainage system or any part thereof.

30. Commission of nuisance and jurisdiction

(1) Any person who contravenes the provision of sections 3, 4, 6, 8, 12, 16, 17 to 25 of this Law commits a nuisance.

(2) Notwithstanding any provision in any other Law or Laws, a magistrate's court shall have jurisdiction to try any person who commits nuisance under subsection (1) of this section and any person who commits an offence under this Law and the court shall have power to impose punishment on such person as provided under this Law.

31. Commencement of proceedings

A sanitation officer or any person duly authorised in that behalf may commence proceedings against a person who fails to abate a nuisance or who commits an offence under sections 6, 8 and 14 of this Law after service on him of a notice under section 9 of this Law by means of a criminal summons in the Second Schedule to this Law.

32. Power of sanitation officer to prosecute

A sanitation officer or any such officer shall in a magistrate's court have power to prosecute an offender who has been summoned to court under the provision of section 30 of this Law.

33. Arrest without a warrant

Any person who commits a nuisance or any offence under this Law may be arrested without a warrant by a police officer or a sanitation officer or any other person duly authorised by the Urban Development Authority in that behalf.

34. Penalty

(1) Any person who fails to comply with the provisions of sections 3, 4, 5, 7, 10, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of this Law shall on summary conviction be liable to a fine of two thousand naira or to imprisonment for three months.

(2) Where the person who commits the nuisance is a corporation, a body corporate or unincorporated, the penalty shall be four thousand naira for each nuisance.

(3) Where it is proved that a nuisance committed under this Law by a corporation, a body corporate or unincorporated has been with the consent or connivance of or attributed to any neglect or omission on the part of the Director, Manager, Secretary, or other similar officer of the said body (or any person purporting to act in any such capacity) the Director, Manager, Secretary or other similar officer of the corporation, body corporate or unincorporated shall be liable on conviction to a fine of two thousand naira or to imprisonment for six months for each offence.

35. Regulations

The Urban Development Authorities may from time to time with the approval of the Government make regulations for carrying into effect the provisions of this Law.

36. Repeal

The Environmental Sanitation and Protection Task Force Law No. 6 of 1984 as amended is hereby repealed.

37. Interpretation

In this Law unless the context otherwise requires—

"designated dumping site" means any place designated by the Urban Development Authority pursuant to the provision of section 15 of this Law;

"domestic waste" means waste from a private dwelling or residential home or from tenement forming apart of a university or school or other educational establishment forming part of a hospital or a nursing home;

"effluent" means an unwanted surplus substance arising from the application of any process;

"industrial waste" means waste from tenement used wholly or mainly for the purpose of a trade, business or factory or industry and includes waste from any mine or quarry;

"occupier" includes a tenant or a resident or user of any tenement;

"owner" in relation to a tenement includes a State lessee whether a lease, licence or otherwise, joint owner, lessee, tenant for life, mortgage in possession or, any person in actual possession, a landlord or any person acting or purporting to act with the authority of the owner or the person entitled to the immediate reversion of the tenement, or any person receiving (whether in his own right or as an attorney or agent) any rent from any person for the occupation of any accommodation in respect of which he claims a right to receive the same;

"person" includes any body of persons corporate or unincorporated;

"refuse" means garbage, and other discarded solid material resulting from domestic, industrial, commercial and agricultural operations and from community activities an it includes solid or building materials;

"sanitation officer" means an officer so designated pursuant to section 1 of this Law and engaged in sanitary work in an Urban Development Authority;

"structures" includes kiosk or building;

"tenement" means land with buildings which is held or occupied as distinct or separate holding or tenancy or any wharf or pier and it includes a shop or market stall, factory, commercial or industrial premises, residential premises, open spaces, club premises, hotel or guest house;

"Urban Development Authority" means Urban Development Authorities created by the Cross River Urban Development Authority Law 2000;

"waste" includes waste of all descriptions, any substances which constitute scrap material or an effluent or other unwanted surplus substance arising from the application of any process.

38. Short title.

This Law may be cited as the Environmental Sanitation Enforcement (Urban Area) Law.

FIRST SCHEDULE

[Section 9 (2).]

OWNER/OCCUPIER

.....

.....

.....

FIRST SCHEDULE—*continued*

Dear Sir/Madam,

ABATEMENT OF NUISANCE NOTICE UNDER ENVIRONMENTAL SANITATION ENFORCEMENT (URBAN AREA) 2002 LAW

Inspection carried out under the abovementioned Law on tenement situate at .....

.....

within Cross River State on ..... has revealed that you have failed to keep your tenement and its surrounding free from filth, rubbish, refuse or waste of all description and/or .....

In this circumstance, unless you abate the said nuisance within three days after service of this notice the provision of the above-named Law will be enforced and you will be prosecuted as provided for under section 28 of the Law.

.....

Sanitation Officer
Urban Development Authority

SECOND SCHEDULE

[Section 31.]

Criminal Summons Form A

(*Summons to the Defendant*)

IN THE MAGISTRATE COURT OF CROSS RIVER STATE held at the .....

..... Magisterial District

Charge No. ..... 20 .....

Between

..... Urban Development Authority

Complainant

And

..... *Defendant*

To ..... of .....

Complaint has been made this day by .....

That you on the ..... day of ..... 20 .....

Within the ..... Urban Development Authority Area/Magisterial District, did*—

(i) fail to clear and keep free from the street at the front, back or either side of your tenement with the drain, gutter and channel on such street of all filth, rubbish, refuse or waste;

(ii) fail to provide cover waste receptacle for your tenement for depositing refuse or waste of any description;

(iii) throw or lay on the street, gutter, tenement or open space rubbish, offensive or unwholesome matter;

(iv) fail to neglect to provide suitable holding tank as provided for under section 5 of this Law.

(v) .....

(vi) .....

(vii) .....

SECOND SCHEDULE—*continued*

And hereby committed to nuisance under section 30 of this Law or committed an offence under section 6, 8, or 14 of this Law and punishable under section 34 or/and section 6, 8, and 14 of this Law, respectively.

You are therefore hereby summoned to appear before the Magistrate Court sitting at .....

..... on the ..... day of ..... 20 ..... at the hour of 9.00 a.m. in the aforenoon to answer to the said complaint.

Dated this ..... day of ..... 20 .....

.....

Magistrate

INSTRUCTION FOR COMPLETING THIS FORM

Delete whatever is not applicable

* State concisely the substance of the complaint.

CHAPTER E6

ENVIRONMENTAL SANITATION ENFORCEMENT
(URBAN AREA) LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER E7

ESCORTS (REQUISITION OF SUPPLIES) LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Circumstances in which an escort may requisition supplies.
2. Payment for supplies requisitioned.
3. Procedure where payment is not accepted.
4. Obstruction of escort.
5. Saving of liability.
6. Interpretation.
7. Short title.

CHAPTER E7

ESCORTS (REQUISITION OF SUPPLIES) LAW

A Law to empower Escorts to Requisition Supplies of which they may be in need in Cases where there has been a Refusal to sell the same.

(4*th June*, 1936)

[Commencement.]

1. Circumstances in which an escort may requisition supplies

(1) Where an escort is in need of supplies and the Local Government Secretary in charge has requested the inhabitants of any village to provide the escort with supplies in such quantities as he may specify (not exceeding the quantities of which the escort is in need) and has informed them that he will pay adequate compensation for all such supplies on delivery, then if and in so far as the inhabitants refuse or fail to provide the escort with such supplies the escort may seize and appropriate supplies belonging to the inhabitants of the village.

(2) For the purpose of this section—

(*a*) any request or intimation may be made or given by the Local Government Secretary personally or by someone authorised to do so on his behalf; and

(*b*) a request or intimation shall be deemed to have been made or given to the inhabitants of a village if it is made or given to one or more persons appearing to the person making or giving the same to be a person or persons having authority in the village, or if it is made or given to as many of the inhabitants as circumstances reasonably permit.

2. Payment for supplies requisitioned

(1) When it becomes necessary for an escort to seize and appropriate supplies under the provisions of section 1, the Local Government Secretary shall keep an accurate record of all supplies so seized and appropriated.

(2) If a person applies to the Local Government Secretary for payment in respect of any of the supplies so seized and appropriated and the Local Government Secretary is satisfied that such supplies were the property of that person the Local Government Secretary shall pay him for such supplies at rates not lower than the rates generally prevailing in the neighbourhood.

(3) If after the expiration of fourteen days from the date of the seizure no claims to the satisfaction of the Local Government Secretary shall have been made or such claims shall not have been made to the full extent of such supplies the Local Government Secretary shall thereupon pay for such supplies or the balance thereof by handing the amount therefor to the village head or to the village head and council who shall pay the same to the owners of the supplies requisitioned.

3. Procedure where payment is not accepted

(1) Where the amount tendered in payment of supplies seized and appropriated is considered by the person claiming to be entitled thereto to be less than the rates generally prevailing in the neighbourhood and such person refuses to accept the amount tendered, he may, within fourteen days of the date when the amount was tendered, apply to the Commissioner to decide the amount to be paid. The Commissioner may confirm or vary, whether by increase or decrease, the amount to be paid.

(2) If the applicant is aggrieved at the decision of the Commissioner, he may within fourteen days appeal therefrom to the High Court, which Court may confirm or vary the decision of the Commissioner. An appeal under this subsection shall be made in such manner as may be prescribed by rules of court.

4. Obstruction of escort

Any person who wilfully obstructs any escort or member thereof in the exercise of the power of seizing and appropriating supplies conferred by section 3 shall be liable to a fine of twenty naira or to imprisonment for six months or to both such fine and imprisonment.

5. Saving of liability

Where the provisions of this Law have been complied with no person shall have any claim whatsoever against the Government, the Local Government Secretary or any person connected with the requisitioning of such supplies in respect of the supplies so seized and appropriated.

6. Interpretation

In this Law—

"Commissioner" means the Commissioner charged with the responsibility for finance;

"escort" includes one or more members of the armed forces of Nigeria accompanying a Local Government Secretary for the purpose of protection of life and property against attack, as well as the Local Government Secretary and all unarmed persons accompanying him;

"supplies" includes foodstuffs and livestock;

"village" includes any town which is not an urban area or a municipality.

7. Short title

This Law may be cited as the Escorts (Requisition of Supplies) Law.

CHAPTER E7

ESCORTS (REQUISITION OF SUPPLIES) LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER E8

ESSENTIAL DRUGS PROGRAMME LAW

ARRANGEMENT OF SECTIONS

PART 1

Establishment of the Programme

SECTION

1. Establishment of the Programme.
2. Functions of the Programme.
3. Steering Committee.
4. Functions of the Steering Committee.
5. Standing Committees.
6. Management Committee.
7. Functions of the Management Committee.

PART II

Staff of the Programme

8. Programme Manager.
9. Other staff.
10. Pension and gratuity.

PART III

Financial Provisions

11. Funds.
12. Supply of drugs for Seedstock.
13. Offence of diverting.
14. Audit account.
15. Borrowing powers.
16. Investment.
17. Bank accounts.
18. Budgetary provisions.
19. Estimates.

PART IV

Meetings

20. Convening of meetings.
21. Presiding at meetings.
22. Quorum.
23. Co-opting of member.

SECTION

24. Validity of proceedings.
25. Standing orders.
26. Common Seal.
27. Representation in Court.
28. Directions.
29. Regulations.
30. Interpretation.
31. Short title.

CHAPTER E8

ESSENTIAL DRUGS PROGRAMME LAW

A Law to make provisions for the establishment of the Essential Drugs Programme and for matters connected therewith.

(2*nd December*, 2002)

[Commencement.]

PART 1

1. Establishment of the Programme

(1) There is hereby established a programme to be known as the Cross River State Essential Drugs Programme.

(2) The Programme shall be a body corporate with perpetual succession and a common seal and shall have power to sue and be sued in its corporate name and to own, hold and dispose of property whether movable or immovable.

2. Functions of Programme

The Programme shall—

(*a*) develop and provide an affordable and sustainable supply of safe and effective pharmaceuticals;

(*b*) promote the rational use of drugs by the public;

(*c*) strengthen institutional capacities at the State and Local Government levels to support the programme activities;

(*d*) introduce cost recovery mechanisms and drug revolving funds for self-financing;

(*e*) improve local capability in drugs manufacturing;

(*f*) ensure that essential drugs are available to the entire population of the State;

(*g*) ensure that available drugs are safe, effective, accessible and affordable at all levels of health care; and

(*h*) create and sustain awareness on Essential Drugs Programme services and components at the State and local government levels.

3. Steering Committee

(1) The programme shall have a governing body to be known as the Steering Committee.

(2) The Steering Committee shall consist of—

(*a*) the Commissioner for Health who shall be the Chairman;

(*b*) the Attorney-General and Commissioner for Justice or his representative;

(*c*) the Commissioner for Finance or his representative;

(*d*) the Permanent Secretary, Ministry of Health;

(*e*) the Director Pharmaceutical Services, Ministry of Health;

(*f*) the Programme Manager; and

(*g*) a representative of the Pharmaceutical Society of Nigeria.

4. Functions of Steering Committee

The Steering Committee shall—

(*a*) articulate and formulate policies for the Programme;

(*b*) establish such organisational structure as may be required for carrying out the functions of the programme;

(*c*) constitute committees as may be necessary for the carrying out of its functions and delegate to those committees such functions and powers as it deems necessary.

5. Standing Committees

The Steering Committee may appoint standing or *ad hoc* Committees as the case may be, to perform on its behalf such of its functions as it may determine but no decision of such Committee shall take effect until it has been ratified by the Steering Committee.

6. Management Committee

There shall be constituted a Management Committee which shall comprise—

(*a*) Programme Manager;

(*b*) Director Administration;

(*c*) Financial Controller;

(*d*) Procurement Officer;

(*e*) Information, Education and Communication Co-ordinator;

(*f*) Head of Internal Audit; and

(*g*) Monitoring and Evaluation Officer.

7. Functions of the Management Committee

The Management Committee shall—

(*a*) develop and implement work plans as may be approved by the Steering Committee from time to time;

(*b*) appoint such contractors, agents, staff and other persons as may be required for carrying out the functions of the programme;

(*c*) appoint, promote, control and discipline the staff of the programme.

PART II

Staff of the Programme

8. Programme Manager

(1) There shall be a Programme Manager who shall be a registered Pharmacist of not less than ten years working experience within the public service and shall be appointed by the Governor.

(2) The Programme Manager shall—

(*a*) be the Chief Executive and Accounting Officer of the Programme; and

(*b*) be responsible for the day-to-day management of the affairs of the Programme.

9. Other staff

The staff of the Programme who shall be civil servants shall be subject to the Cross River State Civil Service Rules and Regulations in matters relating to appointment, promotions, discipline, control and training.

10. Pension and gratuity

It is hereby stipulated that the Service in the Programme is a scheduled service and shall be deemed to be pensionable under the Pensions Law, 1987 or re-enactment or modification thereof and employees of the Programme shall therefore be entitled to pensions, gratuities and other retirement benefits as prescribed in the said Law.

PART III

Financial Provisions

11. Funds

The funds of the Programme shall consist of—

(*a*) such sums of monies as may be budgeted for the Programme by the State Government;

(*b*) seedstock contribution of ₦500,000 each from every Local Government Area of the State;

(*c*) such revenue as the Programme may derive from its charges, investments and services; and

(*d*) such sums which may accrue to the Programme from its assets or any other source whatsoever.

12. Supply of drugs for seedstock

(1) For the seedstock contribution of five hundred thousand naira (₦500,000), drugs worth the same amount shall be supplied to every Essential Drug Store in the Local Government Areas.

(2) The Local Government Areas Essential Drug Stores shall make their drugs purchases from the State Central Drug Store, except where such drugs as are needed are confirmed not available at the State Central Store by the Programme Manager.

13. Offence of diverting

Anyone who diverts moneys from Essential Drugs Fund Accounts either at the State or Local Government levels for the purchase of essential drugs thereby commits an offence and shall on conviction be liable to two (2) years imprisonment without option of fine.

14. Audit account

(1) The Programme shall keep proper books of accounts and records in relation to its income and expenditure and shall prepare in respect of each financial year, a Statement of Accounts for each year.

(2) The Programme shall at the end of its financial year cause its accounts to be audited by an External Auditor to be appointed by the State Auditor-General.

(3) The Auditor of the Programme, shall, on completion of the audit of the accounts of the Programme for each year, prepare and submit to the Auditor-General of the State—

(*a*) a general report setting out the observation and recommendation of the Auditor of the financial affairs of the Programme for that year; and

(*b*) a report on any important matter which the Auditor may consider necessary to bring to the notice of the Programme.

(4) The Programme shall as soon as may be after the end of each financial year submit to the Governor—

(*a*) a report of its activities for the financial year; and

(*b*) the profit and loss account of the programme including its balance sheet for the financial year.

15. Borrowing powers

The Programme may, subject to such terms and conditions as may be approved by the Governor, borrow such moneys as it may from time to time require for the performance of its functions under this Law.

16. Investment

The Programme may, subject to such terms and conditions as may be approved by the Governor—

(*a*) invest any sums standing to its credit in viable securities; and

(*b*) dispose of such securities as and when the need arises.

17. Bank accounts

(1) The Programme shall keep and operate bank accounts in reputable banks and all moneys received on behalf of the Programme shall be paid into such accounts.

(2) No withdrawal shall be made from the Programme's bank account unless the cheque or other instrument in respect of such withdrawal is signed by the Programme Manager and the Financial Controller or such other persons as the Steering Committee may from time to time in that behalf authorise.

18. Budgetary provisions

The Programme shall—

(*a*) operate within normal budgetary allocations made to it; and

(*b*) comply with budgetary and audit rules and regulations applicable in the State Civil Service.

19. Estimates

The Programme shall not later than the 31st day of October in each year, submit to the Governor estimates of its revenue and expenditure for the next succeeding financial year.

PART IV

Meetings

20. Convening of meetings

(1) The Steering Committee may on such date and at such time and place as the Chairman may decide, hold any meeting for the transaction of its business:

Provided that meetings of the Board shall be held at least once every three months.

(2) The Chairman may at any time on his own motion and shall upon the requisition of any-257.2(7)-6.9(7e)0.404(t)m5.4(t)5.8ttb6.9(7eers,0.4056 (c57.2(7)n7.2(7))0.5p)-6.9(e-252.404(h)-7.404(h)m5.4(t).1(meeti7)-0.4.9(8257.2(7

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(3) Any contract or instrument which would not be required to be under seal if entered into or executed by a person, may be entered into or executed as the case may be, on behalf of the Steering Committee by any person generally or specifically authorised in that behalf, by the Steering Committee.

(4) Any document purporting to be a document duly executed under the Common Seal of the Programme shall be received in evidence and shall unless the contrary is proved, be deemed to be so executed.

27. Representation in Court

In any civil action or proceedings the Programme may at any time be represented in Court by a State Counsel or a Legal Practitioner nominated by the Attorney-General of the State.

28. Directions

The Governor may give to the Programme directions of a special or general nature with respect to the performance by the Programme of its functions under this Law and the Programme shall comply with such directions.

29. Regulations

The Steering Committee may make regulations for the carrying into effect of the provisions of this Law and without prejudice to the generality of the foregoing provisions, the Steering Committee may make regulations with respect to—

(*a*) the appointment, promotion, transfer and discipline of the senior staff of the programme; and

(*b*) the condition of service of the staff of the Programme.

30. Interpretation

In this Law unless the context otherwise requires—

"Chairman" means the Chairman of the Steering Committee;

"Governor" means Governor of the State;

"Governor-in-Council" means Governor sitting in session with the Executive Council of the State;

"member" means member of the Steering Committee;

"Programme" means the Cross River State Essential Drugs Programme;

"Programme Manager" means the Programme Manager of the Programme;

"State" means Cross River State;

"Steering Committee" means the Steering Committee of the Programme established by section 2 of this Law.

31. Short title

This Law may be cited as the Essential Drugs Programme Law.

CHAPTER E8

ESSENTIAL DRUGS PROGRAMME LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER F1

FATAL ACCIDENTS LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Right of action in respect of death of a person where action would lie for injury of such person.
2. For whose benefit and by whom action to be brought.
3. Particulars to be given by plaintiff in an action.
4. Period of limitation of actions.
5. Method of award, assessment and apportionment of damages.
6. Method and effect of payment into court.
7. Forum.
8. Savings for rights accrued under 9 and 10 Vic. C. 93 and 27 and 28 Vic. C. 95.
9. Payment out of court.
10. Interpretation.
11. Short title.

CHAPTER F1

FATAL ACCIDENTS LAW

A Law to provide, in certain circumstances, for the Compensation to be paid to the Family of a person killed by the wrongful Act, Neglect, or Default of another person.

(10*th May*, 1956)

[Commencement.]

1. Right of action in respect of death of a person where action would lie for injury of such person

Notwithstanding any rule of law, practice or procedure heretofore in force to the contrary, whenever the death of a person shall be caused by a wrongful act, neglect or default of another person and the act, neglect or default is such as would, if death had not ensued, have entitled the person injured to maintain an action, and recover damages in respect thereof, then and in every case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured.

2. For whose benefit and by whom action to be brought

(1) Every action under section 3 shall be for the benefit of the members of the immediate family of the person whose death shall have been so caused and shall be brought—

(*a*) in the case of a deceased person to whom customary law did not apply immediately before his death, by and in the name of the executor or administrator of the deceased person; and

(*b*) in the case of a deceased person to whom any customary law applied immediately before his death, at the option of his immediate family, by and in the name of such person or persons as the court may be satisfied is or are entitled or empowered to represent the deceased person or his estate according to such customary law or by, and in the name of, the executor or administrator of the deceased person.

(2) If there is, in respect of a deceased person, no executor or administrator or no representative for the purposes of subsection (1) of this section or if there is such an executor, administrator or subsection (1) within six months after the death of such deceased person, then such action may be brought by and in the name or names of all or any of the persons for whose benefit such action would have been brought if it had been brought by and in the name of the executor, administrator or representative as aforesaid, and every action so brought shall be for the benefit of the same person or persons and shall be subject to the same law and procedure, as nearly as may be, as if it were brought by and in the name of such executor, administrator or representative.

(3) Not more than one award of damages may be made for and in respect of the same subject matter.

3. Particulars to be given by plaintiff in an action

In every action brought under the provisions of this Law the plaintiff shall give to the court and to the defendant full particulars of the person or persons for whom and on whose behalf such action is brought and of the nature of the claim in respect of which damages are sought to be recovered.

4. Period of limitation of actions

(1) Subject to the provisions of subsection (2) of this section, every action brought under the provisions of this Law shall be commenced within three years after the death of the deceased person.

(2) This section shall apply notwithstanding anything contained in the Public Officers Protection Law, or any local government law.

[Cap. P17.]

5. Method of award, assessment and apportionment of damages

(1) In every action brought under the provisions of this Law the court may give to the persons respectively for whom and for whose benefit such action is brought such damages as it may think proportioned to the injury resulting from a death.

(2) Any amount recovered under the provisions of subsection (1) of this section, after deducting the costs not recovered from the defendant, shall be apportioned amongst the persons entitled thereto in such shares as the court shall direct.

(3) In assessing damages in any action there shall not be taken into account any sums paid or payable on the death of the deceased under any contract of assurance or insurance whether made by the deceased or by any other person and whether before or after the passing of this Law.

(4) Damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought.

6. Method and effect of payment into court

(1) It shall be sufficient, if the defendant is advised to pay money into court, that he pays it in as compensation one sum to all persons entitled under this Law or his wrongful act, neglect or default without specifying the shares into which it is to be divided by the court.

(2) If any sum so paid into court is not accepted and issue is rejoined as to its sufficiency, and the court shall consider the same sufficient, the defendant shall be entitled to judgment on such issue.

7. Forum

Any action or proceedings arising under the provisions of this Law may be brought either in the High Court or in a magistrate's court:

Provided that if all the parties to such action or proceedings are subject to the jurisdiction of a customary court the plaintiff may, at his option, bring any such action or proceedings in a customary court of competent jurisdiction.

8. Savings for rights accrued under 9 and 10 Vic. C. 93 and 27 and 28 Vic. C. 95

Nothing contained in this Law shall affect any rights which before the commencement of this Law may, under the provisions of the Fatal Accidents Act 1864, have accrued to any person.

9. Payment out of court

(1) In any action brought under the provisions of this Law, any damages awarded and apportioned to a widow of the person killed or to an infant or to a person of unsound mind shall not be paid to such widow, infant or person of unsound mind nor to the next friend or solicitor of such infant or person of unsound mind nor to the solicitor of such widow unless the court shall so direct.

(2) Any damages so awarded and apportioned shall be dealt with as the court shall direct and the said damages or any part thereof may be—

(i) paid into the court and to be invested or otherwise dealt with there; or

(ii) paid into the High Court and transferred to a magistrate's court in the area in which the widow, infant or person of unsound mind resides or to such other magistrate's court as shall be convenient; or

(iii) to be otherwise dealt with.

10. Interpretation

In this Law—

"action" includes any equivalent civil proceeding in a customary court;

"administrator" includes an Administrator-General acting under his powers under Part 7 of the Administrator-General's Act;

"customary court of competent jurisdiction" means a customary court upon which the Governor, by order made under section 14 of the Customary Courts Law, has conferred jurisdiction to enforce this Law;

[Cap. C21.]

"deceased person" means a person whose death has been caused by a wrongful act, neglect or default of another person within the meaning of section 3;

"funeral expenses" include the reasonable expenses of the decent interment or obsequies of a deceased person but does not include the cost of the mourning of any person, or of a tombstone or memorial or of any celebrations or customary presents;

"the High Court" means the High Court of Cross River State established under the High Court Law;

[Cap. H2.]

"immediate family" includes the—

(*a*) wife or wives;

(*b*) husband;

(*c*) parent, which shall include father and mother, grandfather and grandmother and step-father and step-mother;

(*d*) child, which shall include son and daughter, grandson and granddaughter and step-son and step-daughter, of a deceased person;

(*e*) brother and sister which expressions shall include half-brother and half-sister; and

(*f*) nephew and niece of a deceased person who were under the age of sixteen years at the time of the death of the deceased and who were being maintained by him.

11. Short title

This Law may be cited as the Fatal Accidents Law.

CHAPTER F1

FATAL ACCIDENTS LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER F2

FINANCE (CONTROL AND MANAGEMENT) LAW

ARRANGEMENT OF SECTIONS

PART 1

Establishment of Certain Funds and Accounts

SECTION
1. Consolidated Revenue Fund.
2. Establishment and purposes of Capital Development Fund.
3. Composition of the Capital Development Fund.
4. Retention of balances of Capital Development Fund.
5. Establishment of certain accounts.
6. Operation of General Deposits Account.
7. Accounting transactions. Treasury Clearance Account.
8. Rules.

PART 2

Control of Expenditure

9. Supervision of expenditure and accounts by the Commissioner.
10. Management of Consolidated Revenue Fund.
11. Authority to incur expenditure.
12. Authorised expenditure from Consolidated Revenue Fund.
13. Repayment of erroneous receipts.
14. Losses.
15. Investments.
16. Authorisation of investments.
17. Procedure concerning Investments General.
18. Income of Investments General.
19. Fluctuation in value of Investments General.
20. Provision of Appropriation Law not in force.
21. Payment of agents.
22. Trading Accounts.

PART 3

Contingencies Fund

23. The Contingencies Fund.
24. Use of Contingencies fund to meet unforeseen expenditure.
25. Repayments to Contingencies Fund.
26. Power to make rules.

PART 4

Citation and Interpretation

SECTION

27. Interpretation.

28. Citation.

FIRST SCHEDULE

Funds and Accounts Established

SECOND SCHEDULE

Accounting Transaction Authorised

CHAPTER F2

FINANCE (CONTROL AND MANAGEMENT) LAW

(28*th November*, 1970)

[Commencement.]

A Law to provide for the control and Management of the Public Finance of Cross River State, for the Establishment of certain Public Funds and Accounts and to regulate disbursement from such Funds and for other purposes connected with such Funds and Accounts or incidental thereto.

PART 1

Establishment of Certain Funds and Accounts

"statutory expenditure" means—

(*a*) the expenditure charged on the Consolidated Revenue Fund by any provision of the Constitution; and

(*b*) such other expenditure as may by law (other than an Appropriation or Supplementary Appropriation Law) be charged on the Consolidated Revenue Fund or the general revenue and assets of the State, or on the other public funds of the State, as the case may be;

"the State" means Cross River State.

1. Consolidated Revenue Fund

It is hereby declared that the fund known as the Consolidated Revenue Fund maintained by the Accountant-General since the 1st day of April, 1968, and still to be maintained by him, is the Consolidated Revenue Fund of the State established by section 167 of the Constitution.

2. Establishment and purposes of Capital Development Fund

(1) There is hereby established a fund to be known as the Capital Development Fund.

(2) The purposes of the fund are to meet expenditure authorised in an Appropriation or a Supplementary Appropriation Law in respect of a development plan or development programme from time to time approved under either name, by the Executive Council.

(3) For the avoidance of doubt it is hereby declared that expenditure of a recurrent nature shall not be met from the fund.

(4) In so far as circumstances require, all documents relating to the fund shall account for, separately—

(*a*) all contributions to; and

(*b*) all expenditure from the fund.

3. Composition of the Capital Development Fund

The Capital Development Fund established under section 2 of this Law shall consist of the following, that is to say—

(*a*) proceeds of the Development Fund portion of the State's Development Tax;

(*b*) all moneys accruing to the State from the following sources—

(i) proceeds of the five per cent Compulsory Savings Scheme and of any other loans raised within or outside the State by the State Government for development purposes;

(ii) the State's share of Federal Development Loan;

(iii) grants made to the State for capital development purposes by any person, institution or government;

(iv) moneys appropriated by the Executive Council for Capital Development Expenditure from the Consolidated Revenue Fund of the State; and

(v) such other moneys as the Commissioner may prescribe.

4. Retention of balances of Capital Development Fund

At the close of each financial year all receipts, earnings, accruals or balances of the Capital Development Fund shall be retained for the purposes of the said fund, and shall not, unless the Commissioner otherwise directs, be paid into the Consolidated Revenue Fund.

5. Establishment of certain accounts

(1) The accounts set out in the first column of the First Schedule to this Law are hereby established.

(2) The Commissioner may by warrant under his hand authorise the Accountant-General to withdraw from the Consolidated Revenue Fund such sums as may be necessary for the purposes of the accounts established under this section.

(3) The amount withdrawn from the Consolidated Revenue Fund in respect of each of the said accounts shall not at any time exceed the amount set out opposite each account in the second column of the First Schedule to this Law.

(4) No disbursements which are in the nature of final expenditure properly chargeable to the Consolidated Revenue Fund or to the Capital Development Fund shall be charged to the said accounts.

(5) The Executive Council may by order in writing published in the State *Gazette* alter, amend or vary the First Schedule to this Law.

6. Operation of General Deposits Account

Moneys which come into possession of the Government of the Sate but which are not due to the said Government and are held on behalf of other persons, institutions, corporate bodies or Governments, shall accrue to the General Deposits Accounts established under section 5 (1) of this Law.

7. Accounting transactions. Treasury Clearance Account

(1) The Accountant-General may from time to time enter into accounting transactions with any or all of the persons, institutions, corporate bodes and Governments specified in the Second Schedule to this Law.

(2) Any accounting transactions entered into in accordance with the provisions of this section shall be by way of the Treasury Clearance Account established under section 5 (1) of this Law.

(3) The Commissioner may by order under his hand alter, amend or vary the contents of the Second Schedule to this Law.

8. Rules

The Commissioner may make rules the better to implement the purposes of the funds and accounts established by this Law.

PART 2

Control of Expenditure

9. Supervision of expenditure and accounts by the Commissioner

(1) The Commissioner shall so supervise the expenditure and finances of the State as to ensure that adequate arrangements are made for accounting to the Legislature and for such purpose shall have power to direct what accounts shall be kept.

(2) All persons concerned in or responsible for the collection, receipt, custody, issue or payment of public moneys, stores stamps, investments, securities, or negotiable instruments, whether the property of Government or on deposit with or entrusted to Government or any public officer in his official capacity either alone or jointly with any public officer or any other person, shall obey all instructions that may from time to time be issued by the Commissioner or by direction of the Commissioner in respect of the custody and handling of the same and accounting therefor.

(3) The Permanent Secretary, or other officer of the Ministry of Finance, shall have such access to all documents and records as may be necessary for the exercise of the Commissioner's powers under this section.

10. Management of Consolidated Revenue Fund

The management of the Consolidated Revenue Fund shall be conducted in accordance with the provisions of this Law and any other Law in force.

11. Authority to incur expenditure

(1) No expenditure involving a charge on the Consolidated Revenue Fund shall be incurred, except under the authority of a warrant sanctioned by the Commissioner.

(2) No disbursement from the Capital Development Fund shall be made except by the authority of a warrant signed by the Commissioner.

(3) No warrant for the disbursement of moneys from the Capital Development Fund shall be signed or issued by the Commissioner unless the expenditure to which the warrant relates has been authorised in an Appropriation or Supplementary Appropriation Law of the State.

12. Authorised expenditure from Consolidated Revenue Fund

(1) The Commissioner may by warrant authorise the issue from the Consolidated Revenue Fund of all sums required to meet statutory expenditure or to meet the cost of any purpose to which any sum has been appropriated in accordance with this or any other Law:

Provided that any such sum in respect of expenditure other than statutory expenditure shall not exceed the total amount appropriated for the purpose.

(2) The Commissioner may limit or suspend expenditure notwithstanding that authority for such expenditure has been given by a warrant if, in his opinion, financial exigencies or the public interests so require:

Provided that this subsection shall not convey authority to withhold payments in respect of statutory expenditure.

13. Repayment of erroneous receipts

The Commissioner may by warrant authorise the repayment from the Consolidated Revenue Fund of sums received in error by that Fund and any such repayment shall be a charge on the Fund.

14. Losses

Where a loss has occurred of any moneys forming part of the Consolidated Revenue Fund, or it is necessary to make a further issue therefrom in respect of moneys already issued therefrom which have been misappropriated or lost, or it is necessary to make an issue therefrom to effect the replacement of any Government property which has been misappropriated or lost, then subject to any express provision of this or any other Law an adjustment of the Fund or an issue from the Fund for such purpose shall only be effected by the issue of a warrant by the Commissioner under the authority of an Appropriation or Supplementary Appropriation Law.

15. Investments

The investment of moneys contained in the Capital Development Fund shall be governed by sections 18 to 21 of this Law.

16. Authorisation of investments

(1) The Consolidated Revenue Fund, and any other public fund of the State subject to any express provisions of Law regulating any such public fund, may in part consist of deposits

with a bank, or with the Joint Consolidated Fund, either at call or subject to notice not exceeding six months, or of any investments in which a trustee in Nigeria may lawfully invest trust funds, and the disposition of moneys of the Consolidated Revenue Fund or of such other public fund for any such purpose shall need no legislative authority other than that contained in this section and may be made by the Accountant-General or the Crown Agents in accordance with any general or special instructions issued by the Commissioner.

(2) No moneys deposited or invested otherwise than in accordance with subsection (1) may form part of the Consolidated Revenue Fund, or of any other public fund of the State, and the disposition of any moneys from that Fund or those funds for any purpose other than the form of deposit or investment specified in that subsection shall be made in accordance with the procedure prescribed in this Law or in accordance with the provisions of law regulating the fund in question.

17. Procedure concerning Investments General

(1) The Accountant-General shall maintain under the designation of Investments General a record of certain investments.

(2) Investments General shall consist of—

(*a*) those investments forming part of Consolidated Revenue Fund by virtue of section 18 of this Law;

(*b*) any investments held in respect of moneys being part of the Contingencies Fund as described in section 25 of this Law, or any law superseding the same;

(*c*) such investments held in respect of the public funds of the State as the Commissioner shall designate in writing:

Provided that the Commissioner shall not designate any fund in respect of which by virtue of the provisions of law regulating such fund neither the receipts and outgoings nor the appreciation and depreciation of the investments forming part of the fund may accrue or does accrue to the Consolidated Revenue Fund.

18. Income of Investments General

(1) All income accruing to Investments General shall accrue to the Consolidated Revenue Fund and shall be included in the annual statement of revenue of the State for each financial year.

(2) This section shall commence to take effect in respect of investments included in the record of twelve months ending the 31st day of March, 1969, and in respect of all interest accruing within such period.

19. Fluctuation in value of Investments General

(1) The Accountant-General shall in each year value any securities forming part of Investments General by assigning thereto the middle market price of such securities at the close of business on the last day in the year for which such information is available.

(2) Any appreciation or depreciation arising from the valuation of such securities, together with any profits or losses arising from the sale of redemption of such securities, shall be credited or debited direct to the Consolidated Revenue Fund, and be shown as an addition to or deduction from the opening balance of the Consolidated Revenue Fund in the annual statement of assets and liabilities of the State.

20. Provision if Appropriation Law not in force

(1) If the Appropriation Law has not come into operation at the commencement of any financial year, the Commissioner may authorise by warrant the issue from the Consolidated Revenue Fund of such moneys as are necessary for carrying on the services of the Government at a level of those services prevailing in the previous financial year for a period of four months or until the Appropriation Law comes into operation whichever is shorter.

(2) Any moneys so authorised to be issued shall not exceed the sum specified for such service in the estimates presented for the current year and shall be set off against the amounts respectively provided in the Appropriation Law upon the same coming into operation.

21. Payments by agents

(1) It shall be lawful for the Commissioner to appoint agents outside the State to make payments on behalf of the government and to issue instructions from time to time respecting the making of such payments.

(2) Subject to any instructions issued by the Commissioner aforesaid, no payment by such agent in respect of contractual obligation is to be restricted by the fact that its financial authority has lapsed with the close of the financial year.

22. Trading Accounts

(1) The Commissioner may authorise, in the case of Ministries engaged in commercial or semi-commercial activities, the establishment of accounts to be known as Trading Accounts to which all expenditure (including that on Personal Emoluments) incurred and all revenue received for the purpose for which the said Trading Accounts are established, shall be debited or credited as the case may be.

(2) In the preparation of the Estimates and of the Appropriation Bills account shall be taken of the net balance only of any such Trading Account as may have been established in pursuance of subsection (1) of this section.

PART 3

Contingencies Fund

23. The Contingencies Fund

The Commissioner may direct the payment into the Contingencies Fund established under section 7 of this Law of such sums as are appropriated for the purpose by the Legislature of the State.

24. Use of the Contingencies Fund to meet unforeseen expenditure

(1) Where any expenditure required for the Public Service is urgently needed at a time when the House of Assembly is in recess, or when for any other reason it is impracticable immediately to obtain the authority required under the Constitution and any other Law in force for meeting the expenditure out of the Consolidated Revenue Fund or other public funds, the Commissioner may issue a warrant authorising advances from the Contingencies Fund for the purpose of meeting the said expenditure.

(2) No money shall be advanced from the Contingencies Fund except under the authority of a warrant issued pursuant to subsection (1) of this section.

25. Repayments to Contingencies Fund

(1) As the Commissioner has issued a warrant under section 24 of this Law authorising advances from the Contingencies Fund, a proposal for the appropriation of an equal amount from the Consolidated Revenue Fund or other public funds shall be submitted to the Legislative Houses of the State beginning next after the date when the warrant was issued or, if the warrant was issued during a meeting of the Legislative Houses of the State and the Commissioner so directs, then at that meeting.

(2) A proposal submitted under this section shall be for appropriation of the said amount to the various heads of expenditure under which the expenditure would have been incurred if it had been incurred under the authority of a warrant issued by virtue of an Appropriation Law, instead of being met from the Contingencies Fund.

(3) So soon as may be after a proposal made under this section has received the approval of the Legislative House of the State, and a warrant has been issued by virtue of such approval, the amounts advanced from the Contingencies Fund shall be repaid to the said Fund by adjustment from the said heads of expenditure.

26. Power to make rules

Subject to the provisions of this Law, the Commissioner may make rules for the proper and efficient administration of the Fund; such rules shall be presented for the information of the Legislative House of the State.

PART 4

Citation and Interpretation

27. Interpretation

In this Law—

"the Accountant-General" means the Accountant-General of the Cross River State;

"Appropriation Law" means the Law enacted in each year the principal purpose of which is the appropriation of public moneys for such services as are specified in such Law;

"Consolidated Revenue Fund" means the Consolidated Revenue Fund of the State established by section 56 of the Constitution of the State;

"Legislative House" means the House of Assembly of the State;

"the Commissioner" means the State Commissioner charged with responsibility for matters relating to finance;

"the Constitution" means the Constitution of the Federal Republic of Nigeria 1999;

"the Executive Council" means the Executive Council of the State;

"prescribe" means prescribe by rules made under section 10;

"public moneys" include—

(*a*) the public revenues of the State; and

(*b*) any moneys held in his official capacity, whether temporarily or otherwise, and whether subject to any trust or specific allocation or not, by any agent of the Government, either alone or jointly with any other person.

28. Citation

This Law may be cited as the Finance (Control and Management) Law.

FIRST SCHEDULE

[(s.7).]

Funds and Accounts Established

[C.R.S.L.N. 5 of 1976.]

	₦
Contingencies Fund	500,000
Vehicle Advances Account	8,000,000
Miscellaneous Personal Advances Account	12,000
Petrol Trading Account	40,000
Diesel Trading Account	20,000
School Fees (Voluntary Agency) Account	Unlimited
Farmers Fertiliser and Poultry Deposit Account	Unlimited
General Deposits Account	Unlimited
Unallocated Stores Account	50,000
Workshop Suspense Account	10,000
Special Agricultural Inputs (Revolving) Accounts	100,000
Treasury Clearance Account	Unlimited
Staff Housing Fund	2,000,000
Trading Account for Government Guest Houses	27,000

SECOND SCHEDULE

[(s. 9).]

Accounting Transactions Authorised

The Federal Government of Nigeria.

Any of the other State Governments of Nigeria.

Statutory Bodies or Corporations.

Other Governments not expressly mentioned herein.

The Crown Agents for Overseas Governments and Administrations.

TABLE

Derivation of Sections

A. Funds and Accounts Law 1970.

B. Finance (Control and Management) Law.

C. Contingencies Fund Law.

1.
2. A2 and B2.
3. A3.
4. A4.
5. A5.
6. A6.
7. A9.
8. A10.
9. A11.
10. A12.
11. B3.
12. B4.
13. A8 and B5.
14. B6.
15. B7.
16. B8.
17. A7.
18. B9.
19. B10 and A7.
20. B11 and A7.
21. B12 and A7.
22. B13.
23. B14.
24. B15.
25. C3 omitting subsections (2) & (3).
26. C4.
27. C5.
28. C6.

CHAPTER F2

FINANCE (CONTROL AND MANAGEMENT) LAW

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. Contingency Fund Rules.
2. Staff Housing Fund Rules.

CONTINGENCIES FUND RULES

1. Citation

These rules may be cited as the Contingencies Fund Rules.

2. Keeping of accounts

The accounts of the Fund shall be kept by the Accountant-General of the State and shall be audited by the Auditor-General to whom annual statements shall be forwarded by the Accountant-General as soon as possible after the close of each financial year. A copy of such accounts, together with the reports of the Auditor-General thereon, shall be presented before the Legislature and shall be examined by the Public Accounts Committee.

3. Issue of Contingencies Warrants

No sums shall be paid out of the Fund save on the authority of a Warrant, which shall be known as a Contingencies Warrant, signed by the Commissioner. Every such payment shall be described as a Contingencies Advance. The Contingencies Warrant shall state the purposes for which expenditure is to be made and shall indicate the Head, Sub-head and Item of expenditure to which the expenditure would have been classified, if made from the Consolidated Revenue Fund and not by way of advance from the Contingencies Fund.

4. Contingencies Warrant to be signed on Executive Council's approval

The Commissioner shall not sign a Contingencies Warrant unless Executive Council has approved the presentation to the Legislature of a Supplementary Estimate in due course.

5. Action to be taken on receipt of Contingencies Warrant

When a Contingencies Warrant has been signed it shall be forwarded to the Accountant-General; a copy of the Warrant shall be forwarded to the Auditor-General. On receipt of the Warrant the Accountant-General shall forthwith accept as a charge against the Fund vouchers drawn by the officer controlling expenditure under each Head, Sub-head and Item indicated in the Warrant up to the maximum imposed by the amounts shown in the Schedule to the Warrant; each voucher shall indicate clearly the vote of charge to which the expenditure would have been classified if incurred from the Consolidated Revenue Fund.

6. Adjustment Vouchers to be raised as soon as Legislature passes Appropriation or Supplementary Appropriation Law

When the Legislature has passed a Supplementary Appropriation Law, or an Appropriation Law, which contains provisions in respect of Items for which Contingencies Advances have been made, the Accountant-General shall within seven days raise Adjustment Vouchers debiting the Head, Sub-head and Item for which Supplementary Appropriation has been made and crediting the Contingencies Fund with the sums expended from the Fund on the authority of the Warrant or Warrants. Every officer against whom such Adjustment Vouchers are raised shall forthwith accept it.

STAFF HOUSING FUND RULES

ARRANGEMENT OF RULES

RULE

1. Establishment of a board of management of the Fund.
2. Composition of the Board and its meeting.
3. Provisions as to Secretary and his functions.
4. Powers of the Board.
5. Eligibility for loan, etc.
6. Obligation to serve at a place other than where house is situated.
7. Provisions relating to applications, etc.
8. Maximum limit of loans
9. Provisions relating to repayment of loans.
10. Method of making loans.
11. Extra requirement relating to property acquired from loans made by the Board.
12. A house built or purchased with loan to be insured.
13. Loan to bear interest.
14. Commencement date of repayment of loan.
15. Repayment of loan, how made.
16. Further security for loan.
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20. Loan for permanent capital improvement to Borrower's house.
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STAFF HOUSING FUND RULES

(1*st January*, 1972)

[Commencement.]

1. Establishment of a board of management of the Fund.

There is hereby established for the purposes of the Staff Housing Fund shown in the First Schedule to the Finance (Control and Management) Law, a board (in these rules hereafter referred to as "the Board") the function of which shall be to manage and control the said Fund.

2. Composition of the Board and its meeting

(1) The meeting of the Board shall be held at least two times in the year.

(2) A meeting of the Board shall be summoned by the Secretary on the direction of the Chairman and held at such places and times as the Chairman may direct.

(3) The quorum for a meeting of the Board shall be the Chairman (or other person presiding in the absence of the Chairman) and two other members.

(4) Decisions reached at meetings of the Board shall be signified by the votes of a majority of members present and voting thereat, and in the case of equality of votes, the Chairman shall, in accordance with the provisions of section 53 of the Interpretation Law, have a casting vote.

3. Provisions as to Secretary and his functions

(1) The Secretary to the Board shall be a person in the public service and shall be assisted in the performance of his functions by such staff in the public service as may be deployed for that purpose.

(2) It shall be the duty of the Secretary to—

(*a*) record minutes of the proceedings of the Board;

(*b*) attend to the Board and carry out its or its Chairman's directives;

(*c*) cause to be kept by a duly qualified officer proper accounts of financial transactions undertaken by the Board; and

(*d*) do all such things as may be necessary for the due and effectual performance of the functions of the Board.

4. Powers of the Board

(1) The Board may consider applications from persons to whom these rules apply for loans for the purpose of building, or completing the building of, or purchasing, houses for residential purpose.

(2) The Board shall not make a loan for the purpose of purchasing a house unless the house is inspected and valued by an appropriate officer of the Ministry responsible for land matters and the Board is satisfied that the applicant has a valid title deed to the land or which may be sublease or mortgage a certificate of occupancy, customary right of occupancy on condition that the Government obtains a first mortgage of the land and of any building erected, or to be erected, thereon.

5. Eligibility for loan etc.

A person is not eligible to apply for a loan under these Rules unless at the time of the application he is a holder of a pensionable appointment in the service of the Government of the State, or in a Statutory Corporation, or in a State-owned Company, or in a Voluntary Agency Medical or Educational Institution owned and controlled by the State by virtue of which he is entitled to receive an annual allowance on completion of service.

6. Obligation to serve at a place other than where house is situated

A person who obtains a loan from the Board and builds, completes the building of, or purchases, a house is not thereby released from his obligation to serve at a place other than the place where the house is built, completed or, as the case may be, purchased.

7. Provisions relating to application, etc.

(1) Application shall be made in a form, duly completed, as in Schedule 1 to these rules addressed to the Secretary who shall submit the same to the Board for consideration in accordance with the provisions of Schedule 2 of these rules.

(2) Such application shall be considered on merit and for this purpose the Board may require an applicant to appear before it to give further and better particulars regarding his financial position, and to assist the Board further, the Senior Local Officer of the applicant's Ministry or Department may in forwarding an application to the Board, accompany it with any special information he may have.

(3) The applicant shall submit for the approval of the Board any relevant plans of the house he intends to build, and (unless the applicant intends to build the house by direct labour) a copy of the contract he intends to enter into with the contractor for the building of the house; and for this purpose a contract acceptable to the Board may be in the form in Schedule 3 to these rules or in a form to the like effect.

(4) The Board shall require the applicant to enter into a Loan Agreement to guarantee the repayment of the loan and such agreement shall be as in the form set out in Schedule 4 to these rules.

8. Maximum limit of loans

(1) In the case of an officer described in rule 5 not below salary grade level 04, the amount of loan to which such officer is entitled shall not exceed the aggregate of his salary for six years.

(2) In the case of an officer described in rule 5 other than an officer to whom rule 8 (1) applies, a loan shall not exceed the aggregate of six years' salary of such officer but subject to a maximum loan of sixty thousand naira.

9. Provisions relating to repayment of loans

(1) Subject to rule 15 a loan is repayable within fifteen years and the rate of monthly repayment may not exceed one-third of the borrower's monthly income.

(2) Where it appears to the Board that a borrower is due to retire from service before the loan is completely repaid, the Board may either increase the rate of repayment or attach such other conditions regarding repayment as the Board may deem necessary.

10. Method of making loans

(1) Where a loan is approved for the purpose of building a house under a contract between the applicant and a contractor, payment of the loan shall be made by advances to the applicant in the manner hereinafter stated, that is to say—

(*a*) on the signing of the loan agreement, an advance representing not more than twenty per cent of the loan approved or of the contract price;

(*b*) further advances payable from time upon the certificate of the Permanent Secretary, representing in each case the value of the materials on site, so however that the aggregate of the advances made does not exceed sixty per cent of the contract price or of the loan approved;

(*c*) a further advance at the completion of the house representing ten per cent of the contract price; and

(*d*) a final advance representing ten per cent of the contract price payable at the expiration of three months after the date of the certificate and upon a final certificate of the Permanent Secretary that the work has been satisfactorily completed.

(2) Where a person to whom these rules applies is building his house by direct labour, further advances after the initial advance shall only be made from time to time on a certificate by an independent valuer approved by the Permanent Secretary to the effect that the value of work done is commensurate with the loan previously made.

(3) Where a loan is made for the purchase of a house, the payment shall be made—

(*a*) to the borrower and the vendor informed;

(*b*) upon the security of the house as stipulated in rule 17, and

(*c*) upon the certificate of the Permanent Secretary responsible for land matters as to the structure and suitability of the house in relation to the amount of the loan made by the Board and to the purchase price of the house.

11. Extra requirement relating to property acquired from loans made by the Board

(1) Before an advance under paragraphs (*b*) and (*c*) of rule 10 (1) is made, the Permanent Secretary shall, upon the request of the Board to that effect and within thirty days of the receipt of such request, depute an officer to inspect the work and furnish a certificate authorising the payment of the relevant advance.

(2) The Board shall ensure that a house built with a loan made by the Board is properly maintained and kept in a state of good repair by the borrower during the period of repayment and for this purpose the Permanent Secretary may depute an officer to carry out periodical inspection of the house, and the Board may direct any necessary repairs to be carried out at the expense of the borrower.

12. A house built or purchased with loan to be insured

(1) A house built or purchased with a loan made by the Board shall be insured by the borrower with an approved Insurance Company for not less than the full amount of the outstanding loan in appropriate case against—

(*a*) loss or damage by fire, water, tornado, lightning or burglary; and

(*b*) theft of the building materials in the course of construction.

(2) The policy of insurance shall be taken out in favour of the Accountant-General and maintained throughout the period of repayment of the loan and the premiums payable in respect thereof shall be paid by the borrower.

(3) The borrower shall take out the necessary insurance policy—

(*a*) in the case of a house built by the borrower, at the commencement of construction; or

(*b*) in the case of a house to be purchased by the borrower, immediately after the Permanent Secretary has certified that the house is suitable for the loan.

(4) The borrower shall ensure that for the duration of the construction of the building, he or his contractor shall insure the work as executed and fixed in position in accordance with Clause 5 (*b*) of Schedule 4 to these rules.

13. Loan to bear interest

A loan made by the Board shall bear interest at the rate of three per cent.

14. Commencement date of repayment of loan

Repayment of a loan made by the Board shall commence—

(*a*) in the case of purchase, immediately after the loan is made;

(*b*) in any other case, eighteen months after the loan is made.

15. Repayment of loan, how made

(1) The repayment of loan made by the Board together with interest thereon shall be made by equated monthly instalments the amount of which shall be specified in the loan agreement as shown in Schedule 4 to these rules.

(2) Subject to agreement between the Board and the borrower the amount of the monthly instalments may at any time be increased so as to effect a speedier repayment so however that repayment shall always be by equated monthly instalments.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this rule, the repayment of an outstanding balance of a loan made by the Board may be made by—

(*a*) one lump sum payment, or

(*b*) regular lump sum payments the amount of which shall not be less in each case than the aggregate of six monthly instalments as stipulated in the loan agreement; and

if such lump sum payments do not completely discharge the outstanding balance together with the interest thereon, the repayment of any balance then outstanding shall be repayable by equated monthly instalments the amount of which shall be agreed between the lender and the borrower until such balance is fully repaid.

16. Further security for loan

Until a loan made by the Board is fully repaid, the house in respect of which the loan was made shall be secured to the Government in a manner acceptable to the Board.

17. Repayment of loan if the Borrower dies or ceases to be a person to whom these Rules apply

Where before the loan made by the Board is fully repaid the borrower dies or ceases to be a person to whom these rules apply, the Board shall consider any arrangement whereby the payment of any balance then outstanding may be continued by the borrower or his next-of-kin or other legal personal representative.

18. Unauthorised structural alteration prohibited

No structural alteration may without the consent of the Board be made to a house built with a loan made by the Board when the loan has not been fully repaid.

19. Obtaining land with part of loan

(1) The Board may in certain circumstances authorise the borrower to use a part (not exceeding twenty-five per cent) of the loan for the purpose of purchasing land on which the house is to be built; and the other part shall be used only for the building of the house.

(2) Where a borrower is authorised by the Board to obtain land with part of the loan, the borrower shall deposit with the Board as the case may be the certificate of occupancy, the customary right of occupancy or a deed of sublease of the land.

20. Loan for permanent capital improvement to Borrower's house

The Board may, in certain circumstances, make a loan to a person to whom these rules apply for the purpose of making permanent capital improvement to a house belonging to such person which had been built on land covered with as the case may be a certificate of occupancy, the customary right of occupancy or deed of sublease and free from any encumbrance whatsoever.

21. Avoidance of doubt

For the avoidance of doubt, where the Board is empowered by these rules to make a loan in certain circumstances the question as to what constitutes such circumstances shall be determined by the Board and the Board alone.

22. Interpretation

(1) In these rules unless the context otherwise requires—

"the Fund" means the Staff Housing Fund;

"the Permanent Secretary" means the Permanent Secretary of the Ministry of Public Works, or his representative;

"public officer" includes members of staff of Statutory Corporations, State-owned Companies, Voluntary Agencies, Medical or Educational Institutions;

"the Secretary" means the Secretary to the Board appointed under these rules.

(2) In these rules and in the Schedules thereto—

(*a*) words importing the masculine gender include females;

(*b*) words in the singular include the plural and words in the plural include the singular.

23. Citation

These rules may be cited as the Staff Housing Fund Rules.

SCHEDULE 1

STAFF HOUSING FUND RULES

Form of Application for Advance

Age .....

1. Name .....
2. Rank and present salary .....
3. Department/Ministry .....
4. State whether married or single and if married the number of children .....
5. Length of pensionable service .....
6. Where the applicant is now living and does he hold his present house under lease and if so, wheat rent does he pay?.....
7. Give full descriptions of place where he desires to build giving the address .....
8. State the location of the land on which he intends to build .....
9. Does the applicant own any property anywhere and if so, what rent does he derive therefrom? .....
10. Has the applicant any source of income other than his salary, if so, how much? .....
11. Is the applicant's life insured, if so, for what sum and with which Company? .....
12. Amount required .....
13. Period of refund .....

DECLARATION BY APPLICANT

I HEREBY DECLARE that the loan described in the particulars furnished above is required to provide a house for the residential purposes of myself or the family or both, or for a house which I can let at a rent particularly if I am living in the place or town where the house is situated; that I fully understand the conditions under which the money will be advanced as embodied in the rules; that after making allowance for every contingency I am able to repay the advance in the instalments stipulated.

.....

Signature

.....

Rank

CERTIFICATE OF HEAD OF DEPARTMENT/MINISTRY (WHERE APPLICABLE)

I CERTIFY that the particulars furnished by ..... in the above statement are true to the best of my knowledge and belief; that the work and conduct of the applicant have been satisfactory, and I can recommend the applicant as being worthy in every respect of the concession for which he applies. I confirm that the applicant has been confirmed in his appointment.

.....20 ....

Signature

SCHEDULE 2

STAFF HOUSING FUND RULES

Procedure in Dealing with Application for Loans

1. Loans are of three kinds, namely—

(*a*) loan to build a house for residential purposes;

(*b*) loan to purchase a house and obtain land for residential purposes, and

(*c*) loan to complete the building of a house.

2. Application for loan shall be submitted to the Secretary through the applicant's Head of Department in the case of non-Ministerial Departments, but in the case of an officer in the Administration in the field or an officer directly under a Ministry, the application shall be submitted through the Administrative Officer in charge of that station or through the Permanent Secretary respectively.

3. The Head of Department, Administrative Officer, or Permanent Secretary, as the case may be, may in transmitting the application, make such comments respecting the application as he thinks fit.

4. Where the loan is for the purpose of building a house the applicant must produce as the case may be a certificate of occupancy, a customary right of occupancy or deed of sublease—

(*a*) in the case of State land, the lease of the plot;

(*b*) the building plan and specifications in duplicate; and

(*c*) a copy of the contract entered into or to be entered into between the applicant and his contractor for the erection of the house.

5. (1) The Board shall keep a file for each application, and the Secretary shall, as soon as an application is received, write the Permanent Secretary forwarding the plan of the house and specification in duplicate for comments.

(2) Upon the receipt of these papers, the Permanent Secretary shall communicate his views to the Secretary covering the points—

(*a*) whether the plan and specifications could provide a reasonably solid building, and

(*b*) whether the tender price is reasonable in relation to known costs of work done by or for the Ministry of Public Works and Housing.

6. If the tender price or official estimated cost of the house is higher than the amount of loan entitlement by more than 15% of the loan entitlement, the Secretary shall write to the applicant instructing him to deposit the difference into the Treasury and to forward the Treasury receipt.

7. (*a*) After receipt of the replies to the inquiries referred to in paragraphs 5, 6, and 7 above, but before any further action is taken, the Secretary shall bring the case before a meeting of the Board.

(*b*) If the Board disapproves the application or requires further information, it will issue specific instructions. If it approves the application, action shall proceed in accordance with the following paragraphs.

8. The Secretary shall request the applicant to register the Deed or Mortgage with the appropriate Ministry.

9. A Deed of Mortgage or Deed of Assignment which shall be consented to by His Excellency, the Governor, or the Commissioner charged with responsibility for land matters shall contain a certificate as under, signed by the Commissioner for Stamp Duties – "In exercise of the power delegated to me in this behalf, I hereby consent to the transaction herein contained.".

10. The Borrower shall forward to the Secretary in duplicate the indenture of agreement between himself and the Contractor, each copy of which shall be signed over a ten kobo stamp.

11. After execution of the Agreement a copy shall be filed and copies shall be sent to—

(*a*) The Permanent Secretary, Ministry of Public Works;

(*b*) the Contractor;

(*c*) the Accountant-General; and

(*d*) the Applicant.

12. After the Secretary of the Lands Division of the appropriate Ministry has received the registered Deed of Mortgage he shall file a copy and send the original copy with the Building Lease to the Accountant-General and the counterpart to the Mortgagor, and shall further send copies to—

(*a*) the Accountant-General;

(*b*) the mortgagee;

(*c*) the Solicitor-General and Permanent Secretary; and

(*d*) the mortgagor.

13. The Borrower is responsible for requesting payment of advance to himself out of the loan and upon such request, the Secretary shall authorise the Permanent Secretary of the Ministry of Works and Housing to arrange for inspection and valuation of the work as executed and fixed in position and, upon the receipt of the certificate of the said Permanent Secretary stating the value of the work, shall make proportionate payment to the Borrower in accordance with Rule 10.

14. The Borrower shall then send the insurance policy to the Secretary.

15. Where the loan is for the purchase of a house—

(*a*) the applicant shall produce the documents prescribed in paragraphs (*a*), (*b*) and (*c*) of clause 4 of this Schedule together with a copy of the drawing of the house to be purchased;

(*b*) the Secretary of the Ministry of Works and Housing who shall arrange to have the house inspected by an officer in his Ministry and shall then report to the Secretary in the manner stated in Clause 5 of this Schedule shall apply;

(*c*) Clauses 6 to 11 and 14 to 17 of this Schedule shall apply.

SCHEDULE 3

STAFF HOUSING FUND RULES

Specimen Form of Contract between Borrower and Contractor

ARTICLES OF AGREEMENT made the ..... day of ....., 20 ..... Between ..... of ..... (hereinafter called "the Employer") of the one part

and ..... of ..... (hereinafter called "the Contractor") of the other part.

WHEREAS the Employer is desirous of erecting or completing a dwelling house on the plot of land situated at ..... in accordance with the drawings and specifications setting forth the work to be done.

NOW IT IS HEREBY AGREED AS FOLLOWS—

1. The Contractor for the consideration of ₦..... will erect on the said plot the dwelling house in accordance with detailed drawings and specifications (signed by the parties and annexed hereto) and the Contractor will complete the said dwelling house in substantial and workmanlike manner to the satisfaction of the Permanent Secretary of the Ministry of Works and Housing.

SCHEDULE 3—*continued*

2. The Contractor will keep the Employer indemnified against all losses incurred by reason of any breach of by-laws or regulations relating to building or building lines which are in force in the area where the dwelling house is being built.

3. The Contractor will within ..... from the date of the signing of this Agreement complete the work of building the said dwelling house and render same fit for occupation and remove from the said premises all surplus materials and rubbish.

4. The Contractor shall, immediately before commencing the works and at all times during the progress of the works until the said dwelling house and premises are delivered up, insure and keep insured the building in the course of erection in full value thereof from loss or damage by fire, water, tornado, lightning or burglary and shall deposit with the Accountant-General all policies and receipts for premiums paid.

5. Advances in respect of the buildings shall be paid to the Employer by the Accountant-General at the request of the Employer from time to time, upon the certificate of the Permanent Secretary of the Ministry of Works and Housing at the rate of the original advance of ten per cent of the contract price reduced to that proportion which the value of the work done together with the materials on site bears to the total value of the completed house until the actual completion of the work, and at that stage an additional ten per cent shall be paid and the remaining ten per cent paid at the expiration of three months after the date of the certificate of the said Permanent Secretary that the work has been satisfactorily completed.

6. The Contractor shall within two days of the completion of the building give notice thereof in writing to the Permanent Secretary of the Ministry of Works and Housing, and if the building is in accordance with the plans and specifications or the plans and specifications modified or added to as provided for by subsequent agreement and the Contractor has in all other respects conformed with the provisions of this Agreement, the calculation of the period for the issue of the final certificate of the Permanent Secretary of the Ministry of Works and Housing shall commence from the date of the notice so given; and in all other cases the calculation of such period shall commence two days after the receipt by the Permanent Secretary of the Ministry of Works and Housing of notice of such completion or two days after completion to the satisfaction of the Permanent Secretary of the Ministry of Works and Housing as the case may be.

7. If the Contractor—

(*a*) without reasonable cause wholly suspends the work during construction; or

(*b*) refuses or fails to remove defective work or improper materials; or

(*c*) neglects or fails to proceed with the work with reasonable diligence,

and if the default continues for seven days after the Employer has served him with notice in writing to desist from the default or to make good the defect, the Employer may, without prejudice to any other course of action which he may have under this contract, by notice in writing signed by him, determine this contract.

8. If this contract is determined in pursuance of Clause 7, then—

(*a*) the Employer may employ and pay any other person or carry on and complete the work and the Employer or that other person or those other persons may enter upon the site and use all materials, temporary buildings, plants or appliances thereon; and

(*b*) the Contractor shall, if required by the Employer so to do, without further payment assign to the Employer the benefit of any contract—

(i) for the supply of materials intended for use under this contract; or

(ii) for the execution of any works under this contract,

and the Employer shall pay the amount, if any, that remains to be paid under this contract for the materials supplied or for the works executed after the determination.

SCHEDULE 3—*continued*

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered by the said employer.

.....

Employer

In the presence of

Signature.....

Name .....

Address.....

.....

Occupation.....

Signed, sealed and delivered by the said Contractor

.....

Contractor

In the presence of

Signature.....

Name .....

Address.....

.....

Occupation.....

SCHEDULE 4

STAFF HOUSING FUND RULES

Specimen Forms of Mortgage

THIS INDENTURE made the ..... day of ..... , 20 .....

Between ..... of ..... (hereinafter called "the Borrower" which expression shall, where the context so permits, include his successors in title) of the one part and ....., the Chairman, Board of Management, the Staff Housing Fund of the Government of the Cross River State of Nigeria acting for and on behalf of the said Government (hereinafter called "the Lender" which expression shall, where the context so admits, include his successors in office) of the other part.

WHEREAS—

(1) The Borrower is the lessee (or as the case may be, assignee) of the premises in the lease dated the .....day of....., 20 ..... made between..... and the

Borrower and registered as No ..... at page ..... in volume ..... in the Register of Deeds in the Land Registry at Calabar for the term and subject to the covenants and conditions therein contained.

SCHEDULE 4—*continued*

(2) The Borrower intends to erect a house and out-buildings on the said premises at an estimated cost of ₦ ..... and in accordance with the plans hereto annexed.

(3) The Borrower has applied to the Lender for an advance of ₦..... for the purpose upon the repayment thereof with interest secured in the manner hereinafter appearing.

(4) The Borrower requires an immediate advance of ₦..... being an amount equivalent to ten per cent of the said loan to enable him to commence the erection of the said house and out-buildings and the Lender has agreed to advance him the said ₦ ..... and from time to time at the request of the Borrower to make further advances to the Borrower in the manner hereinafter appearing but so that the aggregate of those advances together with the sum of ₦ ..... now advanced to the Borrower shall not exceed ₦ ..... being the total amount of this loan.

In pursuance of the said agreement and in consideration of the sum of ₦…….(being ten per cent of the said loan) paid by the Lender to the Borrower (the receipt whereof the Borrower hereby acknowledges) and in consideration of the covenant of the Lender hereinafter contained for making further advances:

THIS INDENTURE WITNESSETH as follows:

1. The Borrower hereby covenants with the Lender to pay to the Lender the sum of ₦..... (whole amount of loan) with interest thereon at the rate of five per cent or where applicable eight and a half per cent per annum over a period of ..... by equated monthly instalments or deductions from the salary of the Borrower of ₦ ..... each, the first of such payments to be made on the first day of the month following the date on which the Permanent Secretary of the Ministry of Works and Housing or, where necessary, other competent authority, certifies that the house is fit for occupation, and each of the subsequent instalments on the first day of every succeeding month, until the whole debt is fully repaid:

Provided, however, that the Borrower may effect a speedier repayment of the loan or any outstanding balance thereof and interest thereon by a lump sum payment or regular lump sum payments each of which shall not be less than the aggregate of six monthly instalments, and if the lump sum payments do not discharge the whole amount of the loan or any balance and interest thereon repayment shall be equated monthly payments the amount of which shall be agreed between the Lender and the Borrower.

2. In further pursuance of the said agreement and for the consideration aforesaid the Borrower as beneficial owner hereby demises unto the Lender all the property comprised in and demised by the aforementioned lease and all the buildings now or hereafter to be erected thereon to hold the same unto the Lender for the residue of the term created by the said lease subject to the provision for redemption hereinafter contained.

3. If the Borrower pays to the Lender on the dates aforesaid the said sum of ₦ ..... (total amount of loan) and interest thereon at the rate herein before mentioned in accordance with the instalments or deductions from the salary of the Borrower as herein before provided, then the Lender will any time thereafter at the request and cost of the Borrower either execute a receipt for the Borrower's money or re-assign to the Borrower the property hereby mortgaged or otherwise discharge this security.

4. The Lender hereby covenants with the Borrower that if the Borrower in the mean-time strictly observes and performs all agreements, stipulations and conditions on his part herein contained and carries out the provisions of the Housing Fund Rules but not otherwise, then at the request of the Borrower, the Lender shall—

(*a*) from time to time advance sums of money representing seventy per cent of the loan reduced to that proportion which the value of the work done together with the value of materials on site bears to the total value of the completed building until the actual completion of the work; and

(*b*) when the said house and out-buildings are completed, painted and certified fit for occupation by the Permanent Secretary of the Ministry of Works and Housing and (where necessary) a certificate of occupation is granted by the competent authority, advance to the Borrower such sum as will bring the total advance to ninety per cent of the said loan; and

SCHEDULE 4—*continued*

(*c*) after three months of the issue of the above certificate and subject to another inspection by the Permanent Secretary of the Ministry of Works and Housing or his representative advance to the Borrower an amount representing the last ten per cent of the loan:

Provided and it is hereby agreed that interest at the rate aforesaid shall be due and payable on the amount of each advance beginning with the date on which such advance is made to the Borrower.

5. The Borrower hereby covenants with the Lender as follows—

(*a*) that during the continuance of this security the Borrower shall keep the aforementioned house and out-buildings in good and substantial repair and if the Borrower neglects so to do the Lender may, at his discretion, enter upon the said premises in order to repair and keep in repair the said house and out-buildings without thereby becoming liable as a mortgagee in possession and his expenses of so doing shall be added to the principal money hereby secured and bear interest accordingly; and

(*b*) that from the date of taking over of the building from the Contractor and during the continuance of this security the Borrower shall insure and keep insured against loss or damage by fire, water, lightning, tornado and burglary for the full value thereof; and the insurance shall be with the Manilla Insurance Company Limited and the receipts for the policy and premiums shall as and when received by the Borrower be deposited with the Lender, and if the Borrower makes default in securing such insurance or in paying any premiums the Lender may insure as aforesaid and pay the premiums and such expenses of the Lender shall be payable by the Borrower on demand and until so paid shall be added to the principal sum hereby secured and bear interest accordingly.

6. The Borrower further covenants with the Lender that the Borrower shall not, during the continuance of this security, make an under-lease or sublet or otherwise part with the possession of the mortgaged premises without the consent in writing of the Lender.

IN WITNESS whereof the parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered by the Borrower.

.....

Borrower

In the presence of

Signature.....

Name .....

Address.....

.....

Occupation.....

Signed, sealed and delivered by the Lender.

.....

Chairman, Board of Management,
Staff Housing Fund, Calabar

In the presence of

Signature.....

Name .....

Address.....

.....

Occupation.....

SCHEDULE 5

STAFF HOUSING FUND RULES

Table showing monthly repayment of loans by way of annuity over a period of fifteen years with interest at five per cent per annum.

Amount of Loan	Total Amount of Loan and Interest repayable over 15 years	Amount of monthly Repayment of loan and Interest
₦ k	₦ k	₦ k
100.00	144.50	0.81
200.00	289.00	1.61
1,000.00	1,445.121/2	9.05
2,000.00	2,890.25	18.10
4,000.00	5,780.50	36.20
6,000.00	8,670.75	54.30

SCHEDULE 6

STAFF HOUSING FUND RULES

Table showing monthly repayments of loans by way of annuity over a period of fifteen years with interest at eight and a half per cent per annum.

Amount of Loan	Total Amount of Loan and Interest repayable over 15 years	Amount of monthly Repayment of loan and Interest
₦ k	₦ k	₦ k
100.00	181.50	0.01
200.00	361.50	2.01
1,000.00	1,807.50	10.05
2,000.00	3,615.00	20.09
4,000.00	7,230.00	40.17
6,000.00	10,845.00	60.25

CHAPTER F3

FINANCE LAW

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2. Official secrecy.
3. Rules and forms.
4. Service and signature of notice.
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CHAPTER 2 – INCOME TAX AUTHORITIES

7. Appointment of Assessment Authority and Assessment Committee and duties.
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CHAPTER 3 – IMPOSITION OF TAX AND ASCERTAINMENT OF INCOME

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Omitted

CHAPTER F3

FINANCE LAW

A Law to regulate the Imposition of an Income Tax upon persons other than Companies; to impose a Tax on the purchase of certain items and for purposes connected therewith.

(1*st April*, 1961)

[Commencement.]

PART 1

Preliminary

1. Administrative authority and responsibility

(1) For the due administration of this Law, a Commissioner of Internal Revenue, a Deputy Commissioner of Internal Revenue, an Assistant Commissioner of Internal Revenue, and such other officials may be as necessary, may be appointed.

(2) The Commissioner is responsible for the assessment and collection of, and accounting for the taxes imposed under this Law.

(3) All money and securities for money collected or received for or on account of the taxes imposed under this Law shall be paid into the Consolidated Revenue Fund of the Cross River State.

2. Official secrecy

(1) A person employed in, or having an official duty connected with the administration of this Law, shall regard and deal with as secret and confidential all information, documents, returns, records or copies of those records relating to any person by whom the taxes imposed under this Law are payable.

(2) A person having possession of, or control over any information, documents, returns, records or copies of records relating to a person by whom the taxes imposed under this Law are payable, who at any time communicates or attempts to communicate that information or anything contained in those documents, returns, records or copies to any person—

(*a*) other than a person to whom he is authorised by the Commissioner to communicate it, or

(*b*) otherwise than for the purpose of this Law,

is guilty of an offence:

Penalty, imprisonment for two years and a fine of four hundred naira.

(3) A person employed in or having an official duty connected with the administration of this Law shall not be required to—

(*a*) produce in a court of law a document, return or record, or

(*b*) divulge or communicate to a court of law a matter or thing coming under his notice in the performance of his duties under this Law,

except as may be necessary—

(*c*) for the purposes of carrying this Law into effect, or

(*d*) in order to institute a prosecution for an offence committed in relation to the taxes imposed under this Law, or

(*e*) in the course of a prosecution for such an offence.

(4) Notwithstanding anything contained in this section, the Commissioner shall—

(*a*) permit the Auditor-General or an official duly authorised in that behalf by the Auditor-General to have such access to any documents or records as may be necessary for the performance of his official duties and, for the purpose of this section, the Auditor-General or any such official is deemed to be a person whose functions are necessary for the purpose of carrying this Law into effect;

(*b*) for the purpose of informing persons by whom income tax is payable under this Law whose income is not more than two hundred naira per annum of the amounts of tax payable by them, permit an Assessment Authority to publish copies of assessment records relating to those taxpayers.

3. Rules and forms

(1) The State Commissioner may, from time to time, make rules generally for carrying out this Law, and also for the purposes of such matters as are authorised by this Law to be prescribed or provided for by him.

(2) Subject to section 34, the Commissioner may, from time to time specify the form of notices, returns, applications, statements or records under this Law.

4. Service and signature of notice

(1) Subject to this section, section 50 of the Interpretation Law applies to the service of a notice under this Law.

(2) Where a notice is sent by registered post it is deemed to have been served on the day succeeding the day on which the addressee of the registered letter containing the notice would have been informed in the ordinary course of events that the registered letter is awaiting him at the post office, if that notice is addressed in accordance with subsection (4).

(3) A notice is not deemed to have been served under subsection (2) if the addressee proves that a notification, informing him of the fact that the registered letter was awaiting him at a post office, was not left at the address given on the registered letter.

(4) A notice shall be addressed—

(*a*) in the case of a company, to the registered office of the company or the head office of the company in the State; and

(*b*) in the case of a person or body of persons, to the last known business or private address of that individual or body of persons.

(5) A notice may be served by being left at the appropriate office or address as specified under subsection (4) except where that address is a post office box number.

(6) A notice given by the Commissioner or an Assessment Authority under the Law shall be signed by the Commissioner or Assessment Authority, as the case may be, and is valid if the signature of the Commissioner or Assessment Authority is printed, embossed, stamped or written thereon.

5. Legal proceedings

(1) Proceedings for the enforcement of payment or recovery of the taxes or pecuniary penalties imposed under this Law, and proceedings for the imposition of penalties for offences under this Law may be taken in the name of the Commissioner.

(2) A tax or pecuniary penalty imposed under this Law, or a pecuniary penalty payable for an offence under this Law is recoverable by the Commissioner as a civil debt.

(3) For the purposes of this section, the Commissioner may be represented in a magistrate's court by a Tax Collector or by any other suitable official authorised in writing by a Tax Collector, generally or specifically in relation to any particular proceedings or class of proceedings.

PART 2

Income Tax

CHAPTER 1

PRELIMINARY

6. Interpretation

In this Part—

"Assessment Authority" means an official appointed under subsection (1) of section 9 or the Commissioner;

"Assessment Committee" means a body of persons appointed under subsection (1) or subsection (2) of section 9;

"communal income" means an income accruing to an indigenous community as a single entity;

"employer" includes in respect of individuals taxable under this Part—

(*a*) a person who employs those individuals, a body of persons corporate or unincorporated, a person who gives out articles or materials to out-workers, and the legal personal representative of a deceased employer; but in the case of a body of persons corporate or unincorporated, the manager or other principal officer of the main office or of a local office or branch of a subsidiary concern is deemed to be the employer, and a director of a company or individual engaged the management of a company is deemed to be an employed individual; and where that person is located outside the Cross River State the Commissioner may, after giving him an opportunity of being heard, by notice in writing, declare any other person located in the Cross River State who is employed by or on behalf of that person, or has any business connection with him, or through whom he is in receipt of any income, to be the agent of that person, and that agent shall be deemed to be the employer;

(*b*) an official who performs the functions of Head of Department in respect of those individuals employed in an organisation established in Nigeria by the Government of the Cross River State, and an official charged with any responsibility attaching to a duty imposed under this Part in respect of the tax payable on income from employment;

(*c*) the Accountant-General or such other official as may be charged with the responsibility for payment of any Government pension receivable by those individuals;

(*d*) the Chief Secretary to the Premier in respect of those individuals employed in an organisation established outside Nigeria by the Government of the Cross River State, and an official charged with any responsibility attaching to a duty imposed under this Part in respect of the tax payable on income from employment;

(*e*) the Clerk to the Cross River State Legislature in respect of those individuals who are members of that Legislature;

(*f*) subject to the consent of the President under the proviso to subsection (2) of section 100 of the Constitution of the Federation, an official of the Federation who performs the functions of Head of Department in respect of those individuals employed in any organisation established by the Federation, and an official charged with any responsibility attaching to any duty imposed under this Part in respect of the tax payable on income from employment;

"family income" means an income recognised by a local law or custom as such;

"incapacitated individual" means an infant, lunatic, idiot or insane individual;

"indigenous community" means a body of indigenous Nigerian citizens residing in a town, village or settlement in the Cross River State;

"married" means married under the Marriage Act or married by local customary law;

"Tax Collecting Agent" means a person or body of persons or local government appointed under subsection (2) or subsection (3) of section 10;

"Tax Collector" means an official appointed under subsection (1) of section 10 or the Commissioner;

"taxpayer" means a person by whom any income tax is payable under this Part, and a person in respect of whom a proceeding has been taken for the assessment of his income or determination of a loss sustained by him or of the amount of a repayment of tax due to him; but in the case of a body of individuals or of an indigenous community or family, a member of that body or community engaged the management of its activities, or the member of the family who customarily receives the family income from its source, is deemed to be the taxpayer;

and any expression not hereinbefore defined, to which a meaning is assigned by the Act, shall have the meaning so assigned.

CHAPTER 2

INCOME TAX AUTHORITIES

7. Appointment of Assessment Authority and Assessment Committee and duties

(1) For the purpose of—

(*a*) assessing the total income of taxpayers, and

(*b*) determining the amounts of tax payable by them,

the Commissioner may appoint a suitable official or body of persons to be an Assessment Authority or an Assessment Committee, respectively.

(2) For the purpose of—

(*a*) assessing the total income of taxpayers who fall within any category of income specified by the Commissioner, and

(*b*) determining the amount of tax payable by them,

an Assessment Authority may appoint a suitable number of persons to be an Assessment Committee for a specified area.

(3) An Assessment Authority or Assessment Committee shall—

(*a*) assess the total income of taxpayers within its specified area; and

(*b*) determine the amounts of tax payable by them; and

(*c*) maintain such assessment records, and supply such information with respect to the identity, income and other particulars of those taxpayers as may be specified by the Commissioner.

8. Appointment of Tax Collector and Tax Collecting Agent and duties

(1) For the purpose of collecting the tax payable by taxpayers, the Commissioner may appoint a suitable official to be a Tax Collector for a specified area.

(2) A Tax Collector may appoint a suitable person, or body of persons, or local government, to be a Tax Collecting Agent within a part of his specified area, and in the case of a body of persons or a local government the appointment shall be made in the name of any member of that body or of the Secretary or Treasurer of the local government, as the case may be.

(3) For the purpose of collecting the tax by the method of deduction at source, from taxpayers who derive income from employment, the State Commissioner may appoint an employer to be a Tax Collecting Agent in respect of taxpayers at any time employed by that employer.

(4) A local government which has been appointed a Tax Collecting Agent under subsection (2) may, with the approval of the Tax Collector, employ a suitable person or body of persons for the purpose of assisting it in the collection of the tax.

(5) A Tax Collector or Tax Collecting Agent shall—

(*a*) collect the tax from taxpayers within his or its specified area and from those employed by him or it as the case may be;

(*b*) maintain such collection records, and pay all collected tax to such person, in such manner and within such time; and supply such information concerning the identify, income and other particulars of those taxpayers, as may be prescribed by the State Commissioner or specified by the Commissioner, as the case may be.

CHAPTER 3

IMPOSITION OF TAX AND ASCERTAINMENT OF INCOME

9. Charge of income tax

Income tax is, subject to this Law, chargeable and payable for a year of assessment in accordance with the amounts in this Law specified in respect of—

(*a*) the total income of an individual who is resident in the Cross River State during that year:

But the tax is not payable by—

(i) an individual who is not above the age of sixteen years at the date of commencement of that year of assessment, in respect of that part of such income as is earned by personal effort; or

(ii) a female individual who is above the age of sixteen years at the date of commencement of that year and whose total income does not exceed two hundred naira; or

(iii) a female individual, not being an employee, who is above the age of sixteen years at the date of commencement of that year and whose total income exceeds two hundred naira, and—

(A) whose ordinary place of abode is not situated within the area of the authority of a local government listed in the Second Schedule, and

(B) who does not carry on a business or derive an income from an asset situated within that area;

(*b*) the total income of an itinerant worker who is found in the Cross River State during that year;

(*c*) the total income of a body of individuals which is resident in the Cross River State during that year;

(*d*) the total communal income of an indigenous community which is found in the Cross River State during that year;

(*e*) the total family income of an indigenous family of which the member who customarily receives that income from its source usually resides in the Cross River State:

But a part of the total income of such a body of individuals, or the total communal or total family income which is subject to ascertainment as the separate income of an individual who is a member of such a body or community or family, as the case may be, shall be excluded from that total income or total communal or total family income included in the total income of that individual;

(*f*) the total fiduciary income of a trustee of a trust or settlement, or of an executor of the estate of a deceased person in respect of which the Commissioner is the relevant tax authority.

10. Exemption

(1) There shall be exempt from tax—

(*a*) any interest receivable by a taxpayer on a security issued or declared by any Government in Nigeria to be free of income tax;

(*b*) any income of a corporation solely established by the Government of the Cross River State.

(2) That part of the total income of a body of individuals or of the total communal income of an indigenous community or of the total family income of an indigenous family which is receivable by a taxpayer as a member of such a body or community or family, but is not subject to ascertainment as his separate income shall be excluded from his total income.

(3) The Executive Council may exempt from tax—

(*a*) any person or class of persons; or

(*b*) the whole or any part of the income of any person or class of persons; or

(*c*) any class of income.

11. Deductions allowed

(1) For the purposes of ascertaining the income or loss of taxpayer during any period from any source chargeable with tax, there shall be deducted the amount of any premium paid by him during that period in respect of any insurance on his life or the life of his wife, or of any contract for deferred annuity on his life or the life of his wife; but no deduction shall be made in respect of such an insurance except in respect of premiums payable on policies securing a capital sum of death, whether or not in conjunction with any other benefit, and the amount of the deduction made shall not exceed one-tenth of that capital sum, exclusive of any additional benefit by way of bonus, profit or otherwise.

(2) The total amount of the deductions made under this section shall not exceed one-fifth of the total income (including such deductions) of the taxpayers for the relevant year of assessment.

(3) The aggregate amount of the deductions made under—

(*a*) this section,

(*b*) paragraph (*e*) of subsection (1) of section 17 of the Act, and

(*c*) in the case of an employee, paragraph (*f*) of subsection (1) of section 17 of the Act,

shall not exceed two thousand naira in respect of any year of assessment.

CHAPTER 4

DEDUCTION AND ASSESSMENT

12. Deduction of tax at source

(1) The Commissioner may by notice in writing served upon any employer direct that upon any occasion when that employer makes to or on behalf of any employee any payment of or on account of any income from employment, he shall deduct therefrom the tax payable by that employee in respect of that income, notwithstanding that that income has not been assessed.

(2) A direction given under subsection (1) shall specify the income to which it refers and the amount or amounts of tax to be deducted, either specifically or by reference, in the case of employee, to tax tables supplied by the Commissioner in accordance with the First Schedule.

(3) In determining the amount of tax to be deducted under subsection (1) from any payment to an employee the Commissioner shall ensure, as far as possible, that the amount is such that the cumulative amount of deductions (including such amount) made since the commencement of any financial year from income for that year, shall bear to the amount of tax computed upon the total income for that year in accordance with the First Schedule in force for that year, the like proportion that the part of that year which ends with that occasion bears to the whole of that year.

(4) Notwithstanding anything contained in subsection (1) or subsection (3), where such an employee is a taxpayer who derives income from more than one employer or from other sources, the Commissioner may direct and ensure that the amount of tax to be deducted on any occasion by any one employer, and the total amount of tax to be deducted for any financial year by that employer, shall be determined by reference to the total income of the taxpayer from all sources.

(5) Where an employer during any financial year fails to deduct any tax in accordance with this section, the Commissioner may direct that the tax shall be—

(*a*) a civil debt due from and payable by the employer, unless he satisfies the Commissioner that he had sufficient cause for that failure; or

(*b*) deducted by any employer with whom the employee in respect of whose income tax was not deducted is employed during that year; or

(*c*) deducted by any employer with whom the employee is employed during any financial year within six years after the financial year during which that tax should have been deducted.

(6) An appeal lies against any direction of the Commissioner under subsection (5) to the High Court.

(7) The High Court may confirm or annul the direction, and the decision of the High Court shall be final.

(8) The State Commissioner may make rules generally for carrying out this section and may provide for the use of any method whereby tax shall be deducted and paid to the Government of the Cross River State.

(9) (i) Where the breach of any rule made in pursuance of subsection (8) is a continuing offence, then, irrespective of whether or not proceedings are taken under any other provisions of this Law against the employer who commits the breach, the Commissioner may impose on him a penalty of two naira for each day on which the breach continues up to and including the day immediately preceding that on which the breach is remedied, if at all, and the provisions of this Part relating to the notification, collection and recovery of tax shall apply to the notification, collection and recovery of such a penalty.

(ii) The Commissioner may remit the whole or part of such a penalty if it would be just and reasonable so to do having regard to all the circumstances.

13. Return of income

(1) The Commissioner shall, not later than the first day of May of each year of assessment, publish a notice requiring every taxpayer for that year whose total income exceeds two hundred naira, to prepare and deliver not later than thirty days after the date of publication, to

the person and at the place specified in that notice, a statement in writing or in the form of return supplied by the Commissioner.

(2) An Assessment Authority may, at any time and at such additional times as may be necessary, by notice in writing require any taxpayer for any year of assessment, to prepare and deliver not later than thirty days after the date of service of the notice, to the Assessment Authority at the place specified in that notice, a return in the form incorporating that notice; but the Assessment Authority may—

(*a*) extend the period specified for delivery of the return as may be reasonable in the circumstances; or

(*b*) by notice in writing reduce the period if he has reason to anticipate any undue delay in completing the assessment.

(3) A taxpayer who has not been required to deliver a statement or return under subsection (1) or subsection (2) may do so if he wishes.

(4) A person who has incurred a loss of income during any period specified in any notice published or served under subsection (1) or subsection (2) shall prepare and deliver to the person and within the time specified in that notice or extended by the Assessment Authority, a statement in writing or a return in like manner as he would have prepared and delivered under subsection (1) or subsection (2) had he not incurred such a loss, and that Part shall apply as if that statement or return were a statement or return under subsection (1) or subsection (2).

(5) The notice referred to in subsection (1) shall be published in the Cross River State *Gazette* and the Cross River State public press, and by affixture to public buildings and in places of popular resort.

(6) The statement or return referred to in this section shall be signed by the taxpayer to whom it relates and shall contain—

(*a*) the full amount of his income from each and every source during such period or periods as are specified in the notice, computed in accordance with this Part;

(*b*) such other particulars as may be required by the notice for the purposes of this Part; and

(*c*) a declaration that it represents a true and complete statement of his total income computed in accordance with the provisions of this Part, and of those particulars.

(7) A taxpayer who arrives in the Cross River State during any year of assessment shall give notice to the Commissioner of his date of arrival not later than thirty days after that date.

14. Power to call for information from taxpayers

For the purpose of obtaining full information in respect of any income or personal circumstances of a taxpayer, an Assessment Authority may by notice in writing require him, at the place and within the time specified in that notice, to—

(*a*) prepare and deliver any statement specified in that notice; or

(*b*) attend personally before that Assessment Authority for examination as regards any matter relating to that income or those personal circumstances; or

(*c*) produce or cause to be produced for examination any document, book, account or record relating to that income or those personal circumstances which the Assessment Authority may deem necessary.

15. Power to direct taxpayer to keep accounts

(1) Where a taxpayer fails or refuses to keep accounts or records which, in the opinion of the Commissioner, are adequate for the purposes of this Part, the Commissioner may by notice

in writing direct him to keep those accounts or records in such form and in such language as the Commissioner may deem necessary for those purposes and may specify in that notice.

(2) An appeal lies from any direction of the Commissioner made under subsection (1) to the High Court.

(3) The High Court may confirm, modify or annul such a direction and the decision of the High court shall be final.

16. General power to call for information

(1) An Assessment Authority may require any person in the employment of the Government of the Cross River State, or any local government, public body or Statutory Corporation to supply any information which the Assessment Authority may deem necessary for the purposes of this Part, and which is in the possession of that person; but such a person shall not, by virtue of this section, be obliged to disclose any particulars as to which he is under a statutory obligation to observe secrecy.

(2) Subject to the consent of the President under the proviso to subsection (2) of section 100 of the Constitution of the Federation, an Assessment Authority may require any officer of the public service of the Federation to supply any information which the Assessment Authority may deem necessary for the purposes of this Part and which is in the possession of that official; but that official shall not, by virtue of this section, be obliged to disclose any particulars as to which he is under a statutory obligation to observe secrecy.

(3) An Assessment Authority may require any person to produce any record over which he has control which relates to any property, asset, income or personal circumstances of a taxpayer, or to supply any information in the possession of that person which the Assessment Authority may deem necessary for the purpose of this Part; but this subsection does not apply to a company engaged in the business of banking or any person who is under a statutory obligation to observe secrecy, in so far as that business or obligation is concerned.

(4) An Assessment Authority may, for the purpose of this Part, require an employer to supply any information which is in his possession in respect of the income or personal circumstances of all taxpayers employed by him.

17. Assessment of income and determination of tax payable

(1) Where an Assessment Authority or Assessment Committee is satisfied that a statement or return delivered under section 15 is true and complete, it shall accept the statement or return and assess the total income of the taxpayer and determine the amount of tax payable by him, or in case of a person who has incurred a loss of income, determine the amount of that loss; but such a taxpayer or person may deliver a revised statement or return at any time before assessment is made.

(2) Where an Assessment Authority or Assessment Committee is not satisfied that the statement or return delivered under section 15 is true and complete, it shall reject the statement or return and, to the best of its judgment, assess the total income of the taxpayer and determine the amount of tax payable by him accordingly, or determine the amount of loss incurred.

(3) Where a taxpayer who has been required to deliver a statement or return under subsection (1) or subsection (2) of section 15 fails to do so within the time specified or extended, the Assessment Authority or Assessment Committee shall assess the total income of that taxpayer to the best of this judgment and determine the amount of tax payable by him accordingly.

(4) Where a taxpayer whose total income does not exceed two hundred naira does not file a statement or return under subsection (3) of section 15, the Assessment Authority or Assessment Committee shall assess the total income of that taxpayer to the best of its judgment and determine the amount of tax payable by him accordingly.

(5) Where a taxpayer whose total income does not exceed two hundred naira files a statement or return under subsection (3) of section 15, the Assessment Authority or Assessment Committee shall proceed with the matter in accordance with subsection (1) or subsection (2), as may be appropriate.

18. Notice of assessments

(1) An Assessment Authority shall serve upon every taxpayer a notice in writing specifying the amount of assessed income, the amount of tax payable by him, and the time within which the payment should be made, but—

(*a*) a tax ticket in the form specified by the Commissioner is deemed to be such a notice, and

(*b*) where in the case of a taxpayer who has been assessed under subsection (4) of section 19, it appears to the Assessment Authority or any official authorised by him in that behalf that payment of the tax determined as payable by the taxpayer may be delayed, then notwithstanding anything contained in section 23 or section 24 or section 25 or section 26, that tax is payable by the taxpayer on demand.

(2) Where the Commissioner or an Assessment Authority publishes a notice stating—

(*a*) that assessments of the incomes of taxpayers residing in any area or falling within any class or income category specified in that notice have been made;

(*b*) the place at which, and time within which those assessments may be inspected; and

(*c*) the time within which the tax payable by those taxpayers should be paid,

a taxpayer to whom such a notice relates shall take such steps as are necessary to ascertain the amount of tax payable by him and make due payment within the time specified.

(3) Notwithstanding anything contained in subsection (1), a taxpayer shall for any year of assessment take such steps as are necessary to ascertain the amount of tax payable by him and the place at which, and the time within which payment should be made.

(4) The notice referred to in subsection (2) shall be published in the Cross River State *Gazette* and the Cross River State public press, and by affixture to public buildings and in places of popular resort.

(5) The Assessment Authority may—

(*a*) extend the period specified for payment of the tax as may be reasonable in the circumstances; or

(*b*) by notice in writing, where he has reasons to anticipate—

(i) any undue delay in the collection of the tax, reduce that period; or

(ii) that the tax may not be paid, specify that, notwithstanding anything contained in section 31 of the Act or section 42, or section 43 of this Law, payment of the tax shall be made on demand; but in lieu of such security the Assessment Authority may accept such security for payment as he may think fit; and nothing in this subparagraph shall affect section 31 of the Act, or sections 23 to 26 inclusive of this Law, after the payment has been made or the security for payment has been accepted.

19. Additional assessment

If an Assessment Authority or Assessment Committee has reason to believe, by reference to the omission or failure of any taxpayer to deliver a statement or return under section 1, or by reference to any information available, that any taxpayer has not been charged tax or has been charged at a lesser amount than he ought to have been charged for any year of assessment, the Assessment Authority or Assessment Committee shall, at any time and at such additional times as may be necessary, within that year or within six years after the expiration of that year, assess or additionally assess the total income of that person and determine the amount or additional amount of tax which ought to have been payable by him, of assessment, appeal, collection of tax and other proceedings apply to such an assessment or additional assessment and to the amount of tax determined as payable.

20. Specification of amount of tax payable

(1) Where the total income of a taxpayer for any year of assessment is less than two hundred naira, the amount of tax payable by him shall be the amount set out in—

(*a*) Part I, Part II or Part III of the Fifth Schedule, as the case may be, where he is a daily-rated employee, or

(*b*) Part I or Part II of the First Schedule, as the case may be, where he is not,

opposite to the amount of that income as set out in the first column of the appropriate Part of the appropriate Schedule.

(2) Where a male individual taxpayer whose total income for the year of assessment is two hundred naira or more is a person who—

(*a*) throughout the relevant period had no wife or children maintained by him; or

(*b*) proves to the satisfaction of the Assessment Authority that within the relevant period he had a wife living with or maintained by him but no children,

the amount of tax payable by him shall be the amount set out in—

(*c*) the second column of Part III or Part IV of the First Schedule; or

(*d*) the third column of Part III or Part IV of the First Schedule, as the case may be, opposite to the amount of that income as set out in the first column of the appropriate Part of that Schedule, or determined in accordance therewith.

(3) Where a male individual taxpayer whose total income for the year of assessment is two hundred naira or more proves to the satisfaction of the Assessment Authority that he is or has been married and in addition that he had within the relevant period—

(*a*) one or two children maintained by him who were either under the age of sixteen years or, if over that age were receiving fulltime instruction at any university, college, school or other educational institution; or

(*b*) three or more children maintained by him who were either under the age of sixteen years or, if over that age were receiving full-time instruction at any university, college, school or other educational institution,

the amount of tax payable by him shall be the amount set out in—

(*c*) the fourth column of Part III or Part IV of the First Schedule; or

(*d*) the fifth column of Part III or Par IV of the First Schedule, as the case may be, opposite to the amount of that income as set out in the first column of that Part of that Schedule, or determined in accordance therewith.

(4) Where a female individual taxpayer proves to the satisfaction of the Assessment Authority that—

(*a*) throughout the relevant period she had no husband or children maintained by her; or

(*b*) that within the relevant period she had a husband living with or maintained by her but no children,

the amount of tax payable by her shall be the amount set out in—

(*c*) the second column of Part III or Part IV of the First Schedule; or

(*d*) the third column of Part III or Part IV of the First Schedule, as the case may be, opposite to the amount of that income as set out in the first column of that Part of that Schedule, or determined in accordance therewith; but where the husband of such a female taxpayer is an individual taxpayer who proves to the satisfaction of the Assessment Authority that within the relevant period he maintained her, the amount of tax payable by her shall be determined in accordance with paragraph (*c*).

(5) Where a female individual taxpayer proves to the satisfaction of the Assessment Authority that she is or has been married and in addition that she had within the relevant period—

(*a*) one or two children maintained by her who were either under the age of sixteen years or, if over that age were receiving full-time instruction at any university, college, school or other educational institution; or

(*b*) three or more children maintained by her who were either under the age of sixteen years or, if over that age were receiving full-time instruction at any university, college, school or other educational institution,

the amount of tax payable by her shall be the amount set out in—

(*c*) the fourth column of Part III or Part IV of the First Schedule; or

(*d*) the fifth column of Part III or Part IV of the First Schedule, as the case may be, opposite to the amount of that income as set out in the first column of that Part of that Schedule; or determined in accordance therewith:

But where the husband of such a female taxpayer is an individual taxpayer who proves to the satisfaction of the Assessment Authority that within the relevant period he maintained those children, the amount of tax payable by her shall be determined in accordance with paragraph (*c*) of subsection (4).

(6) In the case of the total income of a body of individuals, or of total communal income, or family income, or total fiduciary income of a trustee or executor, for the year of assessment, the amount of tax payable shall be the amount set out in or determined in accordance with Part I or Part II or the second column of Part III or Part IV of the First Schedule, as the case may be, opposite to the amount of that income as set out in the first column of that Part of that Schedule.

(7) "The relevant period" for the purpose of this section is—

(*a*) for an individual taxpayer who receives any income from employment from an employer to whom a direction has been given under section 14 the calendar year ending within the year of assessment if that taxpayer is a daily-rated employee, and the year of assessment if he is not; and

(*b*) for any other individual taxpayer the financial immediately preceding the year of assessment.

CHAPTER 5

OBJECTION, APPEAL AND REVISION

21. Objection to assessment

(1) Subject to this Part, where a taxpayer is aggrieved by an assessment of his income he may make objection and apply in person or in writing to the Assessment Authority of the specified area in which the assessment was made, to review and revise the assessment.

(2) Such an application shall state precisely the grounds of objection and shall be made not later than twenty-one days after the date of service of the notice of assessment; but the Assessment Authority may extend the period specified for making application as may be reasonable in the circumstances.

(3) Upon receipt of such an application the Assessment Authority shall make inquiry as he deems necessary, and determine the objection to the best of his judgment and give notice to the taxpayer of his decision; but where the Assessment Authority revises the assessment and reduces or enhances the amount of tax payable, he shall serve a notice in writing upon the taxpayer in accordance with subsection (1) of section 20.

(4) (*a*) The provisions of this Part relating to assessment apply to an assessment or additional assessment as revised under subsection (3) in like manner that those provisions apply to an assessment or additional assessment.

(*b*) The making of objection does not affect any right of the taxpayer to appeal against an assessment against which he made objection and applied for revision.

(5) Nothing contained in this section renders competent any objection to an assessment made in pursuance of a direction by the Federal Board of Inland Revenue in respect of the undistributed profits of a Nigerian Company or of a determination of the Joint Tax Board under the Act.

22. Appeal to Board of Commissioners against assessment

(1) For the purpose of the appeals provided for by this section, the Executive Council may appoint a suitable person to be a member of a Board of Commissioners of Appeal for a specified area.

(2) Subject to this Part, where a taxpayer is aggrieved by an assessment of his income he may, where the amount of tax in dispute does not exceed one hundred naira, appeal against the assessment to the Board of Commissioners appointed for the specified area in which the assessment was made; but except on a matter of law, no appeal shall lie against an assessment where the taxpayer without sufficient cause has failed to comply with any of the terms of a notice under subsection (2) of section 15 or under section 16.

(3) Where a taxpayer is aggrieved by any deduction from his income made by an employer who has received a direction under section 14, he may, where the amount of deduction in dispute does not exceed one hundred naira, appeal against the deduction to the Board of Commissioners appointed for the specified area in which his place of employment is situated.

(4) Notice of appeal shall be given in writing to the Board of Commissioners not later than twenty-one days after the date on which the tax is payable in respect of which the assessment was made or after the date of service upon the taxpayer of the notice of assessment, whichever is later, or with respect to an appeal under subsection (3), no later than twenty-one days after the last day of the financial year during which the deduction was made.

(5) A taxpayer appealing other than under subsection (3) or under subsection (2) of section 26 shall pay to the Tax Collector of the specified area in which the assessment was made half of the amount of the tax which is in dispute. Payment of the remaining amount shall remain in abeyance until the appeal is determined, whereupon, subject to the determination, it shall be payable not later than twenty-one days after the date of service upon the taxpayer of notice of the amount payable.

(6) An employer who has received a direction under section 14 shall, notwithstanding that the employee from whose income deduction is to be made is appealing against any deduction, continue to make deduction in accordance with that direction until the appeal is determined.

(7) A taxpayer appealing shall—

(*a*) attend before the Board of Commissioners in person, or

(*b*) be legally represented.

(8) The onus of proving that the amount of tax payable or that the amount of deduction is excessive is on the appellant.

(9) The Board of Commissioners may confirm, reduce, increase or annul the assessment or the amount of deduction.

(10) The costs of the appeal shall be in the discretion of the Board of Commissioners and shall be a sum fixed by the Board of Commissioners.

(11) All appeals shall be heard in camera unless the Board of Commissioners shall, upon application by the appellant, direct otherwise.

(12) Nothing in this section affects the liability of taxpayer appealing to pay the amount of tax, if any, which is not in dispute, within the period specified or extended by the Assessment Authority.

(13) The decision of the Board of Commissioners in an appeal shall be final on a matter of fact and no appeal shall lie therefrom to any court.

(14) Subject to this section, the State Commissioner may make rules providing for the conduct of appeals before a Board of Commissioners and for the procedure to be followed and the method of tendering evidence in that appeal.

(15) Nothing contained in this section renders competent an appeal against an assessment made in pursuance of any direction by the Federal Board of Inland Revenue in respect of the undistributed profits of a Nigerian Company or of any determination of the Joint Tax Board under the Act.

23. Appeal to High Court on a matter of law

(1) Where a taxpayer, having appealed to the Board of Commissioners is aggrieved by their decision, he may appeal against the decision to the High Court on a matter of law.

(2) Notice of the appeal shall be given in writing to the High Court not later than twenty-one days after the date of service upon the taxpayer or the Commissioner of the decision of the Board of Commissioners.

(3) Subsections (5), (6), (7), (8), (9), (10), (11) and (12) of section 24 apply to an appeal to the High Court under this section in like manner that they apply to an appeal under that section, but as if references to the Board of Commissioners therein were references to the High Court.

(4) Subject to this section, the Chief Judge may make rules of court providing for the conduct of appeals before the High Court and for the procedure to be followed and the method of tendering evidence in those appeals.

24. Appeal to the High Court against assessment

(1) Subject to this Part, where a taxpayer is aggrieved by an assessment of his income he may, where the amount of tax in dispute exceeds one hundred naira, appeal against the assessment to the High Court; but except on a matter of law, no appeal shall lie against any failure to comply with any of the terms of a notice under subsection (2) of section 15 or under section 16.

(2) Where a taxpayer is aggrieved by any deduction from his income made by an employer who has received a direction under section 14, he may, where the amount of deduction in dispute exceeds one hundred naira, appeal against the deduction to the High Court.

(3) Notice of appeal shall be given in writing to the High Court not later than twenty-one days after the date on which the tax is payable in respect of which the assessment was made or after the date of service upon the taxpayer of the notice of assessment, whichever is later, or with respect to an appeal under subsection (2), not later than twenty-one days after the last day of the financial year during which the deduction was made.

(4) Subsections (5), (6), (7), (8), (9), (10), (11) and (12) of section 24 apply to an appeal to the High Court under this section in like manner that they apply to an appeal under that section, but as if references to the Board of Commissioners therein were references to the High Court.

(5) Subject to this section, the Chief Judge may make rules of court providing for the conduct of appeals before the High Court and for the procedure to be followed and the method of tendering evidence in those appeals.

(6) An appeal against the decision of the High Court lies to the Federal Court of Appeal.

(7) Nothing contained in this section shall render competent an appeal against any assessment made in pursuance of a direction by the Federal Board of Inland Revenue in respect of the undistributed profits of a Nigerian Company or of a determination of the Joint Tax Board under the Act.

25. Repayment in case of error or mistake

(1) Where a taxpayer alleges that by reason of some error or mistake which is apparent from the records of the assessment and does not involve the re-opening of any issue agreed by him or otherwise determined, he has paid tax in excess of the amount which was properly payable by him, he may make application in writing to the Commissioner for repayment of the tax paid in excess.

(2) Such an application may be made at any time not later than six years after the end of the year of assessment in respect of which the tax was paid.

(3) Upon receipt of the application the Commissioner shall make such inquiry or cause such inquiry to be made as he deems necessary and order such repayment of tax as the circumstances of the matter may justify.

26. Assessment to be final and conclusive

(1) Where no valid objection or appeal has been made within the time specified under subsection (2) of section 23, or subsection (4) of section 24, or subsection (2) of section 25, or subsection (3) of section (26) against any assessment or deduction, or where the assessment or the amount of deduction has been determined under subsection (3) of section 23, or subsection (9) of section 24, or subsection (3) of section 25 or subsection (4) of section 26, the assessment or amount deductible so determined is final and conclusive for all the purposes of this Law.

(2) Nothing contained in this section shall affect—

(*a*) the provisions of section 21 with respect to the making of an assessment or additional assessment for any year of assessment which does not involve the reopening upon the same facts of any issue which has once been agreed or determined; or

(*b*) the provisions of section 27 with respect to the making of an application for repayment of any tax paid in excess by reason of apparent error or mistake.

27. Power of revision by Commission and Assessment Authority

(1) The Commissioner may of his own motion call for the record of any proceedings under this Part and make such inquiry or cause such inquiry to be made as he deems necessary and, subject to this Law, may accept, reject, alter or amend any order in the proceedings, or make such order or orders as the circumstances of the matter may justify.

(2) An Assessment Authority may of his own motion call for the record of any assessment under this Part made by any Assessment Committee appointed by him, and make such inquiry or cause such inquiry to be made as he deems necessary and, subject to this Law, may accept, reject, alter or amend the assessment, or make such order or orders as the circumstances of the matter may justify.

CHAPTER 6

LIABILITY IN SPECIAL CASES

28. Incapacitated taxpayer

Where a taxpayer is an incapacitated individual, the assessment of any income derived by him may be made in the name of a receiver appointed by the court, or his agent, curator, guardian, manager or trustee in like manner and to the like amount as would have been made if he were not incapacitated; and the amount of tax determined as payable in the assessment is payable by the receiver, agent, curator, guardian, manager or trustee as a debt due from and payable out of any asset of the taxpayer.

29. Deceased taxpayer

Where a taxpayer dies, then as respects his income arising before his death, all rights and duties which would have attached to him shall pass to his executor, and the amount of tax payable in respect of that income shall be determined as if he had not died but had permanently ceased to carry on a trade, business, profession or vocation or to derive income from any other source, and shall be a debt due from and payable out of his estate.

30. Persons outside Nigeria

In the case of an individual, trustee or executor outside Nigeria, the assessment of any income derived by him may be made in the name of his agent, attorney, guardian, manager, receiver or trustee in like manner and to the like amount as would have been made if he were deemed to be resident in Nigeria, and the amount of tax determined as payable in the assessment shall be payable by the agent, attorney, guardian, manager, receiver or trustee as though he were the taxpayer, and all this Law applies to the assessment and to the amount of tax payable.

CHAPTER 7

RECOVERY, OFFENCES AND PENALTIES

31. Recovery of tax by deduction

The Commissioner may, in the case of a taxpayer who derives income from employment and also income from other sources, where any tax payable in respect of any income from other sources is not paid by the last day of the financial year during which it was payable, direct the employer of that taxpayer to deduct that tax from any payment of or on account of any income from employment made by him to or on behalf of that taxpayer.

32. Recovery powers of tax collector.

(1) A Tax Collector may, where any tax is not paid within the time specified in any notice published or served under this Part, and where the assessment in respect of that tax is final and conclusive under section 28, publish a notice—

(*a*) giving a warning to all persons of a class or income category specified in that notice, that collection of that tax by personal demand will be undertaken at the place of residence of any person by whom that tax is payable, or in any other place; and

(*b*) stating the period during which that method of collection will be operated.

(2) For the purposes of collecting the tax by personal demand, a Tax Collector may authorise a suitable person to act on his behalf. The authorisation shall be in writing and shall be produced by that person upon request.

(3) Where a Tax Collector publishes a notice under subsection (1) of this section, it shall be the duty of a taxpayer to whom that notice relates and to whom a demand is made by a person authorised under subsection (2), to take such steps as are necessary to prove at the time when and to the person by whom the demand is made by production of a receipt granted by a Tax Collector, that he has not refused or neglected to pay any tax payable by him.

(4) Notwithstanding anything contained in section 23, or section 24, or section 25 or section 26, a taxpayer who fails to discharge the duty imposed upon him under subsection (3) is deemed to have failed to pay the tax payable by him, and that tax is payable by him on demand.

(5) For the purposes of this section—

(*a*) any tax which is payable and has not been paid is deemed to be a sum of money payable under a judgment of court within the meaning of subsection (1) of section 19 of the Sheriffs and Civil Process Law;

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(*b*) a person by whom such a sum is payable is deemed to be a judgment debtor within the meaning of that section;

(*c*) a Tax Collector is deemed to be a judgment creditor within the meaning of that section;

(*d*) a Tax Collector has all the powers of a magistrate in respect of the signing of a writ of attachment and sale issued under that Law, and of a registrar and sheriff under that Law in respect of the issue and execution of the writ;

(*e*) subject to paragraph (*f*) all the provisions of that Law relating to the seizure of goods and securities and custody thereof and to the sale of goods apply to a Tax Collector or any officer executing such a writ of attachment and sale; and

(*f*) notwithstanding anything contained in Part 6 of that Law, the State Commissioner may make rules and prescribe forms generally for carrying out this section.

(6) Where a Tax Collecting Agent—

(*a*) misappropriate; or

(*b*) withholds for his own use or for any other purpose; or

(*c*) fails to pay to the person or in the manner or within the time specified by the Tax Collector or other person appointing him,

the whole or any part of the tax collected by him, then, without prejudice to the operation of section 38 of this Law, the provisions of subsection (5) of this section shall be available to the Tax Collector or other person for the purpose of recovery from the Tax Collecting Agent the sum so misappropriated withheld or not paid by him in the same way as they avail the Tax Collector against a taxpayer in respect of unpaid tax.

33. Offences and penalties

(1) A taxpayer who, having been served by an Assessment Authority with a notice under subsection (2) of section 15 or under section 16, without sufficient cause fails to comply therewith, delivers any incorrect return or statement, or gives any incorrect information, or produces any incorrect record to the Assessment Authority, is guilty of an offence.

(2) A person who, without sufficient cause, fails to keep accounts in compliance with any of the terms of a notice under section 17, is guilty of an offence.

(3) A person not being an officer of the public service of the Cross River State who, having been required under subsection (1) or subsection (3) of section 18 to supply any information to an Assessment Authority, neglects or refuses to supply that information, or wilfully misleads or attempts to mislead the Assessment Authority in supplying the information, is guilty of an offence.

(4) An employer who, having been required under subsection (4) of section 18 to supply any information in respect of taxpayers employed by him, neglects or refuses to supply that information, or supplying that information, is guilty of an offence.

(5) A person guilty of an offence under this section is liable on conviction to a penalty of imprisonment for two years and a fine of four hundred naira.

34. False return, statement or record

(1) A taxpayer who, for the purpose of obtaining a reduction in the amount of tax payable by him, or a repayment of tax paid by him, in any return, or written or oral statement, or any document, book, account or record, delivered, made or produced by him to the Assessment Authority, wilfully makes a false representation, is guilty of an offence.

(2) The Commissioner may compound an offence under this section and, with the leave of the court, may at any time before judgment stay or compound any proceedings thereunder.

(3) An offence under this section shall be deemed to have occurred at the place where the office of the Assessment Authority is situated.

35. Failure to pay tax

(1) Subject to subsection (5) of section 24 and subsection (3) of section 25 and subsection (4) of section 26 and subsections (1), (2) and (3) of section 34 a taxpayer who, without sufficient cause, fails to pay any tax payable by him within the time specified or extended or

reduced by the Assessment Authority in any notice served or published under this Part is guilty of an offence and—

(*a*) is liable to a penalty of imprisonment for two years and a fine of four hundred naira; and

(*b*) irrespective of whether or not proceedings are taken against him, a penalty of a sum not exceeding one-fifth of the tax may be added to the tax by the Assessment Authority, and all the provisions of this Part relating to the notification, collection and recovery of this penalty; but the Assessment Authority may remit the whole or any part of the penalty if it would be just and reasonable to do so by reference to all the circumstances.

(2) The court in any proceedings taken under subsection (1) may, where the taxpayer is convicted, make an order for the payment of the tax in respect of which the proceedings were taken.

36. Offences by Tax Collecting Agent

(1) A Tax Collecting Agent who—

(*a*) without sufficient cause, fails to pay any tax collected by him to the person or in the manner or within the time specified under paragraph (*b*) of subsection (5) of section 10; or

(*b*) withholds for his own use or for any other purpose any part of the amount of tax collected by him; or

(*c*) wilfully fails to collect from any taxpayer the full amount of tax payable by that taxpayer; or

(*d*) demands from any person any amount of money in excess of the amount of tax payable by the person; or

(*e*) wilfully sustains the loss of any tax ticket entrusted to him; or

(*f*) wilfully misrepresents the identity, income or other particulars of any taxpayer within his specified area; or

(*g*) defrauds or attempts to defraud, or in any way uses his position to deal wrongfully with any person or the Government of the Cross River State; or

(*h*) without sufficient cause, fails to carry out any duty imposed upon him by subsection (5) of section 10 other than a duty in respect of a breach of which a penalty is specifically provided,

is guilty of an offence

Penalty: imprisonment for two years and a fine of four hundred naira.

(2) In the case of a body of persons or local government appointed under subsection (2) of section 10, proceedings may be taken against the person in whose name the appointment was made, or against all or any of the members of the body, or any councillor, collectively or separately, and all or any of the members or any councillor is liable upon conviction to the penalties specified, unless he satisfies the court that he was in no way personally responsible for or a party to the commission of the offence.

(3) The court in any proceedings taken under subsection (1) may, where such Tax Collecting Agent is convicted, make an order for the payment of any tax in respect of which the proceedings were taken.

37. Offence by employer

(1) An employer who, having been appointed as a Tax Collecting Agent under subsection (3) of section 10, without sufficient cause, fails to pay any tax collected by him by the method of deduction at source, to the person or in the manner or within the time prescribed by the State Commissioner, is guilty of an offence:

Penalty: imprisonment for three years and a fine of six hundred naira.

(2) The court in any proceedings taken under subsection (1) may, where the employer is convicted, make an order for the payment of the tax in respect of which the proceedings were taken.

38. Offences by unauthorised persons

(1) A person who—

(*a*) counsels, induces, assists or incites a taxpayer—

(i) not to pay any tax payable by the taxpayer; or

(ii) to deliver, make or produce any false return, statement or record to an Assessment Authority; or

(iii) to conceal any property of which the taxpayer is the owner; or

(*b*) not being a duly appointed Tax Collecting Agent, collects or attempts to collect the tax imposed under this Part; or

(*c*) forges, or fraudulently alters or uses, or fraudulently lends to or allows the use by any other person of any ticket, receipt document or token relating to the assessment of income and payment of tax; or

(*d*) wilfully obstructs, intimidates or assaults a Tax Collector or any person duly authorised by him under subsection (2) of section 34 in the performance of his duties under this Part;

is guilty of an offence:

Penalty: imprisonment for three years and a fine of six hundred naira.

(2) The court in any proceedings taken under paragraph (*d*) of subsection (1) may, where the accused person is convicted, make an order for the payment of compensation for personal injury or damage to property suffered, through the assault, by the tax collector or person duly authorised by him.

39. Arrest of offender without warrant

Subject to the consent of the President under the proviso to subsection (2) of section 100 of the Constitution of the Federation, a person who appears to have contravened this Part may be arrested by a police officer without a warrant.

40. Errors and defects in records

(1) An assessment, warrant or other proceeding purporting to be made in accordance with this Part shall not be quashed or deemed to be void or voidable for want of form, or be affected by reason of any mistake, defect or omission therein if the assessment, warrant or other proceeding is in substance and effect in accordance with the intent and meaning of this Part, and if the person whose income is assessed or intended to be assessed or affected by the assessment, warrant or other proceeding is designated therein in accordance with common intent and understanding.

(2) An assessment shall not be impeached or affected by reason of—

(*a*) any mistake therein as to—

(i) the name or surname of any person liable; or

(ii) the description of any income; or

(iii) the amount of tax determined as payable; or

(*b*) any variance between the assessment record and the notice of assessment.

41. Remission and repayment

The State Commissioner may, after considering the recommendation of the Commissioner, remit any amount of tax which has not been paid or order the repayment of any amount of tax which has been paid, on the ground of poverty if he is satisfied that it would be just and reasonable to do so by reference to all the circumstances.

42. Immunity

A Tax Collector or any person duly authorised by him under subsection (2) of section 34 shall not be liable in any action or proceeding whether civil or criminal, for anything said or done by him in the lawful exercise of the powers conferred upon him by section 34.

PART 3

Purchase Tax

43. Interpretation

(1) In this Part—

"item" means any item listed in the Third Schedule;

"chargeable item" means any item bought under a chargeable purchase;

"chargeable purchase" means the first purchase made from a wholesale merchant (other than one who is not required to be registered by this Part) selling by wholesale or by retail any item after that item has been brought into Cross River State, or in the case of a purchase of unascertained items, any item appropriated to the purchase which is in Cross River State at the time of the appropriation;

"purchase" means a contract which is a contract of sale within the meaning of the Sale of Goods Act, 1893, and also a contract similar to such a contract in other respects but made for a consideration wholly or partly in money's worth and not, or not only, in money, and also any transaction, in whatsoever form expressed, in so far as its effect is in substance the same as the effect of such contract; and reference to goods being bought includes, in relation to a purchase made for a consideration, not, or not only, in money, and in relation to such a transaction, reference to goods being acquired in any manner;

"retail trader" means a person who sells by retail and not otherwise;

"selling by retail" means selling goods of any class to a person who carries on a business of selling goods of that class;

"tax" means purchase tax chargeable and payable under this Part;

"wholesale merchant" means a person who carries on in Cross River State an agency or a business of selling by wholesale or in any way dealing by wholesale either on his own account or as an agent or factor for another, and also manufacturer and a person who carries on in Cross River State an agency or a business of selling materials to manufacturers.

(2) For the purpose of this Part, where, at the time a purchase is made the goods bought thereunder, or any part thereof, has already been delivered and the buyer is in possession thereof, or of any part thereof, delivery of the goods, or of any part thereof, as the case may be, under the purchase shall be deemed to have taken place o the making of the purchase.

44. Charge of purchase tax

(1) Tax is, subject to this Part, chargeable and payable in accordance with the rates set out in the Fourth Schedule on any item bought under a chargeable purchase.

(2) The tax is chargeable in respect of any item bought under a chargeable purchase, notwithstanding that the purchase was made before the first day of April, 1961, but no tax is chargeable in respect of any item bought under any purchase if the item had been delivered thereunder before that date.

45. Person by whom tax is payable

(1) The person by whom the tax is payable is the seller under a chargeable purchase.

(2) The seller of any chargeable item shall, unless the chargeable purchase in respect thereof is exempted under subsection (2) of section 53, add to any invoice, or similar document delivered by him to the purchaser of that item, a statement specifying the amount due to him from the purchaser in respect of the tax payable by the seller under the purchase.

(3) The tax payable under a chargeable purchase is due upon delivery of the item under the purchase, and is payable not later than twenty-one days after the end of the month during which it became due.

46. Absent taxpayer

Where a person by whom the tax is payable is located outside Cross River State, the Commissioner may, by notice in writing served upon any agent, factor, manager or representative of that person who is located in Cross River State, direct that the agent, factor, manager or representative shall be substituted for that person, and all the provisions of this Law apply to such an agent, factor, manager or representative as they apply to that person.

47. Registration of wholesale merchants

(1) A wholesale merchant whose business includes the selling of any chargeable item shall be registered for the purposes of this Part by the Commissioner.

(2) Where the Commissioner is satisfied that any retail trader or other person, for the purposes of a business of selling by retail carried on by him or for any other purpose, makes purchases of any chargeable item of which the value and character are such as are made in the ordinary course of business by a wholesale merchant, the retail trader or person shall be registered for the purposes of this Part, and all this Part applies to him as it applies to a wholesale merchant.

48. Registration procedure

(1) A person carrying on business in such circumstances that he is required by section 49 to be registered, shall, if he is not already registered under the Finance Law, 1956, apply in writing for registration to the Commissioner.

(2) Upon receipt of the application under subsection (1) the Commissioner shall register the applicant and issue to him a certificate of registration.

(3) Where a person who has been registered under this section ceases to be required to be registered, he shall return his certificate of registration to the Commissioner for cancellation.

(4) The Commissioner shall, not less than thirty days before registering a person (other than one who has applied for registration), or before cancelling a registration, serve notice upon him of his intention to register him or to cancel his registration, as the case may be.

49. Return and information from seller

(1) A seller of any item under a chargeable purchase shall prepare and deliver to the Commissioner not later than twenty-one days after the last day of any month during which any tax was payable under subsection (3) of section 47, a return stating the total quantity of each item sold during that month, the amount of tax payable thereon and such other particulars as may be specified by the Commissioner; but the Commissioner may extend the period for delivery of the return as may be reasonable in the circumstances.

(2) For the purpose of obtaining full information in respect of any chargeable purchase, the Commissioner may by notice in writing require the seller under that purchase to—

(*a*) produce or cause to be produced for examination, or

(*b*) afford access to the Commissioner or any official authorised in that behalf by him,

to any document, book, account or other record relating to that purchase which the Commissioner may deem necessary and which is in the possession of the seller.

50. General power to call for information

Where it appears to the Commissioner that any retail trader or other person is carrying on the business of a wholesale merchant or is making purchases which are made in the ordinary course of business by a wholesale merchant, the Commissioner may require that trader or person or any wholesale merchant with whom those purchases are determining whether that trader or person is required by section 49 to be registered for the purposes of this Part.

51. Exemption

(1) The Executive Council may exempt any person or class of persons from the operation of this Part.

(2) The State Commissioner may, after considering the recommendation of the Commissioner, exempt any chargeable purchase where it is shown to his satisfaction that the goods which are the subject-matter of that purpose will be or have been sold by the seller under that purchase for consumption outside the Cross River State, and have been or will be consumed outside the Cross River State.

52. Repayment of tax

Where a seller or purchaser under a chargeable purchase, whether or not entitled to the benefit of exemption under section 53, satisfied the Commissioner that the amount of tax paid by him or suffered by him under section 47 exceeds the amount properly leviable upon him, the Commissioner shall repay the amount of tax paid or suffered in excess.

53. Failure to pay tax

(1) A seller under chargeable purchase who, without sufficient cause, fails to pay any tax payable by him within the period specified in subsection (3) of section 47, is guilty of an offence:

Penalty: a fine of two thousand naira.

(2) Irrespective of whether or not proceedings are taken against a seller under subsection (1), a penalty of one-twentieth of that tax may be imposed by the Commissioner; but the Commissioner may remit the whole or any part of the penalty if it would be just and reasonable to do so by reference to all the circumstances.

(3) The court in any proceedings taken under subsection (1) may, where the seller is convicted, make an order for the payment of the tax in respect of which the proceedings were taken.

54. Offences and penalties

(1) A person who, without sufficient cause—

(*a*) fails to apply for registration in compliance with subsection (1) of section 50; or

(*b*) fails to deliver a return in compliance with subsection (1) of section 51; or

(*c*) in complying therewith, delivers an incorrect return; or

(*d*) fails to comply with all the terms of a notice served under subsection (2) of section 51; or

(*e*) in complying therewith, produces an incorrect record; or

(*f*) refuses access to any record in his possession to the Commissioner or a duly authorised official,

is guilty of an offence.

(2) A person who, having been required to supply any information under section 52, neglects or refuses to supply that information, or wilfully misleads or attempts to mislead the Commissioner in supplying that information, is guilty of an offence.

(3) A person guilty of an offence under this section is liable on conviction to a penalty of imprisonment for two years and a fine of one thousand naira.

55. False return, statement or record

A seller or purchaser under a chargeable purchase who, for the purpose of obtaining any reduction or repayment of the amount of any tax payable or paid by him or any repayment of tax suffered by him, as the case may be, in any written or oral statement, or any document, book, account or other record delivered, made or produced by him to the Commissioner, makes any false representation, is guilty of an offence:

Penalty: imprisonment for two years and a fine of two thousand naira.

56. Rules

The State Commissioner may make rules generally to implement this Part and, for example, provide for the repayment of tax paid or suffered in excess.

PART 4

Variation, Repeal and Saving

57. Variation of Schedule

(1) Subject to this section where a resolution moved by the State Commissioner is passed with or without modification by a Committee of the Whole House of Assembly providing for the revocation, replacement or variation of any Schedule to this Law, that resolution shall have effect as it is contained in a Law.

(2) The resolution shall cease to have that effect if a Bill revoking, replacing or varying the Schedule concerned in the terms of the resolution is not read a second time by the House of Assembly within the next ten days on which the House of Assembly sits after the resolution is passed.

(3) The resolution shall cease to have that effect if the House of Assembly is dissolved or prorogued, or a law comes into force revoking, replacing or carrying the Schedule in question, or the provisions giving effect to the resolution are rejected during the passage of a Bill containing those provisions through the House of Assembly.

(4) Where the resolution ceases to have that effect any money paid in pursuance of the resolution shall be repaid by the Commissioner.

(5) Notwithstanding anything contained in subsection (1) the Executive Council may by order make an amendment to the Second Schedule to give effect to a change in name or status of a local government listed in it.

58. Repeal and Saving

(1) The Finance Law, 1956, is hereby repealed.

(2) Notwithstanding the repeal, any proceedings under the Law which had been commenced on or before the thirty-first day of March, 1961, shall be continued as if that Law had not been repealed, and any Income Tax or penalty which would have been chargeable, assessable, leviable or recoverable for any year of assessment ending on or before the thirty-first day of March 1961, but which has not been assessed, levied, paid or recovered at the date of commencement of this Law, shall be assessed, levied, paid or recovered in accordance with the Finance Law, 1956, as if that Law had not been repealed, and any repayment of tax due under that Law shall be made ass if this Law had not been passed.

59. Interpretation

In this Law—

"The Act" means the Income Tax Management Act, 1990;

"the Commissioner" means, as the occasion requires, the Commissioner of Internal Revenue appointed for the due administration of this Law, or a Deputy Commissioner of Internal Revenue or an Assistant Commissioner of Internal Revenue or any other official appointed under section 3, for the purposes of the exercise by any of these officials of such powers conferred upon the Commissioner as he may delegate to that official;

"the Commissioner" means the Commissioner for the time being charged with responsibility for finance.

60. Short title

This Law may be cited as the Finance Law.

FIRST SCHEDULE

Rates of Tax on Incomes

[Omitted as superseded by Income Tax Management (Uniform Taxation Provisions Etc.) Decree, 1975.]

SECOND SCHEDULE

Exemption from Tax on Incomes

[Omitted on the same ground.]

THIRD SCHEDULE

Rates of Purchase Tax

Item	Unit	Rate of Tax ₦ k
Petrol	Gallon	2.50
Diesel oil (for road vehicles and non-industrial purposes)	Gallon	3.34

FOURTH SCHEDULE

[Omitted as superseded by the Income Tax Management (Uniform Taxation Provisions Etc.) Decree, 1975.]

CHAPTER F3

FINANCE LAW

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. Income Tax (Direct Assessment and Collection) Rules.
2. Income Tax (Exemptions) Order.
3. Income Tax (Deduction at Source) Rules.
4. Income Tax (Boards of Commissioners of Appeal) Rules.
5. Finance Law (Appeals) (High Court) Rules.
6. Income Tax (Recovery of Arrears) Rules.
7. Finance Law (Purchase Tax) Rules.

INCOME TAX (DIRECT ASSESSMENT AND COLLECTION) RULES

ARRANGEMENT OF RULES

1. Citation.

RULE

2. Interpretation.
3. Exemption Certificate.
4. Householder's Return.
5. Annual return.
6. General tax receipt and Flat Rate Tax Ticket.
7. Tax Collecting Agent's Receipt.
8. Certified true copies.
9. Payment by instalment.
10. Carrying of Receipt or Exemption Certificate.
11. Production of Receipt or Exemption Certificate.
12. Power of entry.
13. Offences and penalties.

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1. Citation

These rules may be cited as the Income Tax (Direct Assessment and Collection) Rules.

2. Interpretation

In these rules—

"householder" means the owner or other person who for the time being is taking care of a residential property;

"small-income taxpayer" means a taxpayer whose total income is less than one hundred and twenty naira.

3. Exemption Certificate

The Commissioner or an Assessment Authority may, in pursuance of subsection (3) of section 12 of the Law, prepare and give to a person who is entitled to the benefit of exemption from income tax, a certificate in a form specified and supplied by the Commissioner.

4. Householder's Return

(1) Upon receipt of a requisition under subsection (3) 10 of the Law, a householder shall—

(*a*) prepare a return (called a Householder's Return) in a form specified and applied by the Commissioner, and

(*b*) not later than twenty-eight clear days immediately after receipt of the form, deliver the return to the Assessment Authority of the area in which is situated the property in respect of which he is a householder.

(2) The Householder's Return shall state and certify with regard to every person above the age of sixteen years on the first day of the financial year specified in the requisition who resides in the property or who resided therein on that day but subsequently left it—

(*a*) his name in full and place of birth;

(*b*) his spouse's name in full, if any;

(*c*) the number of his children not over the age of sixteen years on that day;

(*d*) the number of his children over that age on that day who attend an educational institution;

(*e*) the nature of his employment or occupation;

(*f*) the name and address of his employer, if any;

(*g*) the amount of his salary or wages or total income, if known;

(*h*) whether he pays tax in accordance with the income tax deduction system under the Law, if known; and

(*i*) such other particulars as the Commissioner may specify.

5. Annual Return

(1) Upon receipt of a requisition under subsection (4) of section 18 of the Law, an employer who has an employee in respect of whom he has not operated the income tax deduction system under the Law shall—

(*a*) prepare a return (called a Annual Return) in a form specified and supplied by the Commissioner, and

(*b*) not later than twenty-eight clear days immediately after the last day of financial year specified in the requisition, deliver the return to the Assessment Authority of the area in which that employee resides.

(2) The Annual Return shall state and certify—

(*a*) the personal particulars of the employee during that year;

(*b*) the total amount of emoluments payable in money to the employee during that year; and

(*c*) such other particulars as the Commissioner may specify.

6. General Tax Receipt and Flat Rate Tax Ticket

(1) A Tax Collector or Tax Collecting Agent who collects directly-assessed income tax from a taxpayer shall prepare and give to him a receipt (called a General Tax Receipt, or in the case of a small-income taxpayer, a Flat Rate Tax Ticket) in a form specified and supplied by the Commissioner.

(2) No other form of acknowledgement of payment purporting to be a receipt in respect of directly-assessed income tax shall be given to a taxpayer.

7. Tax Collecting Agent's Receipt

(1) An Assessment Authority who receives from a Tax Collecting Agent an amount representing a collection of directly-assessed income tax shall prepare and give to him a receipt (called a Tax Collecting Agent's Receipt) in a form specified and supplied by the Commissioner.

(2) No other form of acknowledgement of payment purporting to be a receipt in respect of a collection of directly-assessed income tax shall be given to a Tax Collecting Agent.

8. Certified true copies

(1) A taxpayer or Tax Collecting Agent who has lost a General Tax Receipt or Flat Rate Tax Ticket or a Tax Collecting Agent's Receipt, as the case may be, may apply in writing to the Commissioner to be given a certified true copy of the relevant lost receipt or ticket.

(2) The applicant shall produce such evidence of his identity as the Commissioner may require, and shall also set out the full circumstances of the loss and the Commissioner shall, after due verification, give him such a copy.

9. Payment by instalment

(1) For the purpose of facilitating the payment by taxpayers of directly-assessed income tax the Commissioner may make suitable arrangements for the operation of a system of payment by instalment.

(2) Where such arrangements are made with a bank and involve payment under a regular banker's order scheme, the ordinary bank charges shall be borne by the Cross River State Government.

10. Carrying of Receipt or Exemption Certificate

A person who is—

(*a*) included in a class or income category specified in a notice published by a Tax Collector under subsection (1) of section 34 of the law; or

(*b*) exempted from income tax,

shall, during the period of tax collection by personal demand specified in that notice, carry upon his person—

(*c*) the receipt obtained by him from a Tax Collector or Tax Collecting Agent for the payment of income tax; or

(*d*) the exemption certificate given to him by the Commissioner or Assessment Authority; as the case may be.

11. Production of Receipt or Exemption Certificate

In pursuance of a notice published by a Tax Collector under subsection (1) of section 34 of the Law, he or a person authorised to act on his behalf may during the period of tax collection by personal demand specified in that notice require, any person who is—

(*a*) included in a class or income category specified in that notice; or

(*b*) exempted from income tax,

to produce any evidence upon which that person may rely for the purposes of identifying himself as—

(*c*) a taxpayer; or

(*d*) a person by whom income tax is not payable,

as the case may be.

12. Power of entry

For the purposes of collecting income tax from a taxpayer by personal demand in pursuance of section 34 of the Law, a Tax Collector or person authorised to act on his behalf may enter the place of residence of that taxpayer or any other place where he may be found.

13. Offences and penalties

(*a*) A Householder who without sufficient cause—

(i) fails to deliver, in accordance with rule 4, a Householder's Return, or

(ii) delivers an incorrect Return; or

(*b*) an employer who without sufficient cause fails to deliver, in accordance with rule 5, an Annual Return to the Assessment Authority; or

(*c*) a Tax Collecting Agent who, having collected directly assessed income tax from a small-income taxpayer, without sufficient cause, fails to give him a Flat Rate Tax Ticket in accordance with rule 6; or

(*d*) a taxpayer or Tax Collecting Agent who makes a false statement in an application for a certified true copy of a General Tax Receipt or Flat Rate Tax Ticket or a Tax Collecting Agent's Receipt, as the case may be; or

(*e*) a person who is in possession of a General Tax Receipt, Flat Rate Tax Ticket or Tax Collecting Agent's Receipt—

(i) which he did not obtain in accordance with rule 6 or rule 7, as the case may be, as a receipt for the payment of income tax, and

(ii) of which he is not otherwise lawfully in possession; or

(*f*) a person who without sufficient cause obstructs a Tax Collector or a duly authorised person during the course of an entry in accordance with rule 12,

is guilty of an offence:

Penalty: imprisonment for six months and a fine of one hundred naira.

INCOME TAX (EXEMPTIONS) ORDER

1. This order may be cited as the Income Tax (Exemptions) Order, and shall be deemed to have come into operation on the 1st day of April, 1961.

2. The following classes of persons are hereby exempted from income tax—

(*a*) persons who prior to the 1st of April, 1956, were awarded the Victoria Cross, the Medal of the Order of the British Empire, the Distinguished Conduct Medal, the Military Medal, the Distinguished Service Medal, the Meritorious Service Medal, the George Cross, the George Medal or the King's Police Medal for Gallantry;

(*b*) persons who have been—

(i) permanently disabled in the service of any Nigeria Government; or

(ii) wholly disabled, or partly and permanently disabled by wounds or injury received on active service or disease due to active service with the result that they are incapacitated from earning an adequate livelihood;

(*c*) non-commissioned officers and constables of the Nigeria Police Force who enlisted prior to the 10th of June, 1937;

(*d*) indigent persons who by reason of old age, bodily infirmity or disease are unable to earn more than the bare means of subsistence;

(*e*) afflicted persons resident in a leprosy settlement or a recognised segregation village and who do not have an income of two hundred naira or more for any year of assessment.

3. (1) Income arising from a scholarship held by a person receiving full-time instruction at a university, college, school, training centre or other approved educational establishment or training institution is hereby exempted from income tax and no account shall be taken of such an income in computing the total income for income tax purposes.

(2) Income derived by personal effort of a person such as is mentioned in subparagraph (1) is similarly exempted from income tax and no account shall be taken of such an income in computing the total income for income tax purposes.

(3) Nothing in this paragraph shall be construed as conferring any exemption whatsoever in respect of the income of a person who prior to undergoing such instruction as is mentioned in subparagraph (1) was an employed person and who continues to receive from his employer any remuneration or monetary benefit either in the form of a scholarship or grant or otherwise.

4. Revocation

E.R.L.N No. 49 of 1956 and R.R.L.N. No. 91 of 1956 shall cease to have effect save in respect of a year of assessment ending prior to the 1st of April, 1961.

INCOME TAX (DEDUCTION AT SOURCE) RULES

ARRANGEMENT OF RULES

PART 1

Preliminary

1. Short title and commencement.
2. Interpretation.

PART 2

Permanent Employees

3. Deduction of tax.
4. Tax Deduction Card.
5. Payment of deductions to Government.
6. Monthly Returns.
7. Annual Return.
8. P.A.Y.E Tax Receipt.
9. Engagement Note.
10. Termination Note.
11. Power of inspection.
12. Offences and penalties.
13. Continuing offence in respect of Monthly Return.
14. Continuing offence in respect of Tax Deduction Card, etc.

PART 3

Daily-rated Employees

15. Deduction of Tax.
16. Revenue Franking Machine Card.
17. Payment of deductions to Government.
18. Monthly Return.
19. General Tax Receipt.
20. Termination Note.
21. Power of inspection.
22. Offences and penalties.
23. Continuing offence in respect of Revenue Franking Machine Cards, etc.

PART 4

General

24. Domestic Circumstances Declaration.
25. Failure to make Domestic Circumstances Declaration.
26. Offences and penalty.
27. Certified true copy of receipt.

RULES

PART 1

Preliminary

1. Short title and commencement

These rules may be cited as the Income Tax (Deduction at Source) Rules, and shall come into operation on the 1st January, 1963.

2. Interpretation

In these rules—

"allowances" include a sum of money paid or payable in respect of expenses and a sum of money placed by an employer at the disposal of an employee and paid out by the employer;

"government employer" includes employers as defined by paragraphs (*b*), (*c*), (*d*) and (*e*) of the definition contained in section 8 of the Law;

"permanent employee" means an employee other than a daily-rated employee;

"daily-rated employee" means a person employed on a temporary basis and at a low rate of remuneration;

"the Law" means the Finance Law.

PART 2

Permanent Employees

3. Deduction of tax

(1) Upon receipt of a notice under section 14 of the Law an employer shall, in accordance with the directions contained in that notice, deduct amounts of income tax from the emoluments of his permanent employees during a financial year.

(2) Deduction shall be made on each occasion of payment of regular monthly emoluments and also on every occasion of payment of any emoluments.

(3) The emoluments to be subjected to deduction are the gross salaries, wages, fees, allowances or other gains or profits from the employment, which are payable in money by the employer to the employee, but shall not include an amount or a part of an amount of emoluments or an amount of expenditure out of emoluments which may be specified by the Commissioner.

4. Tax Deduction Card

(1) An employer shall maintain in respect of every deduction during a financial year an accounting record (called a Tax Deduction Card) in a form specified and supplied by the Commissioner.

(2) A separate Tax Deduction Card shall be maintained for each permanent employee.

(3) An employer shall ensure that a Tax Deduction Card shall include in respect of every deduction a true and complete record entered at the time the deduction is made.

(4) Notwithstanding anything contained in paragraph (1), (2) or (3), an employer may maintain an accounting record of deduction in some other form specified by the Commissioner.

(5) Not later than twenty-eight clear days immediately after the last day of the financial year, an employer, other than a government employer, shall deliver to the Commissioner all Tax Deduction Cards or other form of accounting record of deductions, complete in all particulars, relating to that year.

(6) All Tax Deduction Cards and other forms of accounting record of deductions shall be the exclusive property of the Cross River State Government.

5. Payment of deductions to Government

(1) Subject to paragraph (2), an employer, other than a government employer, shall pay the total amount of income tax deducted by him during a month into a Government Treasury not later than seven clear days immediately after the last day of that month.

(2) Where—

(*a*) the amount to be deducted is small and the location of the employer is remote, or

(*b*) the employer maintains several establishments which are scattered,

the Commissioner may, in his discretion, extend the period.

6. Monthly Returns

(1) An employer, other than a government employer, shall—

(*a*) prepare a return (called a Monthly Return) in a form specified and supplied by the Commissioner, and, subject to paragraph (2); and

(*b*) deliver it to the respective Assessment Authorities of the areas in which his employees reside, not later than twenty-eight clear days immediately after the last day of the month during which a deduction was due to be made.

(2) Where—

(*a*) the amount to be deducted is small and the location of the employer is remote, or

(*b*) the employer maintains several establishments which are scattered,

the Commissioner may, in his discretion, extend the period.

(3) The Monthly Return shall state and certify—

(*a*) the total number of employees during the month;

(*b*) the total amount of income tax deducted during the month;

(*c*) the total amount of deductions paid into a Government Treasury;

(*d*) the date of the payment;

(*e*) the reference number of the relevant Treasury receipt; and

(*f*) such other particulars as the Commissioner may specify.

7. Annual Return

(1) An employer shall—

(*a*) prepare a return (called an Annual Return) in a form specified and supplied by the Commissioner; and

(*b*) not later than twenty-eight clear days immediately after the last day of the financial year during which a deduction was due to be made, deliver—

(i) the original to the Commissioner, and

(ii) the duplicate to the respective Assessment Authority specified by the Commissioner.

(2) The Annual Return shall state and certify—

(*a*) the personal particulars of all permanent employees during the financial year;

(*b*) the total amount of emoluments payable in money to each such employee during the financial year;

(*c*) the total amount of income tax deducted from the emoluments of each employee during the financial year;

(*d*) such other particulars as the Commissioner may specify; and also,

(*e*) in the case of an employer other than a government employer—

(i) the total amount of deductions paid into a government Treasury;

(ii) the dates of the payment; and

(iii) the reference numbers of the relevant Treasury receipts.

8. P.A.Y.E. Tax Receipt

(1) After the last day of a financial year during which a deduction was due to be made, an employer shall—

(*a*) prepare in triplicate, a receipt (called P.A.Y.E. Receipt) in a receipt book (with detachable leaves) in a form specified and supplied by the Commissioner, in respect of the total amount of deductions made by him from the emoluments of each employee during the financial year; and

(*b*) give to each employee the original of the receipt relevant to his deductions.

(2) The employer shall ensure that true and complete particulars are duly entered in every P.A.Y.E. Receipt prepared and given by him under paragraph (1).

(3) Not later than twenty-eight clear days immediately after the last day of the financial year, an employer shall delivered to the Commissioner the duplicate copies of all P.A.Y.E. Receipts due to be prepared and given to employees in respect of that year.

(4) The duplicate copies in all P.A.Y.E. Receipt books shall be the exclusive property of the Cross River State Government.

9. Engagement Note

(1) Where an employer engages a permanent employee he shall make, in quadruplicate, an entry to that effect (called an Engagement Note) in a record book (with detachable leaves) in a form specified and supplied by the Commissioner; and give to the employee the original of the Engagement Note.

(2) The employer shall ensure that true and complete particulars are duly entered in every Engagement Note given by him under paragraph (1).

(3) Not later than ten clear days immediately after the day on which an employee was engaged, the employer shall deliver to—

(*a*) the Assessment Authority of the Area in which the employee resides, or the particular Assessment Authority specified by the Commissioner, and

(*b*) the Commissioner,

respectively, the duplicate and triplicate copies of the Engagement Note given to the employee.

(4) The duplicate and triplicate copies in all Engagement Note books shall be the exclusive property of the Cross River State Government.

10. Termination Note

(1) Where the services of a permanent employee are terminated, the employer shall—

(*a*) make, in quadruplicate, an entry to that effect (called a Termination Note) in a record book (with detachable leaves) in a form specified and supplied by the Commissioner; and

(*b*) give to the employee the original of the Termination Note.

(2) The employer shall ensure that true and complete particulars are duly entered in every Termination Note given by him under paragraph (1).

(3) Not later than ten clear days immediately after the date of termination of the services of an employee, an employer shall deliver to—

(*a*) the Assessment Authority of the area in which the employee resided, or to the particular Assessment Authority specified by the Commissioner; and

(*b*) the Commissioner,

respectively, the duplicate and triplicate copies of the Termination Note given to the employee.

(4) The duplicate and triplicate copies in all Termination Note books shall be the exclusive property of the Cross River State Government.

11. Power of inspection

For the purpose of facilitating the deduction of income tax, the Commissioner or an Assessment Authority or a person authorised in writing by him in that behalf shall, during ordinary business hours, have—

(*a*) admittance to the premises of an employer, and

(*b*) access to all accounting records relating to the deduction of income tax.

12. Offences and penalties

An employer, other than a government employer, who without sufficient cause—

(*a*) fails to deduct income tax in accordance with rule 3; or

(*b*) fails to maintain in accordance with paragraphs (1), (2), (3) and (4) of rule 4, a Tax Deduction Card or other forms of accounting record of deductions; or

(*c*) fails to deliver to the Commissioner in accordance with paragraph (5) of rule 4 a Tax Deduction Card or other form of accounting record of deductions maintained by him; or

(*d*) fails to pay into a Government Treasury in accordance with rule 5 any income tax deducted by him; or

(*e*) fails to deliver to the Assessment Authority in accordance with rule 6 a Monthly Return; or

(*f*) fails to deliver to the Commissioner or the Assessment Authority in accordance with rule 7 the original or duplicate, as the case may be, of an Annual Return; or

(*g*) fails to give an employee—

(i) a P.A.Y.E. Receipt in accordance with paragraphs (1) and (2) of rule 8; or

(ii) Engagement Note in accordance with paragraphs (1) and (2) of rule 9; or

(iii) a Termination Note in accordance with paragraphs (1) and (2) of rule 10; or

(*h*) fails to deliver to the Commissioner in accordance with paragraphs (3) of rule 8, the duplicate copy of a P.A.Y.E. Receipt given to an employee; or

(*i*) fails to deliver to the Assessment Authority and the Commissioner, respectively, in accordance with paragraph (3) of rule 9 or paragraph (3) of rule 10, as the case may be, the duplicate and triplicate copies of an Engagement Note or of a Termination Note; or

(*j*) denies the Commissioner or an Assessment Authority or other person authorised under rule 11 access to accounting records;

is guilty of an offence:

Penalty: imprisonment for six months and a fine of one hundred naira.

13. Continuing offence in respect of Monthly Return

An employer, other than a government employer, who having failed to pay to the government in accordance with rule 5 any income tax deducted by him, also fails without sufficient cause to deliver to the Assessment Authority in accordance with rule 6 the Monthly Return relevant to that deduction, is guilty of a continuing offence which is deemed to commence on the day immediately following the last day on which the return should have been delivered and is liable to the penalty imposed by subsection (9) of section 14 of the Law.

14. Continuing offence in respect of Tax Deduction Card, etc.

An employer, other than a government employer, who—

(*a*) having failed to deliver to the Commissioner in accordance with paragraph (5) of rule 4 a Tax Deduction Card or other form of accounting record of deductions; or

(*b*) having failed to deliver to the Commissioner in accordance with rule 7 the original of an Annual Return; or

(*c*) having failed to deliver to the Commissioner in accordance with paragraph (3) of rule 8 the duplicate of a P.A.Y.E. Receipt due to be given to an employee, continues without sufficient cause in such failure,

is guilty of a continuing offence which is deemed to commence on the day immediately following the last day on which the Tax Deduction Card or Annual Return or duplicate P.A.Y.E. Receipt, as the case may be, should have been delivered, and is liable to the penalty imposed by subsection (9) of section 14 of the Law.

PART 3

Daily-rated Employees

15. Deduction of Tax

(1) Upon receipt of a notice under section 14 of the Law an employer shall, in accordance with the directions contained in that notice, deduct amounts of income tax from the weekly or monthly emoluments of his daily-rated employees during a calendar year.

(2) Deductions shall be made on every occasion of payment of any emoluments.

(3) The emoluments to be subjected to deduction are the like emoluments as those specified in paragraph (3) of rule 3.

16. Revenue Franking Machine Card

(1) An employer shall maintain in respect of every deduction during a calendar year an accounting record (called a Revenue Franking Machine Card) in a form specified and supplied by the Commissioner.

(2) A separate Revenue Franking Machine Card shall be maintained for each daily-rated employee.

(3) The accounting record of deductions maintained in a Revenue Franking Machine Card shall include frankings which shall be impressed upon the card by the Assessment Authority of the area in which the daily-rated employee resides, to whom the employer shall present the card for franking.

(4) Subject to paragraph (5), an employer shall ensure that each Revenue Franking Machine Card is complete in all particular and duly presented for franking to the Assessment Authority of the area in which the daily-rated employee resides, not later than seven clear days immediately after the last day of the month during which the relevant deduction was due to be made.

(5) Where—

(*a*) the amount to be deducted is small and the location of the employer is remote, or

(*b*) the employer maintains several establishments which are scattered,

the Commissioner may, in his discretion, extend the period.

(6) Subject to paragraph (5) of rule 21, an Assessment Authority shall return all Revenue Franking Machine Cards to the employer immediately after franking, except that he shall retain them when they are presented for franking in respect of the last month of the calendar year.

(7) All Revenue Franking Machine Cards shall be the exclusive property of the Cross River State Government.

17. Payment of deduction to Government

(1) An employer who maintains Revenue Franking Machine Cards shall pay the total amount of income tax deducted by him during any months to the respective Assessment Authorities of the areas in which his daily-rated employees reside at the time the deduction is due to be made—

(*a*) not later than seven clear days immediately after the last day of that month, or

(*b*) at the same time as the cards are presented for franking in accordance with paragraph (5) of rule 16.

(2) An Assessment Authority shall prepare and give to an employer a receipt (called an Employer's Receipt) in a form specified and supplied by the Commissioner in respect of the amount of tax deductions received from him.

18. Monthly Return

(1) An employer who maintains Revenue Franking Machine Cards shall—

(*a*) prepare a return (called a Monthly Return) in a form specified and supplied by the Commissioner; and

(*b*) deliver it to the respective Assessment Authorities of the areas in which his daily-rated employees reside—

(i) not later than seven clear days immediately after the last day of a month during which a deduction was due to be made, or

(ii) at the same time as the cards are presented for franking in accordance with paragraph (5) of rule 16.

(2) The Monthly Returns shall state and certify—

(*a*) the total number of daily-rated employees during the month;

(*b*) the total amount of tax deducted during the month; and

(*c*) such other particulars as the Commissioner may specify.

19. General Tax Receipt

(1) After the last day of a calendar year, a daily-rated employee may apply to the Assessment Authority to whom his Revenue Franking Machine Card has been presented in accordance with paragraph (3) of rule 16, for a receipt called a General Tax Receipt in a form specified and supplied by the Commissioner to be prepared and issued to him in respect of the total value of frankings upon his card.

(2) The Assessment Authority shall, after due verification, give the employee such a receipt.

20. Termination Note

(1) Where the services of a daily-rated employee are terminated, an employer shall—

(*a*) make, in quadruplicate, an entry to that effect (called a Termination Note) in a record book (with detachable leaves) in a form specified and supplied by the Commissioner, and

(*b*) give to the employee the original of the Termination Note.

(2) The employer shall ensure that true and complete particulars are duly entered in every Termination Note given by him under paragraph (1).

(3) The duplicate copy of a Termination Note shall be delivered by the employer to the Assessment Authority at the same time as the Revenue Franking Machine Card maintained for the employee is due to be presented for franking in accordance with paragraph (4) or paragraph (5) of rule 16.

(4) The duplicate copies in all Termination Note books shall be the exclusive property of the Cross River State Government.

(5) The Assessment Authority shall retain the Revenue Franking Machine Card maintained for the employee.

21. Power of inspection

The powers conferred by rule 11 shall also apply for the purposes of facilitating the deduction of income tax from the emoluments of daily-rated employees.

22. Offences and penalties

An employer, other than a government employer, who without sufficient cause—

(*a*) fails to deduct income tax in accordance with rule 15; or

(*b*) fails to maintain a Revue Franking Machine Card in accordance with paragraphs (1), (2), (3) and (4) of rule 16; or

(*c*) fails to present a Revenue Franking Machine Card maintained by him to the Assessment Authority for franking in accordance with paragraph (4) or paragraph (5) of rule 16; or

(*d*) fails to pay to the Assessment Authority in accordance with paragraph (1) of rule 17 an amount of income tax deducted by him; or

(*e*) fails to deliver to the Assessment Authority in accordance with rule 18 a Monthly Return; or

(*f*) fails to deliver to the Assessment Authority in accordance with paragraph (3) of rule 20 the duplicate copy of a Termination Note; or

(*g*) denies the Commissioner or Assessment Authority or other person authorised under rule 11 as read with rule 21 access to accounting records,

is guilty of an offence:

Penalty: imprisonment for six months and a fine of one hundred naira.

23. Continuing offence in respect of Revenue Franking Machine Cards, etc.

An employer, other than a government employer, who having failed to—

(*a*) present to the Assessment Authority in accordance with paragraph (4) or paragraph (5) of rule 16 a Revenue Franking Machine Card due to be maintained by him; and to

(*b*) pay to the Assessment Authority in accordance with paragraph (1) of rule 17 any income tax deducted by him; and to

(*c*) deliver to the Assessment Authority in accordance with rule 18 the Monthly Return relevant to that deduction, continues without sufficient cause in all such failures after the last day of the month during which they occurred,

is guilty of a continuing offence which is deemed to commence on the day immediately following that day, and is liable to the penalty imposed by subsection (98) of section 14 of the Law.

PART 4

General

24. Domestic Circumstances Declaration

(1) Where any employee is engaged by an employer, he shall make and certify and give to the employer a written statement called a Domestic Circumstances Declaration in a form specified and supplied by the Commissioner to the employer.

(2) The employer shall make the form available to the employee for completion and shall retain all completed forms as part of his accounting records relating to the deduction of income tax; but the Commissioner may, for the purposes of the Law, require an employer to surrender to him a Domestic Circumstances Declaration.

25. Failure to make Domestic Circumstances Declaration

Any employee who, without sufficient cause, fails to make a Domestic Circumstances Declaration in accordance with regulation 24, shall be deemed to be a Single Person for the purposes of the deduction of income tax from his emoluments.

26. Offences and penalty

Any employee who makes a false statement in a Domestic Circumstances Declaration required by regulation 24, is guilty of an offence:

Penalty: imprisonment for six months and a fine of one hundred naira.

27. Certified true copy of receipt

(1) An employer or employee who has lost an employer's Receipt or a P.A.Y.E. Receipt or General Tax Receipt, as the case may be, may apply in writing to the Commissioner for a certified true copy of the lost receipt.

(2) The applicant shall produce such evidence of his identity as the Commissioner may require and the application shall set out the full circumstances of the loss, and the Commissioner shall after due verification, give him a copy.

(3) An employee who makes a false statement in an application under this rule is guilty of an offence:

Penalty: imprisonment for six months and a fine of one hundred naira.

INCOME TAX (BOARDS OF COMMISSIONERS OF APPEAL) RULES

ARRANGEMENT OF RULES

RULE

1. Citation.
2. Interpretation.
3. Meetings of a Board.
4. Notice of meetings.
5. Quorum.
6. Respondent.
7. Representation.
8. Filing of grounds of appeal.
9. Registration of appeal.
10. Service on respondent.
11. Reply.
12. Service on appellant.
13. Notice of hearing.
14. Appearance.
15. Power to hear evidence on oath or affirmation.
16. Record of proceedings.
17. Mode of service on appellant.
18. Mode of service on respondent.

RULES

1. Citation

These rules may be cited as the Income Tax (Boards of Commissioners of Appeal) Rules.

2. Interpretation

In these rules—

"Board" means the body of persons appointed as members of a Board of Commissioners of Appeal under subsection (1) of section 24 of the Law;

"Chairman" means a member of a Board of Commissioners who has been appointed as Chairman of the Board by the Executive Council;

"the Law" means the Finance Law.

3. Meetings of a Board

A Board of Commissioners shall meet in such place and at such time as the Chairman may from time to time decided.

4. Notice of meetings

The Chairman shall give to the members at least ten days' notice of a meeting of the Board, and the notice shall state the place, time and duration of the meeting.

5. Quorum

A meeting of a Board shall not proceed unless the Chairman (who shall form a quorum) is present.

6. Respondent

In all appeals before a Board, the Commissioner shall be the respondent.

7. Representation

(1) The appellant may be represented in accordance with paragraph (*b*) of subsection (7) of section 24 of the Law.

(2) The respondent may be represented by the Assessment Authority (hereinafter called the "relevant Assessment Authority") who raised the assessment or who appointed the Assessment Committee which raised the assessment, against which the appeal has been made.

8. Filing of grounds of appeal

(1) The appellant shall file with the Board his grounds of appeal either in the form specified and supplied by the Commissioner or otherwise in writing, together with two copies thereof, not later than fifteen days after the date of giving to the Board the notice of appeal as required by subsection (4) of section 24 of the Law.

(2) The grounds of appeal shall—

(*a*) set forth in paragraphs consecutively numbered a concise statement of the facts and of any point of law upon which the appellant intends to rely in support of his appeal;

(*b*) include a statement of the amounts of—

(i) total income chargeable, and

(ii) total tax payable, which are admitted by the appellant and which the Board is asked to adjudge as being the proper amounts.

(3) In respect of the assessment appealed against, the appellant shall attach to the grounds of appeal—

(*a*) a written statement of the assessment or a copy of the notice of assessment served on him under section 20 of the Law, signed or duly certified, as the case may be, by the relevant Assessment Authority; and

(*b*) the actual tax receipt given to him by the relevant Assessment Authority in respect of half of the amount of the tax which is in dispute, together with a copy thereof.

(4) For the purposes of paragraph (1) of these Rules and of subsection (4) of section 24 of the Law, it shall be sufficient if the appellant files his grounds of appeal with or gives notice of appeal to the relevant Assessment Authority.

9. Registration of appeal

(1) Where the grounds of appeal are filed in accordance with the requirements of rule 8 the Board shall cause the date of filing to be indorsed thereon, and the appeal shall be entered in a register of appeals maintained in the form specified and supplied by the Commissioner.

(2) Where any of the requirements of rule 8 is not fulfilled the Board may refuse to accept for filing any grounds of appeal, but may, for sufficient cause, extent the period of time specified in that rule in order that all those requirements may be fulfilled.

10. Service on respondent

The Board shall cause a copy of the grounds of appeal duly indorsed with the date of filing to be served upon the respondent, but service upon the relevant Assessment Authority shall be deemed to be service upon the respondent.

11. Reply

(1) Not later than fifteen days after the date of service upon the respondent of the grounds of appeal, the respondent shall file with the Board his reply thereto together with two copies of thereof.

(2) The reply shall—

(*a*) set forth in paragraphs consecutively numbered a concise statement of the facts and of any point of law upon which he intends to rely in rebuttal of the grounds of appeal; and

(*b*) be signed by him or his counsel.

(3) For the purposes of this rule the relevant Assessment Authority shall be deemed to be the respondent.

12. Service on appellant

The Board shall cause a copy of the reply of the respondent to be served upon the appellant not later than fifteen days before the date fixed for the hearing of the appeal.

13. Notice of hearing

(1) The Board shall give to the parties at least fifteen days' notice of the date, place and time fixed for the hearing of the appeal.

(2) For the purposes of this rule the relevant Assessment Authority shall be deemed to be the respondent.

14. Appearance

(1) Appearance of the appellant before the Board on the day of hearing or any day of adjournment shall be in accordance with paragraph (*a*) or paragraph (*b*) of subsection (7) of section 24 of the Law, and in default of such an appearance the appeal shall be struck out, but the Board may, for sufficient cause, rule otherwise.

(2) Where the appellant appears and the respondent or his counsel does not appear, the appeal shall be heard *ex parte*, but the Board may, for sufficient cause, rule otherwise.

15. Power to hear evidence on oath or affirmation

The Board may require any evidence to be given on oath or affirmation and the provisions of the Oaths and Affirmation Law, shall apply to the proceedings of the Board.

16. Record of proceedings

(1) At the hearing of any proceedings the Board shall cause to be taken down in writing in a book to be kept for that purpose a record of the proceedings, which shall include—

(*a*) a concise note of any question of law raised at the hearing; and

(*b*) a concise notice of the purport of all oral or documentary evidence given before the Board;

and the decision of the Board and the record shall be signed by the members of the Board who heard the proceedings.

17. Mode of service on appellant

(1) It shall be sufficient if, instead of serving the appellant personally with a document under these rules, the document is served—

(*a*) upon a person found at the address for service supplied by the appellant under rule 8, who resides thereat and appears to be not less than twenty-one years of age, or, if the address is a place of business, upon a person found apparently in charge thereof; or

(*b*) in accordance with section 6 of the Law; or

(*c*) upon the appellant's counsel wherever he may be found, or, if the counsel is not found at his office, on the clerk apparently in charge thereof.

(2) An appellant may change his address for the service of documents by giving notice in writing to the Board.

18. Mode of service on respondent

All documents intended for the respondent shall be sufficiently served upon him if posted in a prepaid registered envelope addressed to him or to his counsel.

FINANCE LAW (APPEALS) (HIGH COURT) RULES

ARRANGEMENT OF RULES

RULE

1. Citation.
2. Interpretation.
3. Representation of parties.
4. Respondent.
5. Notice of appeal.
6. Grounds of appeal.
7. Entering of appeal.
8. Requirements for filing.
9. Reply.
10. Notice of hearing.
11. Proceedings in default.
12. Enlargement or abridgement of time.
13. Service on appellant.
14. Service on Commissioner.
15. Conduct of further appeals.
16. Order of court.
17. Costs.
18. Conduct of appeals direct to court.

RULE

19. Record of proceedings before Board.

20. Setting aside judgment.

21. Fees of court.

SCHEDULE

FORMS

RULES

[Commencement.]

1. Citation

These rules may be cited as the Finance Law (Appeals) (High Court) Rules.

2. Interpretation

In these rules—

"advocate" means a law officer, or a legal practitioner entitled to practice before the High Court;

"the court" means the judge of the High Court in the division within which the appellant resides or the income arises;

"the Law" means the Finance Law;

"registrar" means the registrar of the court.

3. Representation of parties

In all proceedings before the court the parties may be represented by an advocate.

4. Respondent

In all appeals the Commissioner shall be the respondent.

5. Notice of appeal

(1) The notice of appeal required by section 25 (2) of the Law shall be in Form A of the Schedule hereto, and the notice of appeal required by section 26 (3) of the Law shall be in Form B of the said Schedule.

(2) Every notice of appeal shall be signed by the appellant or by his advocate and shall be lodged with the registrar together with two copies thereof.

(3) Upon receiving a notice of appeal the registrar shall indorse both the original and the copies with the date of receipt and shall forthwith forward one copy by registered post to the Commissioner.

(4) No fee shall be charged upon lodging a notice of appeal.

(5) If the notice of appeal is lodged by the advocate of the appellant the notice of appeal shall state the address of the appellant and his occupation and also the name of the advocate and his office address, which shall be an address for service at which documents intended for the appellant may be left under rule 13.

(6) If the appellant has no advocate the notice of appeal shall state the residence of the appellant and his occupation, and, if his place of residence is within the jurisdiction it shall be an address for service, and if his place of residence is not within the jurisdiction, the notice of appeal shall state an address for service within the jurisdiction at which documents intended for the appellant may be left.

6. Grounds of appeal

(1) Within thirty days of the date of lodgement of the notice of appeal the appellant shall file a written statement of his grounds of appeal in the registry of the court, together with one copy of such statement.

(2) The statement shall be signed by the appellant or by his advocate.

(3) In the case of an appeal under section 26 of the Law the statement shall set forth in paragraphs consecutively numbered a concise statement of the facts and of any point of law upon which the appellant intends to rely, and shall state the amounts of—

(*a*) the chargeable income, and

(*b*) the tax payable, which the court is asked to find and adjudge to be the proper amounts.

(4) In the case of an appeal under section 25 of the Law the statement shall set forth in paragraphs consecutively numbered the questions of law upon which the appellant intends to rely, and shall state the amounts of—

(*a*) the chargeable income, and

(*b*) the tax payable, which the court is asked to find and adjudge to be the proper amounts.

(5) There shall be attached to all statements—

(*a*) two copies of the document by which the assessment from which appeal was made to the Board of Commissioners, or from which appeal is made directly to the court, as the case may be, was made known to the appellant under section 20 of the Law, duly certified by the authority issuing the same, or if there is no such document, a written statement signed by the assessing authority of the assessment made upon the appellant, together with one copy thereof;

(*b*) a receipt signed by the appropriate tax collector proving payment of the deposit required by section 24 (5) of the Law, together with one copy of such receipt.

7. Entering of appeal

(1) Upon the filing of the statement of grounds of appeal the registrar shall indorse thereon the date of filing, and shall enter the appeal in a register of Finance Law appeals to be kept for that purpose.

(2) The registrar shall cause a copy of the statement, indorsed with the date of filing, and copies of all documents attached thereto, to be served upon the Commissioner and the same shall be sufficiently served if posted in a prepaid registered envelope addressed to the Commissioner, and the time at which the memorandum so posed would be delivered in the ordinary course of post shall be considered as the time of service thereof.

8. Requirements for filing

No statement of grounds of appeal shall be filed by the registrar unless—

(*a*) the court fee chargeable thereon is first paid, and

(*b*) the documents specified in paragraph (5) of rule 6 of these rules are presented with the grounds of appeal.

9. Reply

(1) Within twenty-one days of the service of the statement of grounds of appeal the Commissioner shall file in the registry of the court a written reply and one copy thereof, which shall be signed by the commissioner or by his advocate, and shall set forth in paragraphs consecutively numbered a concise statement of the facts and any points of law upon which the Commissioner intends to rely.

(2) The registrar shall cause a copy of the reply to be served on the appellant fifteen days at least before the date fixed for the hearing of the appeal.

10. Notice of hearing

The registrar shall give fifteen days' notice in writing to the parties of the date fixed for the hearing of the appeal, unless the court directs shorter notice.

11. Proceedings in default

(1) Where a notice of appeal has been lodged with the registrar beyond the time limited by section 25 or by section 26 of the Law, as the case may be, the Commissioner may apply to the court by motion upon notice to the appellant for an order dismissing the appeal, and if the court is satisfied that the notice of appeal has been lodged beyond the time so limited the court shall make an order dismissing the appeal.

(2) If a party omits to do an act or to take a proceeding within the time prescribed by these rules or fixed by an order enlarging the time so prescribed, the other party may move the court upon notice to the party in default, to give judgment against the party in default, and the court may thereupon give judgment against the party in default, or may entertain an application for enlargement of time, as to the court may seem fit.

(3) If upon the day fixed for the hearing of an appeal it shall appear to he court that the deposit required by section 24 (5) of the Law has not been made by the appellant, the court shall dismiss the appeal, but the receipt referred to in paragraph (5) of rule 6 of these rules shall be *prima facie* evidence of such deposit.

12. Enlargement or abridgement of time

(1) The court shall have power to enlarge or abridge the time appointed by these rules or by the High Court Rules, or fixed by an order enlarging time, for doing any act or taking any proceeding required by these rules or by the High Court Rules.

(2) Every application for enlargement or abridgement of time shall be supported by affidavit.

(3) An application for abridgement of time may be made *ex parte*, but the court may require notice thereof to be given to the other party.

(4) An application for enlargement of time shall be made by motion upon notice to the other party.

13. Service on appellant

(1) It shall be sufficient if, in lieu of serving the appellant personally with any document intended for him, such document is served—

(*a*) on the appellant's advocate wherever such advocate may be found, or, if such advocate is not found at his office, on the clerk there found apparently in charge; or

(*b*) by posting it in a prepaid registered envelope addressed to such advocate at his office address; or

(*c*) on any person found at the residence of the appellant who is a resident thereof and appears to be twenty-one years of age or more; or

(*d*) on any person found at the address for service given by an appellant whose residence is not within the jurisdiction, who is a resident thereof, and appears to be twenty-one years of age or more, or if the address for service is a place of business, on any person there found apparently in charge.

(2) An appellant may change his address for service by giving notice in writing to the registrar.

(3) Where service in one of the foregoing modes is impracticable, or where the appellant has failed to give a sufficient or any address for service, an application supported by affidavit may be made by the Commissioner to the court for an order dispensing with service, or directing service in some other member, and the court may thereupon make such order as to the court shall seem just.

14. Service on Commissioner

All documents intended for the Commissioner shall be sufficiently served on the Commissioner if posted in a prepaid registered envelope addressed to the Commissioner.

15. Conduct of further appeal

(1) Subject to the express provisions of the Law and of these rules, in the case of an appeal under section 25 of the Law from a decision of the Board of Commissioners the court shall proceed, and the appeal shall be heard and conducted by the court, as nearly as may be, as if the appeal was an appeal to the High Court from magistrate's court in a civil case.

(2) The appellant shall appear before the court on the day of hearing, or any adjournment thereof, in person or by an advocate, and in default of such appearance the appeal shall be struck out and the decision of the Board of Commissioners confirmed, unless the court, for sufficient cause, thinks fit to order otherwise.

(3) The Commissioner shall appear in person or by advocate.

(4) Where the appellant appears, and the Commissioner does not appear, the appeal shall be heard *ex parte*, unless the court, for sufficient cause, thinks fit to order otherwise.

16. Order of court

The court may confirm, reduce, or cancel the assessment fixed or confirmed by the decision of the Board of Commissioners, or may make such order thereon as to the court may seem just.

17. Costs

The court may make such order as to the costs of the appeal, and as to the costs incurred before the Board of Commissioners, as the court may think just.

18. Conduct of appeals direct to court

(1) Subject to the express provisions of the Law and of these rules, the practice and procedure of the court in relation to an appeal made under section 26 of the Law shall be assimilated as nearly as may be to the practice and procedure of the High Court in the exercise of its civil jurisdiction, and the High Court Rules and any rules amending or substituted for the same shall apply with such modifications as may be necessary to render them conveniently applicable, as if the appellant and the Commissioner were respectively the plaintiff and the defendant in an action; and evidence in relation to any such appeal may be adduced in any manner in which it may be adduced in an action.

(2) The court may confirm, reduce, or cancel the assessment, or make such order thereon as to the court may seem just.

19. Record of proceedings before the Board

(1) An appellant who appeals against the decision of the Board of Commissioners under section 25 of the Law, shall, upon lodging his notice of appeal, apply to the Board of Commissioners for three copies, certified by a member of the Board, of the record of the proceedings before the Board.

(2) Upon such application, and subject to any rules which may be made in that behalf, the Board shall supply the appellant with three copies of the record of their proceedings, certified as aforesaid.

(3) The certified copy of the record of proceedings shall include—

(*a*) a copy of any notes of evidence and of any notes of argument recorded by the board;

(*b*) a copy of all documents admitted in evidence by the Board, or relied upon by the Board when reaching their decision, and retained by them;

(*c*) a copy of the decision of the Board.

(4) The appellant shall lodge two copies of the record with the registrar, and upon receipt of the said copies the registrar shall forward one copy by registered post to the Commissioner.

(5) No appeal from a decision of the Board of Commissioners shall be set down for hearing until the required copies are lodged with the registrar.

(6) No delay by the Board in supplying copies of their record of proceedings shall excuse the appellant from filing his grounds of appeal within the time limited by these rules, but the appellant may, by leave of the court, add to or amend his grounds of appeal after receiving the said record.

(7) Application for leave to add to or amend the grounds of appeal under this rule may be made by motion upon notice to the Commissioner.

(8) Notwithstanding the provisions of the preceding paragraph the court may give leave to add to or amend the grounds of appeal on the day of hearing, upon the oral application of the appellant, but such leave shall not be granted unless the court is satisfied that the application could not, with reasonable diligence upon the part of the appellant or his advocate, have been made earlier.

20. Setting aside judgment

(1) Where judgment is given against a party in his absence, the other party shall give him notice of the judgment.

(2) The court may in a proper case, upon motion supported by affidavit, after notice to the party who obtained judgment, set aside the judgment and direct such further proceedings to be heard as may be appropriate, on such terms as may be just: but no motion to set aside judgment shall be entertained unless notice of the motion has been given within fifteen days of the day on which notice of judgment was given; nor shall the time hereby prescribed be extended in any circumstances whatsoever, any rule to the contrary notwithstanding.

21. Fees of court

The fee payable upon the filing of a statement of grounds of appeal shall be reckoned on the difference between the amount of the tax payable under the assessment appealed against, or under the decision of the Board of commissioners, as the case may be, and the amount of tax which the court is asked to adjudge as being the proper amount, at the same rate as is chargeable for the time being on a summons in the High Court claiming a sum of money; and the scale of fees for the time being in force in civil matters in the High Court shall apply to all subsequent acts, applications, or proceedings, but no fees shall be paid by the Commissioner.

SCHEDULE

FORM A

In the High Court of Justice of the Cross River State ..... Judicial Division

In the matter of an appeal under section 25 of the Finance Law.

To the Registrar

Take Notice that ..... (full name of appellant and occupation) of

..... (resident of appellant) Appeals to this Honourable

Court against the decision given in his case by the Board of Commissioners appointed for the .....

..... area upon the ..... day of ....., 20 .....

(date of decision). The name and office address of the appellant's advocate is .....

or the address for service within the jurisdiction is .....

.....

Signature of the appellant or his Advocate

FORM B

In the High Court of Justice of the Cross River State ..... Judicial Division

In the matter of an appeal under section 26 of the Finance Law.

To the Registrar

Take Notice that ..... (full name of appellant and occupation) of

..... (resident of appellant) Appeals to this Honourable Court against the assessment made upon him by the Commissioner (or by the Assessing Authority) for the ..... area.

FORM B—*continued*

PARTICULARS

The statement made upon the appellant is ..... (state amount).

The tax in respect of the said assessment is ..... (state amount) and is payable upon

..... (state date). The name and office address of the appellant's advocate is .....

.....

or the address for service within the jurisdiction is .....

.....
Signature of the appellant or his Advocate

INCOME TAX (RECOVERY OF ARREARS) RULES

ARRANGEMENT OF RULES

PART 1

Preliminary

RULE

1. Citation.
2. Interpretation.

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Functions of Income Tax Officials

3. Application for issuance of writ.
4. Issue of writ.
5. Appointment of bailiffs.
6. Declaration by bailiff.
7. Duty and liability of bailiff.
8. Appointment of supervisor and valuer.
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10. Despatch of writ for execution.
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PART 3

Attachment and Sale

14. Property which may be seized.
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RULE

16. Custody of attached property.
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18. Notice of sale.
19. Method of delivery of inventory and notice of sale.
20. Attachment binding on property attached.
21. Conduct of sale.
22. Method of sale.
23. Place of sale.
24. Appropriation of sale proceeds.
25. Record of execution proceedings.
26. Settlement before sale.
27. Amount of unpaid tax disputed.
28. Claim to attached property.
29. Tax Collector's discretion to stay execution.
30. Death of income tax defaulter.

SCHEDULE

FORMS

PART 1

Preliminary

1. Citation

These rules may be cited as the Income Tax (Recovery of Arrears) Rules.

2. Interpretation

In these rules—

"attachment" includes distress and seizure, and its grammatical variations have a corresponding meaning;

"execution" includes service, and its grammatical variations have a corresponding meaning;

"foreign Assessment Authority" means an Assessment Authority who has applied to a Tax Collector outside the jurisdiction of that Authority for the issuance of a writ;

"income tax defaulter" means a person who has not paid income tax payable by him in accordance with subsection (1) of section 34 of the Law;

"Schedule" means the Schedule to these Rules.

PART 2

Functions of Income Tax Officials

3. Application for issuance of writ

(1) An Assessment Authority may, for the purpose of the recovery of income tax due by an income tax defaulter in respect of an income tax assessment, certify the particulars of the matter and apply in the form, duly completed, of Form A in the Schedule, to the—

[Form A. Schedule.]

(*a*) tax collector having authority in the jurisdiction of the assessment Authority; or

(*b*) tax collector having authority in the area in which any movable property of the income tax defaulter may be found,

for the issue of a writ of attachment and sale.

(2) The duplicate of the application form shall be filed in the recovery case file relating to the income tax defaulter, which the Assessment Authority shall maintained.

4. Issue of writ

(1) Subject to this rule, a Tax Collector may issue a writ of attachment and sale in the form, duly completed, of Form B in the Schedule, by which he may levy, or cause to be levied, by distress and sale of goods and chattels wherever they may be found within his jurisdiction, the money payable under an income tax assessment which has not been paid.

[Form B. Schedule.]

(2) A writ shall not be issued until after either—

(*a*) three clear days from the—

(i) expiration of the period for giving notice of appeal where an appeal has not been filed; or

(ii) determination of an appeal before the High Court or the Board of Commissioners; or

(*b*) where an Assessment Authority has made an order of payment by instalments of the amount of income tax assessed, after the default in payment of an instalment according to that order, upon which event a writ may be issued for the whole of that amount.

5. Appointment of bailiffs

(1) All income tax bailiffs in the Revenue Division of the Ministry of Finance are hereby appointed bailiffs for the purpose of executing writs issued by Tax Collectors.

(2) A Tax Collector may appoint, in writing, officers to be unpaid bailiffs for the purpose of executing writs issues by him.

6. Declaration by bailiff

A bailiff, whether paid or unpaid, upon appointment as bailiff shall make before a judge or magistrate for the area in which the bailiff exercises authority as bailiff, a declaration (which shall be exempt from stamp duty) in the form, duly completed, of Form C in the Schedule.

[Form C. Schedule.]

7. Duty and liability of bailiff

(1) A bailiff shall not demand or accept any part of the money levied under a writ executed by him.

(2) A bailiff who fails to comply with the provisions of this rule is guilty of an offence.

Penalty: imprisonment for three months or a fine of one hundred naira or both.

8. Appointment of supervisor and valuer

The Assessment Authority in the jurisdiction of a Tax Collector shall supervise the execution of writs issued by the Tax Collector and value and keep possession of any property attached under a writ.

9. Preparation of writ

A writ shall be prepared in triplicate, every copy being signed in full by the Tax Collector, and the original shall be filed in the appropriate writs file which he shall maintain.

10. Despatch of writ for execution

(1) The Tax Collector shall send the duplicate and triplicate copies of a writ through the local Assessment Authority to the income tax bailiffs in the jurisdiction of the Tax Collector for execution by them.

(2) Where application for the writ was made by a foreign Assessment Authority, the Tax Collector shall intimate to him the issuance of the writ.

11. Filing

The Assessment Authority shall file the duplicate of the writ in the recovery case file of the income tax defaulter and the triplicate shall be served upon the income tax defaulter.

12. Extended time for execution

Execution may, in the discretion of the Tax Collector, be effected on a Sunday or other public holiday, or before 6 a.m. or after 6 p.m. on any day, provided that he indorses on the writ an order to that effect.

13. Life of writ

An unexecuted writ shall remain in force until the last day of the financial year immediately following that in which it was issued.

PART 3

Attachment and Sale

14. Property which may be seized

The property which may be attached and sold—

(*a*) includes any movable property to which the income tax defaulter is entitled and which is subject to a lien or right of some other person to immediate possession thereof; but

(*b*) does not include—

(i) movable property apparently over forty naira in value; or

(ii) movable property which is not in the possession of the income tax defaulter; or

(iii) shares in any public company or corporation to which the income tax defaulter is entitled.

15. Notice of attachment

(1) The bailiff proceeding to attach any property shall—

(*a*) deliver to the income tax defaulter; or

(*b*) leave at the place where the attachment is effected,

a notice of attachment in the form, duly completed, of Form D in the Schedule.

(2) The notice shall be prepared in duplicate and the duplicate shall be filed in the recovery case file of the income tax defaulter.

16. Custody of attached property

The attached property shall be removed and deposited in the office of the Assessment Authority or in some other fit place that he may determine.

17. Inventory of attached property.

(1) Where attached property is removed, the income tax defaulter shall, immediately after the removal, be given a sufficient inventory thereof in the form, duly completed, of Form E in the Schedule.

[Form E. Schedule.]

(2) The inventory shall be prepared in duplicate and the duplicate shall be filed in the recovery case file of the income tax defaulter.

18. Notice of sale

(1) Where property is attached, a notice in the Form, duly completed, of Form F in the Schedule shall be given, at least twenty-four hours before the time of sale, to the income tax defaulter stating the time and place where the property will be sold.

[Form F. Schedule.]

(2) The notice shall be prepared in duplicate and the duplicate shall be filed in the recovery case file of the income tax defaulter.

19. Method of delivery of inventory and notice of sale

The original inventory of attached property prepared under rule 17 and the original notice of sale prepared under rule 18 shall be—

(*a*) given to the income tax defaulter personally; or

(*b*) sent to him by registered post to his place of residence; or

(*c*) if his place of residence is not known, may be left at or sent to him by registered post at the place where the property was attached.

20. Attachment binding on property attached

(1) After an attachment has been so made and after it has been notified as required, an income tax defaulter who alienates the property attached, whether by sale, gift or otherwise, is guilty of an offence:

Penalty: imprisonment for six months or a fine of one hundred naira or both.

(2) The alienation is null and void.

21. Conduct of sale

A sale of property under a writ of attachment shall be conducted by a bailiff under the supervision of the Assessment Authority or his duly authorised representative.

22. Method sale

The Tax Collector may order a sale of property to be made by public auction.

23. Place of sale

A sale of property shall be made at such place as the Tax Collector may direct.

24. Appropriation of sale proceeds

(1) Where property is sold under a writ of attachment and sale, the proceeds of sale be appropriated by the Assessment Authority towards full satisfaction of the unpaid assessment, and any balance of the proceeds shall be paid to the income tax defaulter.

(2) The amount appropriated by the Assessment Authority shall be recorded in an Income Tax Revenue Cash Book and the income tax defaulter shall be given a General Income Tax Receipt.

(3) A receipt shall be furnished by the income tax defaulter in respect of any balance of the proceeds paid to him.

25. Record of execution proceedings

(1) A record of the proceedings in execution of a writ of attachment and sale shall be maintained in duplicate in the form, duly completed, of Form G in the Schedule.

[Form G. Schedule.]

(2) The Assessment Authority shall file the original in the recovery cash file of the income tax defaulter and send the duplicate to the Tax Collector for filing in the appropriate writs file.

26. Settlement before sale

(1) Where property is attached and the income tax defaulter pays, or cause to be tendered, to the Assessment Authority to whom the writ was issued, or to his duly authorised representative, the full amount of money shown in it, the attached property shall not be removed and the Tax Collector shall by order in writing—

(*a*) supersede the execution,

(*b*) release the property from attachment, and

(*c*) recall the writ.

(2) Where the income tax defaulter, before the actual sale of the property, pays or causes to be tendered, to the Assessment Authority to whom the writ was issued, or to his duly authorised representative, the full amount of money shown in it, the sale shall not proceed and the Tax Collector shall by order in writing—

(*a*) supersede the execution,

(*b*) release the property from attachment, and

(*c*) recall the writ.

(3) All moneys received by an Assessment Authority or his duly authorised representative before the actual sale of attached property shall be—

(*a*) treated as a payment of income tax by the income tax defaulter, and

(*b*) recorded in an Income Tax Revenue Cash Book and the income tax defaulter shall be given a General Income Tax Receipt.

27. Amount of unpaid tax disputed

(1) Where, upon the attachment of any property, the income tax defaulter disputes the amount alleged to be remaining due under the assessment, he may apply to the Assessment Authority to whom the writ was issued for a stay of execution.

(2) The sale shall not proceed until the Assessment authority who applied for the writ has summarily decided as to what amount, if any, remains due under the assessment.

28. Claim to attached property

(1) Where a person claims an interest in any attached property, its sale shall not proceed until the claim has been summarily decided by the Tax Collector in whose jurisdiction the property is located.

(2) That claim shall be made in writing stating full particulars of—

(*a*) the claimant;

(*b*) the property claimed; and

(*c*) the grounds of claim, and

may be delivered to the bailiff holding the writ or to the Assessment Authority to whom the writ was issued or his duly authorised representative.

(3) The claimant shall deposit with the Assessment Authority the full amount of money shown in the writ.

(4) The amount deposited shall be recorded in a deposit book of a form approved by the Commissioner and the claimant shall be given a receipt in a form approved by the Commissioner.

(5) Where the Tax Collector admits the claim he shall order that—

(*a*) the execution be superseded,

(*b*) the property be released from attachment,

(*c*) the writ be recalled, and

(*d*) the amount deposited be repaid to the claimant.

(6) Where the Tax Collector does not admit the claim he shall order that—

(*a*) the amount deposited be appropriated by the Assessment Authority in satisfaction of the unpaid assessment,

(*b*) the property be released from attachment,

(*c*) the writ be recalled, and

(*d*) the amount deposited be repaid to the claimant.

(7) The amount appropriated by the Assessment Authority shall be recorded in an Income Tax Revenue Cash Book and the income tax defaulter shall be given a General Income Tax Receipt.

29. Tax Collector's discretion to stay execution

If at any time upon the written application of the income tax defaulter it appears to the satisfaction of the Tax Collector who issued the writ that—

(*a*) the income tax defaulter is unable because of unavoidable misfortune to satisfy the assessment; and

(*b*) his property ought to be released,

the Tax Collector may, in his discretion, stay the execution of the writ for such time and upon such terms as he thinks fit, and so on from time to time until it appears that the cause of inability has ceased.

30. Death of income tax defaulter

Where the income tax defaulter dies before the execution has been fully had, the Tax Collector shall by order—

(*a*) supersede the execution;

(*b*) release the property from attachment, and

(*c*) recall the writ.

SCHEDULE

FORM A

[Rule 3.]

INCOME TAX (RECOVERY OF ARREARS) RULES

Application for Issuance of Writ of Attachment and Sale of Movable Property of Income Tax Defaulter

Recovery Case No ....., 20 .....

From ..... To

The Assessment Authority	The Tax Collector,
Internal Revenue Office,	Internal Revenue Office,
..... Division	..... Division.

1. I hereby certify that the undermentioned person is a defaulter in respect of an amount of income tax as per details stated below.

2. I also certify that no appeal in respect of it is pending before the High Court or Board of Commissioner and that the period for giving notice of any appeal has expired.

3. I apply for the issuance of a writ of attachment and sale against his movable property in respect of that amount.

(*a*) Name of Defaulter (in full) .....

(*b*) Address .....

(*c*) Official No. .....

(*d*) Assessment Year, 20 .....

(*e*) Assessment Notice No. .....

(*f*) Assessment Ledger Reference .....

(*g*) Amount of Tax.....₦ k

FORM A—*continued*

(*h*) Date by which the tax/instalment of tax was payable ..... 20 .....

Date ....., 20.....

.....

Signature of Assessment Authority

FORM B

[Rule 4.]

INCOME TAX (RECOVERY OF ARREARS) RULES

Writ of Attachment and Sale against Movable Property of Income Tax Defaulter
(Section 34, Finance Law)

In the Office of the Tax Collector ..... Division

Recovery Case No. ....., 20 .....

Between ..... Creditor (Tax Collector for ..... Division)

and ..... Debtor
(Income Tax Defaulter)

WHEREAS an income tax assessment was made by the Assessment Authority for .....
Division where under the above-named Debtor was required to pay tax ₦ k for the Assessment Year, 20 .....

AND WHEREAS default in payment of the said amount of income tax has been made by him:

AND WHEREAS a notice under section 34 (1) (*a*) of the Finance Law, has been published by me:

These are therefore to require and order you forthwith to make and levy the amount due to the Creditor under that assessment by distress and sale of goods and chattels of the Debtor wherever they may be found within the ..... division (except the wearing apparel and bedding of him or his family and the tools and implements of his trade, to the value of ten naira) and also by seizing and taking any money, bank-notes, cheques, bills of exchange, promissory notes, bonds or securities for money belonging to the Debtor which may there be found or such part or so much thereof as may be sufficient to satisfy this execution.

DATED this ..... day of ..... 20 .....

To

The Tax Collector and Bailiffs — Amount remaining due

..... Division. — ₦ k

Notice— The goods and chattels are not to be sold until after the end of five days immediately following the day on which they were seized unless they are of a perishable nature or at the request of the Debtor.

..... Division .....

Signature of Tax Collector

FORM C

[Rule 6.]

INCOME TAX (RECOVERY OF ARREARS) RULES

Declaration of Bailiff

I, ... do hereby solemnly and sincerely declare that I will not use or exercise the office of bailiff corruptly during the time that I shall remain therein, neither shall nor will I accept, receive, or take by any colour, means or device whatsoever or consent to the taking of any manner of fee or reward of any person or persons or betwixt party and party, but will according to my power truly perform my duty during the time that I shall remain in that office.

.....

Signature of Bailiff

TAKEN before me this ..... day of ..... , 20 .....

.....

Signature of Judge or Magistrate

FORM D

[Rule 15.]

INCOME TAX (RECOVERY OF ARREARS) RULES

Notice of Attachment of Movable Property of Income Tax Defaulter

In the Office of the Tax Collector ..... Division

Recovery Case No. ....., 20 .....

Between ..... Creditor (Tax Collector for ..... Division)

and ..... Debtor

(Income Tax Defaulter)

To the Debtor,

Take notice that a writ has been issued for the attachment and sale of your movable property in execution of the income tax assessment which has been certified in this matter and the amount for which it has been issued is stated below.

And take notice that your movable property is hereby attached and you are prohibited from selling the property or any right, title or interest in it.

If you pay to me the full amount to be levied as stated below at any time before the sale of the property this execution will be superseded and your property will be released.

If you do not pay the amount to be levied the property will be sold and the amount to be levied will be deducted from the sale proceeds and the balance, if any, will be paid to you.

Your property will not be sold until after the end of five days immediately following the day on which it was attached unless it is of a perishable nature or you request it.

FORM D—*continued*

Amount for which the writ has been issued ₦ k

Dated this …… day of ……, 20 ……..

..... Division .....
Signature of Assessment Authority

FORM E

[Rule 17.]

INCOME TAX (RECOVERY OF ARREARS) RULES

Inventory of Attached Property of Income Tax Defaulter

In the Office of the Tax Collector ..... Division

Recovery Case No. ....., 20 .....

Between ..... Creditor (Tax Collector for ..... Division)

and ..... Debtor
(Income Tax Defaulter)

Date ……, 20 ……..

To the Debtor

Serial No. of Article of property	Description in full	Approximate Value ₦	k
Total Value			

....
Signature of Tax Office Clerk *Signature of Bailiff*

FORM F

[Rule 18.]

INCOME TAX (RECOVERY OF ARREARS) RULES

Notice of Sale

In the Office of the Tax Collector ..... Division

Recovery Case No. ....., 20 .....

Between ..... Creditor (Tax Collector for ..... Division)

and ..... Debtor
(Income Tax Defaulter)

FORM F—*continued*

To the Debtor,

Take notice that your movable property which has been attached in execution of the income tax assessment of which has been certified in this matter and the amount of which is stated below will be sold on 20 ..... during the hours of ..... and ..... at the Internal Revenue Office ..... Division .....

Amount for which the attachment was made ₦ k

..... Division .....

Signature of Assessment Authority

*Delete as necessary

FORM G

[Rule 25.]

INCOME TAX (RECOVERY OF ARREARS) RULES

Record of Proceedings

Recovery Case No ..... , 20 .....

	Details	Initial of Clerk or Bailiff
1.	Amount of Tax in default ₦ k	.....
2.	Date of Application for Writ	.....
3.	Date of Signature of Writ	.....
4.	Date of Service of Writ	.....
5.	Time of Service of Writ	.....
6.	Date of Service of Notice of Attachment	.....
7.	Time of Service of Notice of Attachment	.....
8.	Brief statement of events during Attachment ..... (Note: It should also be stated whether the defaulter paid up the amount due or whether he disputed the amount due)	.....
9.	Date of Issue of Inventory of Attached Property and Notice of Sale	.....
10.	Did the defaulter pay up the amount due before Sale?	.....
11.	Did any person claim any interest in the attached property?	.....
12.	Amount deposited by claimant, if any, ₦ k	.....
13.	Tax Collector's decision upon claim, if any	.....
14.	Tax Collector's action under Rule 29, if any	.....
15.	Was the defaulter alive at the time of Sale?	.....
16.	Date of Sale	.....
17.	Time of Sale	.....
18.	Place of Sale	.....
19.	Method of Sale	.....
20.	Proceeds of Sale ₦ k	.....
21.	Balance of Proceeds, if any, after satisfaction of tax ₦ k	.....
22.	Acknowledgement by defaulter of receipt of balance of proceeds Received the sum of ₦ k (in words)	.....

FORM G—*continued*

Details	Initial of Clerk or Bailiff
..... *Signature of Defaulter*	
Date ....., 20	
23. Brief Statement of events during Sale	.....

CERTIFICATE

I hereby certify that the entries in this form constitute a true and complete record of the proceedings in this recovery case.

Date ....., 20 ....
Signature of Bailiff

Submitted to the Tax Collector ..... Division.

Date ....., 20 ....
Signature of Assessment Authority

FINANCE LAW (PURCHASE TAX) RULES

ARRANGEMENT OF RULES

RULE

1. Citation and commencement.
2. Interpretation.
3. Registration particulars.
4. Accounting records.
5. Rebate.
6. Rebate application.
7. Accounting records.
8. Rebate investigation.
9. Rebate payment.
10. Exemption.
11. Accounting records.
12. Exemption verification.
13. Offences and penalty.

RULES

1. Citation and commencement

These rules may be cited as the Finance Law (Purchase Tax) Rules. They shall come into operation on the 1st March, 1963 and shall also have effect in respect of applications for rebate of amounts paid in accordance with subsection (2) of section 47 in relation to transactions on or after the 1st October, 1960.

2. Interpretation

In these rules—

"industrial purposes" includes purposes connected with—

(*a*) any manufacturing process carried on in a mill or factory or similar premises for or incidental to—

(i) the making of any goods, materials, article or other thing whatsoever, or of any part of the same; or

(ii) the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolishing of any goods, materials, article or other thing whatsoever; or

(*b*) the operation of a transport (other than road vehicles) dock, inland, coastal or maritime navigation, water supply or hydraulic power undertaking; or

(*c*) the generation of electricity or of any other form of energy, or railway operation; or

(*d*) the working of any mine, oil-well or other source of mineral deposits, or of a plantation.

3. Registration particulars

An application for registration for the purposes of Part 4 of the Law shall contain—

(*a*) the name and address of the applicant;

(*b*) the description of each chargeable item sold by the applicant; and

(*c*) the address of each place of business in the Cross River State at which he transacts business connected with the sale of a chargeable item.

4. Accounting records

(1) A person who has been or is required to be registered for the purposes of Part 4 of the Law shall maintain standard double entry accounting records in respect of all transactions connected with the sale of chargeable items, fully supported by appropriate invoices and vouchers relating to those transactions.

(2) Those records shall include—

(*a*) stock records in respect of the quantities of each chargeable item—

(i) held in stock on the first day of April in each year;

(ii) taken into stock during the year commencing on the first day of April;

(iii) sold during that year whether for consumption in the Cross River State or elsewhere;

(iv) otherwise dealt with during that year; and

(v) held in stock on the thirty-first day of March in each year;

(*b*) sale records showing the quantities of each chargeable item—

(i) sold during the year commencing on the first day of April for consumption in the Cross River State; and

(ii) sold during that year for consumption outside the Cross River State; and

(*c*) such other particulars as the Commissioner may specify.

5. Rebate

Subject to these rules, a person who has purchased and consumed a quantity of diesel oil for industrial purposes and has paid to the seller thereof, in accordance with the provisions of subsection (2) of section 47 of the Law, an amount, additional to the purchase price, representing the purchase tax payable by the seller in respect of that quantity of diesel oil, shall be entitled to a rebate of that amount.

6. Rebate application

For the purpose of obtaining a rebate under rule 5, application shall be made to the commissioner through the seller in such form and in respect of such period as the Commissioner may specify.

7. Accounting records

(1) A person who applies for rebate under rule 5 shall maintain standard stock accounting records in respect of all quantities of diesel oil purchased, whether consumed for industrial purposes or otherwise dealt with, supported by appropriate invoices and vouchers relative to those quantities.

(2) Those records shall show the quantities of diesel oil—

(*a*) held in stock on the first day of April in each year;

(*b*) taken into stock during the year commencing on the first day of April;

(*c*) actually consumed for industrial purposes during that year;

(*d*) otherwise dealt with during that year; and

(*e*) held in stock on the thirty-first day of March in each year; and

(*f*) such other particulars as the Commissioner may specify.

8. Rebate investigation

For the purpose of ascertaining whether a person is entitled to a rebate under rule 5 the Commissioner or any official authorised in that behalf by him may—

(*a*) require that person to produce or cause to be produced any record relating to any stock of diesel oil held by him; or

(*b*) enter any business premises of that person and examine or copy any such record.

9. Rebate payment

Where the Commissioner is satisfied that a person who applies for rebate has duly fulfilled the requirements of rules 6 and 7 he shall pay the applicant the amount of rebate to which he is entitled.

10. Exemption

A person who is a purchaser of diesel oil bought under a chargeable purchase and who has been exempted under subsection (1) of section 53 of the Law from the operation of Part 4 of the Law shall not, without the express approval of the Commissioner, voluntarily dispose of any quantity of diesel oil in respect of which he has been exempted except where such a disposal is in pursuance of a purpose in respect of which exemption was accorded.

11. Accounting records

(1) A person who has been exempted under subsection (1) of section 53 of the Law from the operation of Part 4 of the Law shall maintain standard stock accounting records in respect of all quantities of diesel oil purchased, whether consumed in pursuance of a purpose in respect of which exemption was accorded or otherwise dealt with, supported by appropriate invoices and vouchers relating to those quantities.

(2) Those records shall show the quantities of diesel oil—

(*a*) held in stock on the first day of April in each year;

(*b*) taken into stock during the year commencing on the first day of April;

(*c*) actually consumed for industrial purposes during that year;

(*d*) otherwise dealt with during that year; and

(*e*) held in stock on the thirty-first day of March in each year; and

(*f*) such other particulars as the Commissioner may specify.

12. Exemption verification

For the purpose of verifying that a person who has been exempted under subsection (1) of section 53 of the Law from the operation of Part 4 of the Law is duly fulfilling the requirements of rules 10 and 11 the Commissioner or any official authorised in that behalf by him may—

(*a*) require that person to—

(i) prepare and deliver to the Commissioner such returns in such form and for such periods as are specified in rule 11; or

(ii) produce or cause to be produced any record in respect of any stock of diesel oil held by that person; or

(*b*) enter any business premises of that person and examine or copy any such record.

13. Offences and penalty

A person who, without sufficient cause—

(*a*) fails to maintain accounting records in compliance with rule 4;

(*b*) makes an incorrect application for the purpose of obtaining a rebate under rule 5;

(*c*) fails to maintain accounting records in compliance with rule 7;

(*d*) fails to comply with a requirement under paragraph (*a*) of rule 8; or

(*e*) in complying therewith, produces an incorrect record;

(*f*) refuses the Commissioner or a duly authorised official access to any record in accordance with paragraph (*b*) of rule 8; or

(*g*) in contravention of rule 10, voluntarily disposes of any quantity of diesel oil in respect of which he has been exempted; or

(*h*) fails to maintain accounting records in compliance with rule 11; or

(*i*) fails to deliver a return in compliance with sub-paragraph (i) of paragraph (*a*) of rule 12; or

(*j*) fails to comply with a requirement under sub-paragraph (ii) of paragraph (*a*) of rule 12; or

(*k*) in complying with paragraph (*a*) of rule 12, delivers an incorrect return or produces an incorrect record; or

(*l*) refuses the Commissioner or a duly authorised official access to any record in accordance with paragraph (*b*) of rule 12,

is guilty of an offence:

Penalty: a fine of one thousand naira.

CHAPTER F4

FIRE SERVICE LAW

ARRANGEMENT OF SECTIONS

PART I

Organisation and Administration

SECTION

1. Establishment of the Fire Service.
2. General duties of the Fire Service.
3. Constitution of the Fire Service.
4. Responsibility of the Chief Fire Officer.
5. Legal representation and service of process.
6. Provision of equipment, training, inspection of buildings, etc.
7. The Commissioner's powers.
8. Enlistment.
9. Expiration of term of service during State of Emergency and resignation or withdrawal from service.

PART II

Gratuity, Annual Allowance, Pensions

10. Pensions, gratuity and annual allowance.
11. Pension and subsistence allowance in case of incapacity.
12. Pension, gratuities on death.

PART III

Fire Fighting, Fire Prevention and Other Services

13. Provision of water supply and regulations thereon.
14. Regulations.
15. Standing orders.
16. Affixing of fire alarm, etc.
17. Arrangement with persons within the State.
18. Arrangements with Federal or other State fire authorities and persons outside the State.
19. Disaster relief or distress in other States.

PART IV

Powers of Members of Fire Service

20. Powers of firemen and regulation of traffic.
21. Right of member of Fire Service to enter upon lands.
22. Limitation of suits against Fire Service.

PART V

Miscellaneous Provisions

SECTION

23. Establishment of Fire Service Reward Fund.
24. No charges to be made save in certain cases.
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CHAPTER F4

FIRE SERVICE LAW

(18*th January*, 1985)

[Commencement.]

THE HOUSE OF ASSEMBLY OF CROSS RIVER STATE hereby makes the following—

LAW

PART I

Organisation and Administration

1. Establishment of the Fire Service

There shall be established a Fire Fighting and Rescue Service to be known as the Cross River State Fire and Rescue Service (hereinafter referred to as "the Fire Service").

2. General duties of the Fire Service

The Fire Service shall be employed for the extinguishment, control and prevention of fire, the saving and protection of life and property, the provision of relief by way of rescue and ambulance services to the public in traffic accidents, criminal injuries, accidents in constructions fields, sickness in the streets and private premises; and in disaster not only connected with fire but also with the other humanitarian and other works as may be required of it under the authority of the Commissioner.

3. Constitution of the Fire Service

The Fire Service shall consist of a State Chief Fire Officer (hereinafter referred to as "the Chief Fire Officer") and such other officers and firemen of such ranks as may from time to time be appointed by the State Civil Service Commission.

State Chief Fire Officer

4. Responsibility of the Chief Fire Officer

(1) The Fire Service shall be under the command of the Chief Fire Officer who, subject to the Public Service Rules and the direction of the Commissioner, shall be responsible to the Commissioner for the efficient administration and control of the Fire Service.

(2) Any power conferred and any duty imposed upon the Chief Fire Officer may, in the absence of the Chief Fire Officer at any time, be exercised or performed by any member of the Fire Service authorised generally or specifically in that behalf by the Chief Fire Officer or the Commissioner.

5. Legal representation and service of process

(1) The Fire Service may sue or be sued in that name in respect of any right or obligation arising from any act done or omitted to be done by the Fire Service in pursuance of the provisions of this Law and the Fire Service shall be represented by the Chief Fire Officer or any other member of the Fire Service authorised by the Chief Fire Officer in writing to represent the Fire Service.

(2) Service upon the Fire Service of any notice, order or other process may be effected by delivering it or sending it by registered post to the Chief Fire Officer.

6. Provision of equipment, training, inspection of buildings, etc.

The Commissioner may make provision for fire fighting, fire prevention and the alleviation of distress, and in particular may—

(*a*) secure the service of such fire equipment as may be necessary and practicable to meet efficiently all normal requirements;

(*b*) ensure the efficient training of members of the Fire Service;

(*c*) ensure efficient arrangement for dealing with calls for assistance of the Fire Service in cases of fire or other emergency;

(*d*) ensure efficient arrangement for obtaining by inspection or otherwise information required for fire fighting and fire prevention purposes with respect to the character of buildings and other property, the available water supplies and the means of access thereto, and other material circumstances;

(*e*) ensure efficient arrangement for the giving, when requested, of advice in respect of buildings and other property as to fire prevention or the restriction of the spread of fires, and as to means of escape in case of fire;

(*f*) ensure that for the purposes of paragraph (*d*) of this section—

(i) any member of the Fire Service shall be empowered to enter any building or other property at all reasonable hours if authorised to do so by the Chief Fire Officer;

(ii) if any member of the Fire Service empowered under subparagraph (i) is refused admission thereto, the court on the *ex parte* application of the Chief Fire Officer or of the member so authorised, may order the owner or occupier of such building or other property to admit the member thereto; and

(iii) any court order made under sub-paragraph (ii) shall continue in force until the purposes for which the entry was necessary have been achieved.

7. The Commissioner's powers

The Commissioner's powers shall include power—

(*a*) to provide accommodation for the Fire Service and its equipment including housing and other accommodation for members of the Fire Service and furniture reasonably required for such accommodation;

(*b*) to provide service uniforms and accoutrements to members of the Fire Service;

(*c*) to make adequate arrangement to pay compensation to any member of the Fire Service or the family of such member who dies or becomes partly or permanently incapacitated by an injury sustained or sickness contracted—

(i) while on duty;

(ii) in actual execution of his duty; or

(iii) in circumstances especially attributable to the nature of his duty;

(*d*) to pay to persons not being members of the Fire Service maintained in pursuance of this Law, who render services for fire fighting purposes, such rewards as the Chief Fire Officer deems fit;

(*e*) to provide and maintain fire alarms in such positions in any street or public place as the Chief Fire Officer deems proper and to affix any such fire alarms to any wall or fence adjoining a street or public place;

(*f*) to make efficient arrangement for ensuring that reasonable steps are taken to prevent or mitigate damage to property resulting from measures taken in dealing with fires;

(*g*) to employ the Fire Service, or use any of the equipment maintained by it, for purposes other than fire fighting purposes for which it appears to the Commissioner to be suitable and, if the Commissioner deems fit, to make such charge as he may prescribe for any service rendered in the course of such employment or use;

(*h*) to employ the Fire Service or use any of its equipment outside the State.

Enlistment and service

8. Enlistment

(1) Every fireman shall on appointment be enlisted to serve in the Fire Service for not more than 41years or until he is 60 years old, whichever comes first, and for such other period as may be fixed by the Civil Service Commission to be reckoned in all cases from the day on which he has been approved for service.

(2) A firewoman who becomes pregnant or marries before the completion of two years in the service shall compulsorily withdraw from the Fire Service without pay for twelve months, that is to say, for the nine months of pregnancy and for three months after putting to bed and this period shall in all respect not be taken into account for the purpose of pension, gratuity or any other retirement benefits.

9. Expiration of term of service during State of Emergency and resignation or withdrawal from service

(1) Any fireman whose term of service expires during a State of Emergency, insurrection or hostilities may be compulsorily retained as the Civil Service Commission may direct.

(2) No fireman shall be at liberty to resign or withdraw himself from duties without approval of the Civil Service Commission or any member of the Fire Service to whom the Civil Service Commission has delegated the power to give such approval.

(3) For the purpose of this section the term **"State of Emergency"** has the same meaning as it has in the Constitution of the Federal Republic of Nigeria, 1999.

PART II

Gratuity, annual allowance, pensions

10. Pensions, gratuity and annual allowance

Subject to the provision of this Law all posts in the Fire Service shall be deemed to be pensionable and members of the Fire Service shall be entitled to all benefits enjoyed in the Civil Service such as gratuities, monthly and annual allowances and pensions, but shall also receive 25% monthly hazard, 17% monthly shift duty, and 15% annual uniform allowance.

11. Pension and subsistence allowance in case of incapacity

(1) Where any member of the Fire Service has been permanently incapacitated by any injury sustained or sickness contracted—

(*a*) while on duty;

(*b*) in the actual execution of his duty;

(*c*) on account of circumstances specifically attributable to the nature of his duty, and his discharge or retirement is thereby necessitated or materially accelerated,

such member of the Fire Service shall be regarded as qualified for retirement and on discharge, in addition to his pension and gratuity, shall be granted monthly subsistence allowance based on the following proportion of his monthly rate of pay at the date of his injury—

where his capacity to contribute to his support is—

Slightly impaired	Ten-Sixtieths
Impaired	Fifteen-Sixtieths

Materially impaired	Twenty-Sixtieths
Totally destroyed	Twenty-five-Sixtieths.

But the amount of such subsistence allowance may be reduced to such an extent as the Commissioner deems reasonable where the injuries or sickness are not the sole cause of discharge or where the member of the Fire Service incapacitated has continued to serve for not less than one year after sustaining the injury or contracting the sickness in respect of which he received his discharge.

(2) The provisions of subsection (1) shall not apply to any officer who by reason of the injury is entitled to compensation under the Workmen's Compensation Act.

(3) Where however any member of the Fire Service has been permanently incapacitated by an injury sustained or sickness contracted as provided in such subsection (1) of this section, but is fit to resume duties thereafter, such member of the Fire Service shall, after assessment by a medical doctor employed in a Federal or State government hospital or clinic, be paid an injury compensation according to the percentage of assessed disability.

(4) For the purpose of this section, any member of the Fire Service who is paid under section 11 (3) cannot be paid under section 11 (1) if in due course he retires or is discharged.

12. Pension, gratuities on death

(1) If a member of the Fire Service who is or has been approved for service dies—

(*a*) while on duty;

(*b*) in the actual execution of his duty;

(*c*) as a result of injury received or sickness contracted in execution of his duty and which might have incapacitated him under section 11 (1); or

(*d*) on account of circumstance specifically attributable to the nature of his duty,

the Commissioner on the recommendation of the Chief Fire Officer, or at his own instance, where the case involves the Chief Fire Officer, may direct that pensions and gratuities be paid to or applied for the maintenance and personal support and benefit of all or any of the following persons namely; any wife, child, children, relative or dependant of the member of the Fire Service, in such manner as the Commissioner on the recommendation of the Chief Fire Officer may deem just.

(2) It shall be lawful for the Commissioner, on the recommendation of the Chief Fire Officer, or at his instance, where the case involves the Chief Fire Officer, to grant, in addition to any pension and gratuities if such pension and gratuities have not previously been granted under section 10, a monthly family upkeep allowance set out in this subsection, that is to say—

(*a*) if such member of the Fire Service dies leaving a widow or widows, an upkeep allowance to her or divided equally among them, whilst unmarried at a rate not exceeding twenty sixtieth of the deceased's monthly rate of pay at the date of death, or under section 11, not exceeding the rate payable to such a member of the Fire Service while he was incapacitated;

(*b*) if such member of the Fire Service leaves a widow or widows to whom an upkeep allowance is granted under the preceding paragraph and a child or children, an upkeep allowance or allowance not exceeding one-eighth of the monthly upkeep allowance prescribed under the preceding paragraph, in respect of such child or children until such child reaches or reach the age of 21 years;

(*c*) if such a member of the Fire Service leaves a child or children but does not leave a widow or leaves a child or children and a widow or widows to whom no monthly upkeep allowance under subsection (2) (*a*) has been granted, then an upkeep allowance in respect of each child of double the amount prescribed in subsection (2);

(*d*) until such a child attains the age of 21 years;

(*e*) if such member of the Fire Service leaves a child or children and a widow to whom an upkeep allowance is granted under subsection (2) (*a*) and the widow subsequently dies, an upkeep allowance double the amount prescribed in subsection (2) (*b*) in respect of each child as from the date of death of the widow until such child attains the age of 21 years,

(*f*) if such member of the Fire Service does not leave a widow or if no pension is granted to his widow, and if his mother was wholly or mainly dependent on him for support, a monthly upkeep allowance to the mother of an amount not exceeding the monthly upkeep allowance which might have been granted to his widow provided that—

(i) all such monthly upkeep allowances shall be at the discretion of the Commissioner acting on the recommendation of the Chief Fire Officer and any upkeep allowance so granted shall cease if at any time the Commissioner is satisfied that the person in respect of whom such upkeep allowance has been granted is adequately provided with other means of support;

(ii) a monthly upkeep allowance shall not be payable under this paragraph at any time in respect of more than six children;

(iii) a monthly upkeep allowance granted to a female child under this paragraph shall cease upon the marriage of such child or when she attains the age of 21 years' whichever comes first;

(iv) if, in any case, it appears to the Commissioner acting on the recommendation of the Chief Fire Officer that it will be proper so to do having regard to the law or custom of the area, payment of the foregoing upkeep allowance may, at the discretion of the Commissioner, be paid to such authority having jurisdiction in that area as he may specify for disbursement in the interest of the persons entitled thereto under the provisions of this subsection;

(v) if any member of the Fire Service proceeding by a route approved by the Commissioner to or from his duty station at the commencement or termination of his service therein or of a period of leave therefrom, dies as a result of damage to any vessel, vehicle or aircraft in which he is travelling or of any act of violence directed against such a vessel, vehicle or aircraft, such member of the Fire Service shall be deemed for the purpose of this section to have died under the circumstance described in subsection (1) of this section;

(*g*) for the purpose of this section the word **"child"** includes—

(i) a posthumous child; and

(ii) a stepchild born before the date of the injury or death and wholly or mainly dependent upon the deceased member of the Fire Service for support.

PART III

Fire Fighting, Fire Prevention and Other Services

13. Provision of water supply and regulations thereon

(1) The Commissioner shall take all reasonable measures to ensure the provision of an adequate supply of water at all times for use by the Fire Service in case of fire and for this purpose may make regulations—

(*a*) for securing on such terms as to payment or otherwise as may be therein specified that an adequate supply of water shall be available at all times to the Fire Service in case of fire;

(*b*) for the provision at the expense of the Fire Service of fire hydrants or other sources of water at points to be indicated by the Chief Fire Officer;

(*c*) for the provision at the expense of the Fire Service of distinguishing marks denoting the situation of each fire hydrant or other source of supply of water, which distinguishing marks may be placed or erected upon or adjoining any street or public place;

(*d*) for providing for uniformity in fire hydrant and other such sources of water supply and in the distinguishing marks denoting the location of such fire hydrants or other sources of water supply and in the positions where such distinguishing marks shall be placed;

(*e*) for the regulation of the pressure of water available from such fire hydrants or other sources of water supply and for the provision at the expense of the Fire Service of such auxiliary pumping plant and equipment as may be necessary.

(2) The water authority shall, when any new main water pipes are to be installed or any major alterations made to existing main pipes inform the Fire Service and provide for the use of the Fire Service, the detailed plans and all other information for the proposed works.

14. Regulations

(1) Save as provided by section 13 of this Law the Commissioner may from time to time make regulations—

(*a*) on the recommendation of the Chief Fire Officer—

(i) with respect to the organisation and administration of the Fire Service;

(ii) with respect to the offices in the Fire Service and appointments to such offices;

(iii) with respect to the training of members of the Fire Service; and

(iv) with respect to the promotion, transfer, dismissal and disciplinary control of members of the Fire Service;

(*b*) setting out the scales of charges permitted under subsection (2) of section 24 for services rendered by the Fire Service;

(*c*) with respect to the administration of the Fire Service Reward Fund established under section 23;

(*d*) with respect to the prevention of fire and reduction of the risk of fire and the safety of persons or animals in or near any building or class of buildings from fire hazards;

(*e*) with respect to the prohibition or control of the use, in the erection, alteration, improvement or repair of any building or other structure, or materials deemed by the chief Fire Officer to constitute a fire hazard or of the use of any materials, because of the use or proposed location or otherwise, the Chief Fire Officer deems to constitute a fire hazard;

(*f*) requiring owners of multiple dwellings, schools or colleges, factories, industries, cinemas, theatres, office buildings and other such buildings, structures, or places to which the public resort from time to time to take such precautions as the Chief Fire Officer may specify for the safety against fire hazard of the tenant, occupiers, invitees or other users of such building structures or places;

For the purposes of paragraph (*f*) of subsection (1) the Chief Fire Officer may classify such buildings, structures or places into different categories and each such category may be subject to different requirements as may be stipulated; and further for the purposes hereof the Commissioner may empower the Chief Fire Officer to limit the number of persons occupying or using such buildings, or prevent them from using such building or structures or places at any time and to require such owners or occupiers to install such fire fighting equipment of such standard as the Chief Fire Officer may prescribe and deem necessary and generally to regulate the use of such buildings, structures or places so that at all times the tenants, occupiers, invitees, or users thereof shall have free access to such fire fighting equipment;

(*g*) prescribing the type of signal, audible or visual, to be used on fire engines or other mobile fire fighting equipment;

(*h*) relating to the establishment and good management of canteens and recreation rooms for the benefit of the Fire Services;

(*i*) for such other matters as he deems necessary or desirable to give effect to the provisions of this Law.

(2) If any owner of a building, structure or place feels aggrieved by any regulation, requirement or classification made under paragraph (*e*) or (*f*) he may apply to the High Court of competent jurisdiction by summons against the regulation, requirement or classification.

(3) The relevant High Court shall have jurisdiction to hear and determine such application.

(4) Any such application shall be made within 21 days from the date on which the notice was served or information was given to the aggrieved person of the matter forming the subject of the application.

15. Standing orders

(1) The Commissioner may, after considering the recommendation of the Chief Fire Officer, make standing orders with respect to—

(i) any matter relating to the organisation and administration of the Fire Service;

(ii) any matter relating to appointment to the Fire Service, and to the promotion, transfer, discipline and control of members of the Fire Service;

(iii) any matter relating to the discipline and control of persons undergoing training under section 28;

(iv) any matter relating to the duties to be performed by members of the Fire Service and for their guidance in the discharge of those duties;

(v) the description and issue of the fire fighting and fire prevention equipment, accoutrements, uniforms and other necessaries to be supplied to the Fire Service; and

(vi) the management and good government of fire stations, training schools, recreation rooms, control rooms and canteens.

(2) Standing orders made under this section shall be binding upon all members of the Fire Service and on all persons under training in fire fighting and fire prevention.

16. Affixing of fire alarm, etc.

(1) Any fire alarm or any mark indicating the locations of any fire hydrant or other water supply as required or prescribed by this Law may be fixed or placed upon any land without the consent of the owner of such land or other property and without payment of compensation.

(2) For the purpose of this section—

"land" includes buildings, walls or fence;

"mark" includes any notice, tablet, plate, post or other distinguishing mark;

"owner" includes any lessee, tenant, licensee or occupier.

17. Arrangement with persons within the State

(1) The Commissioner may, on the recommendation of the Chief Fire Officer, enter into arrangements on such terms as to payment or otherwise as may be agreed, with persons who own private fire fighting units to assist the Fire Service in dealing with fires and other emergencies occurring in the State.

(2) Members of private fire fighting units engaged in operations under subsection (1) of this section shall possess the same rights, enjoy the same immunities and exercise the same powers as members of the Fire Service.

18. Arrangements with Federal or other State fire authorities and persons outside the State

(1) The Commissioner may, on the recommendation of the Chief Fire Officer and on such terms as to payment or otherwise as may be agreed, enter into arrangement with—

(*a*) the government of any State of the Federation or any fire authority in any State which maintains a fire fighting service; or

(*b*) any person who maintains a fire fighting unit outside the State—

(i) to secure the provision by such State government fire authority or person, of assistance for purposes of dealing with fires or other emergencies occurring within the State;

(ii) to secure the provision by such State government fire authority or person, of assistance for purposes of dealing with fires or other emergencies occurring outside the State.

(2) The Commissioner shall not enter into any arrangement under sub-paragraph (*b*) (ii) of subsection (1) unless the other government involved agrees to indemnify the Fire Service and all its members against action for damages in respect of any act or omission for which the Fire Service would not be liable in the State under this or any other Law.

19. Disaster relief or distress in other States

(1) If any disaster occurs anywhere within the Federation of Nigeria, outside the State and if either the fire authority or the Commissioner of Police of the State in which the disaster has occurred so requests the Chief Fire Officer may in his discretion provide assistance—

(*a*) by utilising or lending with or without compensation therefor, to that State government or fire authority the equipment, supplies, facilities, personnel and other resources of the Service; and

(*b*) by performing on public or private lands, protective and other work essential for the preservation of life and property and the alleviation of suffering.

(2) The government of the State shall not be liable for anything done by the Fire Service in lawful exercise of its function under this section.

(3) For the purpose of this section—

"disaster" means any flood, fire, hurricane, earthquake, storm or other catastrophe in any part of the Federation which in the opinion of the State Fire Service or the Commissioner of Police of the State is, or threatens to be of sufficient severity and magnitude to warrant assistance by the Fire Service to supplement the efforts and available resources of the fire authority and local fire fighting services of that part of the Federation in alleviating the damage, hardship and suffering caused thereby.

PART IV

Powers of Members of Fire Service

20. Powers of firemen and regulation of traffic

(1) The most senior member of the Fire Service present at any fire shall have the sole charge and control of all operations for extinguishing the fire or for the assistance of persons or animals in fire distress by reason thereof or by reason of such fire fighting or fire prevention measure.

(2) The most senior member of the Fire Service present at any fire may close to traffic any street or thoroughfare or may stop or regulate traffic thereon or remove any person including the owner or occupier of the property involved or of adjacent or neighbouring property from the said street or thoroughfare if in his opinion it is necessary or desirable to do so for fire fighting purposes.

(3) For the purposes of ensuring or expediting a free passage of any fire engine or other mobile fire fighting equipment while proceeding to a fire, any member of the Fire Service may remove any person or vehicle from any street or thoroughfare if in his opinion it is necessary or desirable to do so for the purposes of ensuring or expediting such free passage of the fire engine or other mobile fire fighting equipment.

(4) All persons and vehicles using any street or thoroughfare shall yield right of way to fire engines and other mobile fire fighting equipment proceeding to a fire and operating any prescribed signals, audible or visual, and police officers, if present, shall give such assistance as may be necessary for that purpose.

(5) For the purpose of ensuring that fire engines are available when required for emergency, no person shall detain or cause to be detained outside a fire station, any fire engine, appliance or equipment without the written consent of the Chief Fire Officer or any fire officer so authorised by him to give such written consent.

21. Right of member of Fire Service to enter upon lands

(1) Any member of the Fire Service who is on duty or any member of another State or other fire authority or of a fire fighting unit who is acting within the State in pursuance of any arrangement entered into under section 17 or section 18 of this Law may, without the consent of the owner or occupier—

(*a*) enter and if necessary break into any building, place or property in which a fire has or is reasonably believed to have broken out;

(*b*) enter and if necessary break into any building, place or property which he believes it is necessary to enter for the purpose of rescuing or protecting the building, place or property from fire or from acts done for rescue and fire fighting purposes or for the purpose of extinguishing a fire therein or on property adjacent thereto;

(*c*) having entered such building or place, to do such acts therein as he may deem necessary for rescue operations or for extinguishing any such fire or for protecting such building, place or property adjacent thereto or any property therein from fire or from acts done for rescue or fighting purposes;

(*d*) having entered such building or place or property to do such acts therein as he may deem necessary for the protection, rescue or assistance of persons or animals;

(*e*) having entered such a building or place or property remove any chemicals, containers, petroleum products, explosives or any property, furniture or items which in his opinion are capable of causing fire or are dangerous to the tenants, or occupiers of such building, place or property or property adjacent thereto;

(*f*) pull down any building or other structure, or destroy or remove any property as he may deem necessary to extinguish or limit the spread of any fire, or carry out rescue of persons or animals;

(*g*) with the written consent of the Chief Fire Officer, after a seven days' demolition notice has been served on the owner or occupier, pull down any building or structure or destroy or remove any property which in the estimation of the Chief Fire Officer does not conform with fire safety requirements, classifications or regulations made under section 14 (*d*), (*e*) and (*f*);

(*h*) stop the storage, sale or transportation of any commodity or material which, in his opinion, is believed to constitute a fire hazard;

(*i*) stop the construction of any structure or building which by the Fire Service standards stands a risk of collapse or constitutes a fire hazard or any undue risk to persons or animals;

(*j*) take water from any source whatever without payment or other compensation therefor for the purposes of extinguishing a fire or of limiting the spread thereof.

(2) Any injury to persons or damage to property caused by any member of the Fire Service while acting in the execution of his duties under this Law in extinguishing fire or in aiding or assisting persons or animals in a fire situation shall be deemed to be injuries or damages caused by fire.

22. Limitation of suits against Fire Service

(1) Notwithstanding the provisions of the Public Officers Protection Law, when any suit is commenced against the Fire Service for any act done in pursuance of this Law or against any member for any act done in the execution of his duty, or for any alleged neglect or default in the execution of any such duty, such suit shall not lie or be instituted unless it is commenced within two months next after the act, neglect or default complained of or in the case of a continuing damage or injury, within two months after the ceasing thereof.

(2) No member of the Fire Service shall be sued in his personal capacity in any civil proceedings for any act done pursuant to this Law.

PART V

Miscellaneous Provisions

23. Establishment of Fire Service Reward Fund

There shall be established a fund to be called "the Fire Service Reward Fund" into which shall be paid all pay forfeited by members of the Fire Service for offences against discipline and all fines levied from assault on members of the Fire Service. Such fines shall be applied and administered by the Chief Fire Officer in accordance with regulations made under section 14 (1) (*c*).

24. No charges to be made save in certain cases

(1) No charges shall be made for any service rendered by the Fire Service in extinguishing fire or for carrying out any emergency rescue operations.

(2) Charges may be made for services rendered by the Fire Service other than those specified in subsection (1) and the scales of such charges shall be set out by the Commissioner.

(3) Any such prescribed charge may be sued for and recovered in a court of competent jurisdiction in the State and the person so sued shall pay the costs of such action.

25. Fire Service not to be used for civil disturbance

Save when expressly so authorised by the Commissioner or the Chief Fire Officer, the Fire Service shall not be employed for the purpose of the prevention, control or suppression of civil commotion, riot or other civil disturbance.

26. Hours of duty

(1) Every member of the Fire Service shall carry out all lawful orders and shall at all times punctually and efficiently perform all appointed duties and attend to all matters within the scope of his office.

(2) Whether or not a member of the Fire Service is off duty, his responsibility remains the same and he shall be bound to attend all calls to duty at all times when summoned to do so, by any legal means.

27. Clothing and equipment

Uniform and equipment of the members of the Fire Service shall be of such specifications and worn in such manner as laid down in the standing orders for the Fire Service.

28. Fire Service training facilities available to non-members

Any person who is not a member of the Fire Service may with the approval of the Chief Fire Officer and on such terms as to payment or otherwise a may be prescribed be admitted to all or part of such training in fire fighting and fire prevention as is established under this Law for the training of members of the Fire Service.

29. Award of honours (Fire Service) medals

(1) Subject to the provision of the National Honours Act and the Honours (Fire Service) Warrant 1974, the Chief Fire Officer shall submit recommendations through the Commissioner, to the State Executive Council for the award of the following medals—

(*a*) The Nigerian Fire Service Cross;

(*b*) The Meritorious Service Medal; and

(*c*) The Long Service Medal,

to deserving members of the Fire Service.

[Cap. N43.]

(2) On the recommendation of the Chief Fire Officer the Commissioner may establish other special decorations, awards, medals and colours for the Fire Service and shall make regulations and rules to govern their award and use.

PART VI

Offences

30. Contravention of this Law or of regulations

Any person who contravenes or fails to comply with any of the provisions of this Law or with any regulation or requirement made thereunder for which no other penalty is specifically provided shall be guilty of an offence and on conviction shall be liable to fine not exceeding ₦100.00 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

31. Resignation or abscondment before the completion of five years

Any member of the Fire Service who absconds or resigns before the completion of five years' unbroken service shall be required to refund his training cost and such training cost may be sued for and recovered in any court of competent jurisdiction in the State.

32. Personation of member of the Fires Service

Any person not being a member of the Fire Service who puts on or assumes either in whole or in part the dress, name, designation or description of any member of the Fire Service or in any way pretends to be or personates a member of the Fire Service or to possess authority from or on behalf of the Fire Service, for the purpose of obtaining admission into any building or other place or of doing any act which such person would not under law be entitled to do on his own authority shall be guilty of an offence and on conviction thereof shall be liable to a fine of two hundred naira or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

33. Obtaining admission into the Fire Service by fraud

Any person who knowingly uses or attempts to pass off any forged or false certificate, character, letter or other document for the purpose of obtaining admission into the Fire Service or who, on applying for admission shall make any false statement whether orally or in writing shall be guilty of an offence and on conviction thereof shall be liable to fine not exceeding two hundred naira or to a term of imprisonment not exceeding three months or to both such fine and imprisonment, and if he had been admitted into the Fire Service shall be liable to be dismissed therefrom.

34. Communication of confidential or secret information

(1) Any member of the Fire Service who at any time communicates or attempts to communicate any confidential or secret information obtained by him in the course of his duty as a member of the Fire Service to any unauthorised person shall be guilty of an offence and on conviction thereof shall be liable to a fine not exceeding two hundred naira or to a term of imprisonment not exceeding three months or to both such fine and imprisonment and shall further be liable to dismissal from the service.

(2) For purpose of this section an **"unauthorised person"** means any person other than a person to whom a member of the Fire Service is authorised by the Commissioner or the Chief Fire Officer to communicate such information.

35. Taking part in strike action, work-to-rule, group disturbance or mutiny

Any member of the Fire Service who engages, encourages or takes part in, or abets any strike action, work-to-rule or any group disturbance or mob action or any trade union activity or mutiny shall be guilty of an offence punishable by summary dismissal from the service.

36. Fire Service Certificate for petrol/kerosene stations

(1) All flammable gas, diesel, petrol and kerosene filling stations and depots shall be covered by a Fire Service Safety Certificate duly signed by the Chief Fire Officer and no flammable gas, diesel, petrol or kerosene filling station shall be constructed or operated without such certificate.

(2) A Fire Service safety certificate shall be renewable every year and all applications for renewal shall be made to the Chief Fire Officer within the first three months of every year.

(3) Any person who contravenes the provision of this section shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred naira or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

37. Obstruction of and assault on members of the Fire Service

Any person who—

(i) wilfully obstructs, interferes with, assaults or resists any member of the Fire Service in the execution of his duty under this Law or aids, invites, induces or abets any other person to obstruct, interfere with, assault or resist any such member of the Fire Service or any person aiding or assisting such member in the execution of his duty under this Law; or

(ii) wilfully obstructs or delays the passage of any fire engine or other mobile fire fighting equipment proceeding to a fire; or

(iii) detains or causes to be detained a fire engine or other mobile fire fighting equipment in any place other than a fire station as specified under section 20 (5) of this Law,

shall be guilty of an offence under this Law and liable on conviction to a fine not exceeding five hundred naira or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

38. Failure to yield right of way to fire engine

Any person who fails to yield right of any way to a fire engine or other mobile fire fighting equipment as required by this Law shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred naira or to imprisonment for a term not exceeding one month or to both such fine and imprisonment.

39. False alarm

Any person who wilfully gives or causes to be given a false alarm of a fire to the Fire Service maintained in pursuance of this Law or to any member of such Fire Service shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred naira or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

40. Interference with fire fighting equipment

(1) Any person who unlawfully interferes with, damages or removes any fire fighting equipment maintained by the Fire Service shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred naira or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

(2) For purposes of this section **"fire fighting equipment"** includes any fire engine, mobile fire fighting equipment, fire extinguishers, fire escape, fire alarm, fire hydrant, fire hydrant cover, or any post, pillar, plate, tablet or other mark used to indicate the position of the fire hydrant or other sources of water or any other equipment so prescribed.

41. Storage, sale and transportation of flammable liquid or gas

(1) Any person who stores, sells, buys or transports any flammable liquid or gas other than in the fuel tank of a vehicle or engine without a fire certificate and who contravenes or fails to comply with any regulation or requirement prescribed or made under this Law shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred naira or to imprisonment for a term not exceeding six months or to both such fine and imprisonment, and such flammable products shall be forfeited to the Fire Service.

(2) For the purpose of this section, **"fire certificate"** means any written permit signed by the Chief Fire Officer or by any Fire Officer so authorised by him in writing to sign and issue such a permit.

42. Contravention of building regulations made under this Law

(1) (*a*) Any person who is the owner of property, a building, structure or place and who contravenes or fails to comply with any regulation or requirement prescribed or made under this Law—

(i) prohibiting, controlling or limiting the use of the property, building, structure or place for any particular purpose or any particular time or by more than any specified number of persons at any particular time; or

(ii) requiring the installation or maintenance of any fire fighting equipment in or upon the property, structure, place or building; or

(iii) any person who is the owner of land on which a building is being erected, or who is the owner of a building which is being altered or repaired or who is employed by the owner of the land to erect a building or any structure thereon or by the owner of a building which is being altered or repaired or who is employed by the owner of the land to erect a building thereon or by the owner of a building to alter or repair the same, whether under contract or otherwise and who contravenes or fails to comply with any regulation or requirement prescribed or made under this Law prohibiting, controlling or limiting the use of certain specified materials in or about the erection, alteration or repair of the building,

shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred naira or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(2) (*a*) Upon conviction of the owner of any building under paragraph (*b*) of subsection (1) the court may in its absolute discretion order that the building be demolished or that the materials be removed therefrom at the expense of the owner without compensation.

(*b*) Any demolition or removal order made under paragraph (*a*) shall be executed by the convicted owner within the time decreed by the Court order.

(3) For purposes of this section—

"building" includes any building, structure or any multiple dwelling.

43. Power to prosecute

For offences under this Law, the Chief Fire Officer or any officer authorised by him may in his official capacity prosecute the offenders in the magistrate's court.

44. Interpretation

In this Law, unless the context otherwise requires—

"Commissioner" means the member of the State Executive Council charged with responsibility for matters relating to fire service and fire protection;

"Court" means the magistrate's court;

"fire authority" means the State or Local Authority or other body responsible under any law for the provision of fire fighting or fire protection service in the State;

"fire engine" means any vehicle used for the carriage of members of the Fire Service or fire protection service in the State;

"fire fighting equipment" includes fire extinguishers, fire escapes, emergency exits and other such means of fire fighting, fire prevention and escape as may be prescribed;

"fire fighting unit" means fire fighting personnel and mobile fire fighting equipment maintained as such by any person other than a fire authority for use in the fighting and prevention of fires on such person's property;

"fireman" means any uniformed male member of the Fire Service;

"firewoman" means any uniformed female member of the Fire Service;

"Fire Service" means the Cross River State Fire Service established under this Law;

"mobile fire fighting equipment" means any fire fighting equipment not being a fire engine so constructed as to be movable from place to place on a wheel or wheels;

"multiple dwelling" means a building or group of buildings constructed or adopted to be let in separate portions for purposes of residence to more than six separate tenants or occupiers under separate agreement whether verbal or written and includes hotels, guest houses, rest houses or other buildings used for similar purpose;

"owner" includes lessee, licensee and occupier;

"prescribed" means prescribed by this Law or by regulations;

"State" means the Cross River State.

45. Citation

This Law may be cited as the Fire Service Law.

CHAPTER F4

FIRE SERVICE LAW

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. Fire Service Disciplinary Procedure Regulations.

FIRE SERVICE DISCIPLINARY PROCEDURE REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Power to exercise disciplinary control vested in Chief Fire Officer.
2. Procedure for carrying out orders.
3.
4. Breach of discipline.
5. Certain officers to hold inquiry into charges.
6. Disciplinary charges.
7. Procedure.
8. Record of proceedings.
9. Punishment.
10. Effective date of dismissal.
11. Appeal and review.
12.
13. Review.
14. Power to suspend punishment.
15. Power to expunge certain punishment from service records.
16. Interdiction.
17. Absence from duty without leave.
18. Damage or loss of equipment.
19. Withdrawal from service.
20. Deduction from salary.
21. Deduction to be paid to revenue.
22. Fire Service Reward Fund.
23. Surrender of property.
24. Citation.

SCHEDULE

FIRE SERVICE DISCIPLINARY PROCEDURE REGULATIONS

[11*th June*, 1985]

[Commencement.]

In exercise of the powers conferred on me by section 14 (1) of the Fire Service Law, 1985 and of all other powers enabling me in that behalf, I …….. Commissioner for Local Government, on the recommendation of the Chief Fire Officer hereby make the following—

1. Power to exercise disciplinary control vested in Chief Fire Officer

The Chief Fire Officer shall exercise disciplinary control over the members of the Service and may, in response to the exigency of the Service, transfer or deploy any member of the service at any time.

2. Procedure for carrying out orders

(1) Any order made by an officer who is superior in rank shall be carried out by an officer in a lower rank without question and obeyed before any complaints are made by such junior member of the Fire Service.

(2) Any complaints from a junior member of the Fire Service, after complying with an order from a member of the Fire Service who is superior in rank shall be made in writing to—

(*a*) the Divisional Fire Commander through the sectional head, where the complaints is of the rank of station officer; or

(*b*) the Chief Fire Officer through the Divisional Fire Commander where the complaints is of the rank of Station Officer and above.

(3) The Chief Fire Officer or the Divisional Fire Commander as the case may be, shall adjudicate on the matter within 48 hours from the time the complaint is made.

3. (1) The Chief Fire Officer may recommend to the appropriate authority the promotion of any member of the service who—

(*a*) has the prescribed qualification; or

(*b*) has acquired the necessary experience; or

(*c*) has performed satisfactorily or outstandingly.

(2) Noting in these Regulations shall give any member of the service a claim to promotion as of right.

[Schedule.]

(3) The effective date of any promotion shall be specified by the authority having the power to carry out the promotion.

4. Breach of discipline

Any member of the Service who contravenes paragraph 17 of these Regulations or commits any of the disciplinary offences specified in the Schedule hereto shall be guilty of an offence and shall be liable to the appropriate punishment specified in paragraph 9 of these Regulations.

5. Certain officers to hold inquiry into charges

Subject to paragraph 9 (2) of these Regulations where a member of the Service is charged with any of the disciplinary offences specified in the Schedule hereto, an inquiry into the charge shall be conducted—

(*a*) in the case of a member of the Service below the rank of a Station Officer, by an officer not below the rank of Divisional Officer, as the Chief Fire Officer may appoint;

(*b*) in any other case by the Chief Fire Officer.

6. Disciplinary charges

(1) A charge shall be framed in accordance with any of the disciplinary offences prescribed in the Schedule, and shall describe the offence briefly identifying the accused with the offence charged.

(2) Where there are two or more distinct offences a separate charge shall be laid in respect of each offence and a separate finding shall be made on each charge.

(3) Where a member of the Service contravenes more than one offence in the cause of a single transaction, a separate charge shall be laid in respect of each offence and separate findings shall be made on each charge thereof, but only a single punishment shall be recommended or awarded in respect of all the offences.

(4) Two years or more member of service may be charged and tried together for the same or different disciplinary offences if committed in the cause of the same transaction.

(5) The charge may be amended at any time before the finding, but the accused shall be informed of the amended charge and he shall have a right to give evidence, call witnesses and cross-examine them in respect of the amended charge.

(6) A member of the Service charged with a disciplinary offence may be convicted of an attempt to commit that offence or for aiding and abetting the commission of that offence.

7. Procedure

(1) The charge shall be read and explained to the accused by the adjudicating officer and the accused shall be called upon to plead to the charge.

(2) Where the accused pleads guilty—

(*a*) the adjudicating officer shall record the facts in support of the charge and shall explain them to the accused;

(*b*) the accused shall then be called upon to make any statement he may wish to make in mitigation of the offence and the adjudicating officer shall record such statement if made or the fact that the accused had nothing to say;

(*c*) the adjudicating officer shall, where the facts in support of the charge establish the offence charged, record a conviction and recommend or award any punishment prescribed in paragraph 9 in respect of the offence.

(3) If the accused pleads not guilty or refuses to plead, the adjudicating officer shall record the accused's plea or his refusal to plead; thereafter the adjudicating officer shall call witnesses in support of the charge and the accused may cross-examine such witnesses, and may be re-examined on matters arising out of cross-examination and the evidence of the witnesses so called shall be recorded by the adjudicating officer.

(4) If after hearing the case in support of the charge the adjudicating officer is of the opinion that no case has been made out against the accused, he shall dismiss the charge; but if otherwise, he shall call on the accused for his defence and shall record such defence as may be put up by the accused.

(5) The accused may, when called upon for his defence, give evidence, call witnesses or remain silent. If the accused gives evidence he may be cross-examined but not as to character (unless it is in issue) or as to other offences for which he is not charged and he may make a statement to explain any matter arising out of his cross-examination. The witnesses of the accused may be cross-examined as to both the character and credibility of the accused and the accused or his legal representative may re-examine them.

(6) The adjudicating officer shall upon the evidence before him convict or acquit the accused. If the accused is convicted the adjudicating officer shall invite him to say anything he may wish to say in mitigation of the offence, and thereafter he shall recommend or award, as the case may be, any punishment under paragraph 9 which he considers adequate having regard to the circumstances of the case.

(7) The adjudicating officer may question any witness at any time during the course of the proceedings and any witness may be recalled from leave by the adjudicating officer.

(8) All evidence shall be taken in the presence of the accused and any evidence given in a language not understood by him shall be interpreted to him.

(9) All evidence shall be taken on oath.

(10) The adjudicating officer shall at all times satisfy himself that the accused has an opportunity to defend himself.

(11) Where the accused is convicted and a punishment has been recommended or awarded, as the case may be, the adjudicating officer shall notify the accused in writing to his appeal against conviction or punishment or both within seven days from the date of such notification.

(12) The adjudicating officer may adjourn a case from time to time as circumstance permit.

(13) When any member of the Service below the rank of Station Officer is convicted of a disciplinary offence under these Rules, the adjudicating officer shall only have power to recommend a punishment to the Chief Fire Officer who may substitute any punishment he may consider adequate having regard to the circumstance of the case.

(14) When any member of the Service of the rank of Station Officer or above is convicted of a disciplinary offence under these Rules, the Chief Fire Officer as the adjudicating officer shall have power to award any punishment; but where he awards a punishment of dismissal or termination of appointment or reduction in rank such punishment shall be referred to the Ministerial Management Committee for consideration. The Ministerial Management Committee may ratify the Chief Fire Officer's decision or award any punishment it deems fit.

8. Record of proceedings

An adjudicating officer shall make a record of the following—

(*a*) the charge;

(*b*) the plea of the accused;

(*c*) where the accused pleads guilty, facts in support of the charge, and evidence in support of the charge, the evidence of the accused and the witnesses called in his defence;

(*d*) where the accused pleads not guilty, the evidence of the witnesses called in support of the charge, the evidence of the accused and the witnesses called in his defence;

(*e*) the findings of the adjudicating officer;

(*f*) any statement made by the accused, if he is convicted, in mitigation of the offence;

(*g*) the punishment recommended or awarded.

9. Punishment

(1) A member of the Service who is convicted of a disciplinary offence may (according to the degree and nature of the offence) be punished for that offence by—

(*a*) dismissal;

(*b*) termination of appointment;

(*c*) being required to resign immediately or on a specified date as an alternative to dismissal;

(*d*) reduction in rank or grade;

(*e*) fines;

(*f*) reprimand;

(*g*) withholding or deferment of increment;

(*h*) suspension from duty without pay;

(*i*) interdiction;

(*j*) confinement to fire station, quarters, barracks or house during an emergency;

(*k*) extra duty, fatigue or drill;

(*l*) caution.

(2) A Fire Service officer from the rank of leading fireman up to and including the Chief Fire Officer may, without trial, punish a defaulter on the spot by awarding any of the following punishments—

(*a*) confinement to fire station, quarters, barracks or house during an emergency;

(*b*) extra duty, fatigue or drill;

(*c*) caution.

(3) Any punishment awarded against a defaulter other than those specified under sub-paragraph 2 of this rule shall be entered into the service record of the defaulter.

10. Effective date of dismissal

(1) If a member of the service is dismissed for a disciplinary offence such dismissal shall take effect from the date the dismissal was recommended.

(2) Any punishment other than dismissal shall take effect from the date such punishment is awarded, or where necessary, the date on which the dismissal was confirmed after recommended.

11. Appeal and review

Every conviction and punishment recommended or awarded by virtue of paragraph 4 of these Regulations shall be subject to appeal or review in such manner and so such extent as is prescribed in paragraphs 12 and 13 and upon any such appeal or review the conviction may be set aside or confirmed, or the punishment reduced or increased, as the case may be.

12. (1) An appeal against conviction for a disciplinary offence or any punishment awarded therefor or against both conviction and punishment shall lie to—

(*a*) the Chief Fire Officer, where the case of the defaulter was adjudicated upon by an officer other than the Chief Fire Officer;

(*b*) the civil service commission through the ministerial management committee where the case was adjudicated upon by the Chief Fire Officer.

(2) An appeal in writing shall be filed by the accused with the adjudicating officer within seven days of his conviction.

(3) Where an appeal is filed under sub-paragraph (2) of this paragraph the adjudicating officer shall forward to the appropriate authority a record of the proceedings together with a copy of the grounds of appeal.

(4) An appeal may be heard by the appellate authority with or without hearing the appellant or anyone on his behalf.

(5) The appellate authority may refer a case back to the adjudicating officer for rehearing or for further evidence to be taken.

(6) In an appeal against a dismissal, an appellate authority may substitute therefor an order that the appellant be discharged from the service.

(7) An appellate authority may exercise any of the powers specified in paragraph 11.

13. Review

An appellate authority may in order to ascertain the correctness, legality or propriety of the conviction and punishment in respect of a disciplinary charge, call for, examine and review the record of proceedings thereof.

14. Power to suspend punishment

(1) Subject to the provisions of these Regulations, any punishment other than dismissal, awarded under these regulations may be suspended for a period of six months by the Chief Fire Officer, where the case of the accused was adjudicated upon by any other officer, and by the civil service commission where the case of the accused was adjudicated upon by the Chief Fire Officer.

(2) At the expiration of the period of suspension of a punishment, the Chief Fire Officer or the civil service commission as the case may be, shall review the case, taking into consideration any available report on the accused within the period of suspension, and may set aside, uphold or reduce the punishment (in which case any entry relating to the offence which may have been made in the record of the accused shall be expunged or amended), or order that the punishment be executed.

(3) If during the period of suspension the accused is convicted of another disciplinary offence under these Regulations, the suspended punishment shall forthwith be carried out.

15. Power to expunge certain punishment from service records

An entry of reprimand or withholding of an increment for a period of one year in the service record of a member of the Service, may, by order of the Chief Fire Officer, be expunged by the recognition of a subsequent specific act of good service.

16. Interdiction

(1) The Chief Fire Officer, if he deems it necessary in the public interest, or in the interest of the Fire Service, that any member of the Service shall cease to exercise the powers and

function of his office, may interdict from duty such member of the Service, pending the determination of any criminal charge or any inquiry under these Regulations into the conduct of such member of the Service, but such member shall not by reason only of such interdiction cease to be a member of the Service.

(2) The powers vested in and the privileges and benefits enjoyed by an interdicted member of the Service as a member of the Service shall for the period of interdiction fall in abeyance but such member of the Service shall still be subject to the same authority and discipline as if he had not been interdicted.

(3) A member of the Service who has been interdicted shall be entitled to not less than half of his salary during the period in which he is interdicted.

(4) If the trial of a member of the Service does not result in dismissal, discharge from the Service, or termination of appointment or reduction in rank or grade or withholding or deferment of increment, he shall be entitled to the balance of the salary which he would have received had he not been interdicted.

(5) Unless otherwise stated, if the trial of a member of the Fire Service results in reduction in rank or grade, such a member shall drop to a corresponding or equivalent step in the salary grade to which he has been reduced and shall, on that step, assume his new position and seniority among other members in the new grade or rank.

(6) A member of the Fire Service whose trial results in the withholding or deferment of increment shall lose his seniority among members of his grade or rank and shall assume the last number and position within that grade or rank.

17. Absence from duty without leave

(1) Any member of the Service who absents himself from duty without leave for two or more days consecutively shall be guilty of an offence and shall be dealt with in accordance with these Regulations.

(2) The name of any member of the Service absenting himself from duty without leave shall be struck off the list of members of the Service and when such member applies for his name to be reinstated, his case shall be inquired into by the Chief Fire Officer or any other officer appointed in that behalf by the Chief Fire Officer.

(3) When such a member of the Service gives a satisfactory explanation of his absence without leave to the adjudicating authority his name shall be reinstated on the list of members of the Service.

(4) No pay shall accrue to any member of the Service for the period of his absence without leave except in the case where he has given a satisfactory explanation of such absence.

18. Damage or loss of equipment

(1) If any member of the Service sells, pawns, destroys or otherwise disposes of any accoutrements, clothing or other property issued to him, or loses or damages the same, he may in addition to any other punishment, be ordered to make good the loss or damage by deductions out of his salary in such a manner as the adjudicating authority may determine.

(2) If any member of the Service wilfully damages any vehicle, craft, or any other property issued for his use during his service, whether or not he was personally authorised to use such property, he may, where the amount of damage does not exceed ₦6 be ordered to make good such damage by deductions from his salary in such a manner as the adjudicating authority may determine.

(3) Nothing in sub-paragraphs (1) and (2) of this paragraph shall restrict the power to surcharge any member of the Service to whom these Regulations apply with the whole or part of the cost of any greater damage or loss occasioned by his act of neglect.

19. Withdrawal from service

(1) A firewoman of the Service who becomes pregnant before the expiration of two years from the date of her enlistment into the Service shall, by a written notice inform the Chief Fire Officer, be required to withdraw from the service for a period of twelve calendar months.

(2) On receipt of the notice served under sub-paragraph (1) of this paragraph the member of the Service shall, within one month of the receipt of such notice, formally withdraw in writing from the Service.

(3) After the expiration of one month's notice, it shall be deemed by the Chief Fire Officer that the member has withdrawn from the Service and her record shall be endorsed accordingly.

(4) No salary or other benefits shall be paid to a member during the period of her withdrawal from the Service under this paragraph.

(5) The period of withdrawal from service shall not count towards the number of years of service in the Service.

(6) At the expiration of the period of withdrawal the member of the service may apply in writing to the Chief Fire Officer for re-enlistment into the Service.

20. Deduction from salary

(1) Any fine imposed upon a member of the Service for a disciplinary offence under these Rules shall be deducted from salary due to the defaulter at the time of committing such offence and thereafter from any other salary due to him.

(2) The amount of deductions in respect of any fine shall be at the discretion of the adjudicating officer but shall in no case exceed one-third of the monthly salary of the defaulter and when there is more than one order for deduction in force against the same person such deductions shall not exceed two-thirds of the defaulter's monthly salary.

(3) Where more than one order for deduction is made in respect of the same person, the enforcement of orders later in date shall, where necessary, be postponed until the earlier orders have been fully complied with by the defaulter.

21. Deduction to be paid to revenue

All deductions form salary made under these Rules except in respect of fines shall be paid into revenue.

22. Fire Service Reward Fund

(1) Fines imposed under these Rules shall be paid into a fund to be known as the Fire Service Reward Fund.

(2) The Fire Service Reward Fund shall be disbursed from time to time as the occasion arises for rewarding any member in the Service for acts of bravery in the performance of his duties and for providing recreational requirements for the Service or for any other purpose as may be considered necessary by the Chief Fire Officer.

(3) No award from the fund to a member of the Service shall, at any time, exceed the sum of ₦20.

(4) Authority to disburse the Fund shall be vested in the Chief Fire Officer.

23. Surrender of property

Any member of the Service who absconds or is dismissed from the Service or whose appointment is terminated shall return to his divisional commander all Fire Service items of clothing, uniform, identity card, equipment and all other property entrusted to his care and on failure to do so shall be liable on conviction to imprisonment for a term of six months.

24. Citation

These Regulations may be cited as the Fire Service Disciplinary Procedure Regulations 1985.

SCHEDULE

[Paragraph 4.]

The Fire Service Disciplinary Offence

1. Disobedience, that is to say, disobedience or failure without sufficient cause to carry out any lawful order whether in writing or not.

2. Insubordination, that is to say—

(*a*) insubordination by word, act, or demeanour to an officer senior in rank to the defaulter;

(*b*) use of obscene, abusive or insulting language to or quarrelling with any member of the Service.

3. Abuse of authority that is to say—

(*a*) abuse of authority by questionable conduct; or

(*b*) by oppressive or tyrannical conduct towards an inferior in rank; or

(*c*) lacking civility to any member of the public; or

(*d*) improperly using position as a member of the Service for private advantage; or

(*e*) without authority or reasonable cause driving any Service vehicle.

4. Neglect of duty, that is to say—

(*a*) failure without sufficient cause to attend to or carry out duty promptly and diligently; or

(*b*) by carelessness or negligence, cause any loss, damage or injury to occur to any person or property; or

(*c*) leaving station or place of duty without permission or sufficient cause; or

(*d*) failure to make an entry which is the duty of a member of the Service to make in any book or document; or

(*e*) inattention or misbehaviour on parade; or

(*f*) neglecting assistance to any person taken ill or injured in a public place; or

(*g*) withholding or failure to report promptly any complaint or report against a member of the service; or

(*h*) malingering or feigning sickness without due cause, or concealing any infectious or contagious disease; or

(*i*) without reasonable cause failing to appear at or being late for any parade or other duty; or

(*j*) to sit, lie down, sleep or gossip when on duty; or

(*k*) drinking any intoxicating liquor, taking any intoxicating drug when on duty;

(*l*) smoking when on duty; or

(*m*) failing to work the allocated beat properly, or being irregular on beat or sentry.

5. Falsehood or prevention before or at any inquiry, that is to say—

(*a*) knowingly making any false or misleading statements whether in writing or not, in the course of his duty as a member of the Service; or

(*b*) without sufficient cause destroying or mutilating any official book or altering or erasing any entry therein; or

(*c*) committing any act involving dishonesty or other moral turpitude of a kind not otherwise specified therein.

6. Breach of confidence, that is to say—

(*a*) divulging any matter which it is the duty of a member of the Service to keep secret; or

(*b*) communicating to any unauthorised person matters connected with the Service without leave from a superior fire officer under whom he is serving.

7. Corrupt practice, that is to say—

(*a*) failure to account, or to make a prompt and true return of any money or property which comes to a member of the Service in the course of his duty; or

(*b*) accepting directly or indirectly any bribe or gratification.

8. Absence form duty without reasonable excuse or being late for any parade drill, hydrant inspection, topography, or other similar duties.

9. Damage to clothing or personal equipment, that is to say—

(*a*) damage to any article of clothing or personal equipment with which a member of the Service has been provided or entrusted, or failure to take proper care thereof; or

(*b*) failure to report any damage to or any article of clothing or personal equipment.

10. When on duty or likely to be called upon for duty to be unfit to perform the same due to intoxication.

11. (*a*) While on duty or while off duty in uniform in a public place without reasonable excuse to be dirty or untidy in his person, clothing or personal equipment;

(*b*) Forcing entry; or

(*c*) Lending or borrowing money from any member of the service; or

(*d*) Gambling in a fire station or place of duty, or permitting or failing to report gambling in a fire station or place of duty; or

(*e*) Failure to attend to any reasonable request pertaining to his work or professional training made to a member of the Service by any member of the public; or

(*f*) While in uniform using a taxi or public service vehicle on or off duty without paying the fare; or

(*g*) Acting in a manner likely to bring discredit on the reputation of the Service; or

(*h*) The commission of any other act that is likely to prejudice the good order or discipline of the Service;

(*i*) Making any frivolous, vexatious or anonymous complaint; or

(*j*) Incurring debt without any reasonable prospect or intention of paying the same or having incurred any debt making no reasonable effort to pay same; or

(*k*) Associating with a person or persons of bad character, or a person or persons charged with a criminal offence, without sufficient and proper reason, the proof of which shall lie upon the Service personnel concerned; or

(*l*) Entering any place licensed for the sale of alcohol other than the Service canteen, or any other Service or force mess, when in uniform or on duty, except when the presence of the officer charged is required in the execution of his duty;

(*m*) When under arrest or in confinement, leaving or escaping from arrest or confinement before being set at liberty by proper authority.

CHAPTER F5

FOREST LAW

ARRANGEMENT OF SECTIONS

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General Provisions

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Constitution of Forest Reserves and Declaration of Protected Forests

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CHAPTER F5

FOREST LAW

A Law for the preservation and control of forests in Cross River State.

(1*st April*, 1956)

[Commencement.]

PART 1

General Provisions

1. Power to exempt certain persons, tribe or area

The Commissioner may, by notice in the *Gazette*, and either for the period mentioned in the notice, or without any period assigned, withdraw from the operation of all or any of the provisions of this Law any class of persons, tribe or part of a tribe or any area specified therein.

2. Delegation of powers by Commissioner

(1) The Commissioner may, by notice in the *Gazette* and subject to such conditions, exceptions and qualifications as he may specify, depute any person, by name or office, to exercise or perform on his behalf, such of the powers and duties conferred upon him by this Law as he may specify and thereupon, or from the date specified in the notice, the person so deputed shall have and exercise such powers and perform such duties subject as aforesaid.

(2) The Commissioner may, in the like manner, revoke any such notice, and may exercise any powers or perform any duties conferred upon him by this Law, notwithstanding the delegation by him of such powers or duties.

3. Appointment of officers

The Civil Service Commission may appoint such officers as may be necessary for giving effect to the provisions of this Law.

4. Improvement of forest generally

Any forest officer, not below the rank of Assistant Conservator of Forests, may enter upon any land and, with any necessary workmen, may cut out and destroy any diseased, dead or dying tree or any tree likely to cause damage to any forest property or to life or property.

PART 2

Constitution of Forest Reserves and Declaration of Protected Forests

5. Commissioner may constitute forest reserves and declare protected forests

(1) The Commissioner may constitute, as forest reserves, any of the following lands—

(*a*) lands at the disposal of the Government;

(*b*) any lands in respect of which it appears to the Commissioner that the forest growth on such lands should be protected or reserved or forest growth be established.

(2) The Commissioner may, by notice in the *Gazette*, declare any such lands to be a protected forest.

6. Preliminary notification of intention to create a reserve and appointment of reserve settlement officer

(1) Before constituting any lands as a forest reserve, the Commissioner shall publish in the *Gazette* a notice—

(*a*) specifying, as nearly as may be, the situation and the limits of the lands;

(*b*) declaring that the lands now form a protected forest;

(*c*) declaring whether the lands are at the disposal of the Government or are lands coming within paragraph (*b*) of section 7;

(*d*) declaring that it is intended to constitute the lands a forest reserve, either for the general purposes of the Government or for the particular use and benefit wholly or in part of any class or persons or for the benefit of any community;

(*e*) appointing an officer, hereinafter referred to as a "reserve settlement officer", to inquire into and determine the existence, nature and extent of any rights, claimed by or alleged to exist in favour of any persons or communities or brought to the knowledge of the said officer, affecting the lands or any other rights in or over the lands which it is proposed to constitute a forest reserve.

(2) (*a*) If, for any reason, the reserve settlement officer appointed under this section is unable to perform his duties, the Commissioner may, by notice in the *Gazette*, appoint any person to act on his behalf or as his successor.

(*b*) The notice so appointing may have retrospective effect for a period not exceeding one month.

(3) The Commissioner may, by notice in the *Gazette*, revoke any notice under section 7 or 8.

7. Notice of inquiry

Upon publication of the notice aforesaid, the reserve settlement officer shall—

(*a*) immediately cause the particulars contained therein to be made known in the areas under the jurisdiction of the local government in which the lands are situated by causing the same to be read and interpreted in the local language in every customary court in the said areas under the jurisdiction of the local government, and also

as far as he considers essential, by informing in writing the chiefs of the communities dwelling on, and the local government having jurisdiction over, the lands aforesaid; and

(*b*) fix, and in the manner aforesaid, make known a period within which, and a place to or at which, any person or community claiming any right or rights in or over or affecting the lands which it is proposed to constitute a forest reserve shall either send in a written statement of claims to him or appear before him and state orally the nature and extent of his or its alleged rights.

8. Duty of reserve settlement officer at inquiry

(1) As soon as possible after expiration of the period fixed by the reserve settlement officer, he shall—

(*a*) inquire into and determine the limits of the lands specified in the notice aforesaid; and

(*b*) determine the nature and extent of any claims or alleged rights affecting the lands which have been preferred or brought to his notice.

(2) The reserve settlement officer shall keep a record in writing of—

(*a*) all such claims and alleged rights;

(*b*) all objections which may be made to such claims or alleged rights; and

(*c*) any evidence in support of or in opposition to any claim or alleged right.

9. Reserve settlement officer to have judicial powers

For the purposes of the inquiry, the reserve settlement officer shall have all the powers conferred by law upon a magistrate.

10. Reserve settlement officer may join or sever claims

The reserve settlement officer may, at any time during the inquiry, join any number of claims or sever any claims joined and, in his findings, may join any number of claims or sever any claims which were formerly joined.

11. Submission of reserve settlement officer's findings on completion of inquiry

Upon the completion of the inquiry, the reserve settlement officer shall submit to the Chief Conservator for the consideration of the Commissioner his findings, describing the limits of the lands specified in the notice under section 8 and setting forth, with all such particulars as may be necessary to define their nature, duration, incidence and extent, all claims and alleged rights preferred or brought to his knowledge in respect of the lands and admitting or rejecting the same wholly or in part.

12. Rights may be extinguished or modified by Commissioner

Where the reserve settlement officer has admitted wholly or in part any right or claim and, in the opinion of the Chief Conservator, the exercise of such right or claim or any part thereof—

(1) would stultify the objects of the proposed forest reserve;

(2) would seriously hinder the efficient working of the proposed forest reserve; or

(3) would do serious damage to the proposed forest reserve;

the Commissioner—

(*a*) may extinguish any such rights or claims and shall either give monetary compensation or grant in exchange similar rights on other similarly situated land either within or without the final boundaries of the forest reserve;

(*b*) may confine or restrict any such rights or claims to certain areas either within or without the final boundaries of the forest reserve or the exercise of such rights to certain times of the year;

(*c*) may make an enclave or so amend the boundaries of the proposed forest reserve so as to exclude, from the forest reserve, any areas over which such rights or claims have been admitted;

(*d*) may add such additional rights as he shall consider it just and equitable to allow, notwithstanding that the reserve settlement officer has not admitted such rights; or

(*e*) may adopt wholly, or in part, any one or any combination of the above methods of dealing with the matter:

Provided that, in altering the external boundaries of the proposed forest reserve, the Commissioner shall not include any area which lies outside the original limits set out in the notice published in accordance with the provisions of section 8.

13. Notification of lands to be reserved and rights admitted

(1) The Commissioner shall, thereupon, publish a notice in the *Gazette* specifying—

(*a*) the lands which it is finally intended to constitute a forest reserve;

(*b*) the rights which may be exercised within the proposed forest reserve; and

(*c*) any other special conditions affecting the proposed forest reserve.

(2) The notice shall be made known in the same manner as the notice published under section 8 and to every person who, and the representative of any community which, preferred any claim or in respect of which any claim was brought to the knowledge of the reserve settlement officer.

14. Appeals from notice specifying lands to be reserve and rights admitted

(1) Any person who has made a claim on his own behalf or, where a claim has been made on the behalf of a community, the representative of that community, may, within three months of the date of publication of the notice under section 15 appeal to the High Court in whose area of jurisdiction the proposed forest reserve is situated against that portion of the notice which affects his claim or the claim made on the behalf of the community which he represents.

(2) The Chief Judge of the High Court may make rules in respect of appeals and may in the rules prescribes fees to be paid in respect of appeals.

(3) The decision on appeal of the High Court shall be final.

15. Order of Commissioner constituting a forest reserve

(1) After the time limited under section 14 for appealing to the High Court has elapsed or, if there has been an appeal, after the determination of the appeal, the Commissioner may, after taking into consideration the decision on appeal of the High Court, make an order constituting as a forest reserve the lands in respect of which an inquiry has been held.

(2) The order shall set forth—

(*a*) the limits of the lands which constitute the forest reserve; and

(*b*) all rights affecting the same, as set forth in the notice published under section 13, or established by the court upon appeal against such notice.

(3) The order shall be published in the *Gazette* and made known in the same manner as the notice published under section 8.

(4) From the date of the publication of the order in the *Gazette* such lands shall be a forest reserve.

16. Revision or modification of orders constituting a forest reserve

(1) Any order made under section 15 may be revised or modified by the Commissioner and such revision or modification may be given retrospective effect.

(2) In any revision or modification made under this section the Commissioner may, after further inquiry if such be deemed necessary—

(*a*) exercise the powers conferred on him by section 13;

(*b*) add such additional rights as he shall consider it just and equitable to allow notwithstanding that such rights had not been admitted in the notice published under section 15;

(*c*) provide for any two or more contiguous forest reserves being joined to form one forest reserve.

17. Extinguishment and revival of rights

Every right in or over land in respect of which no claim shall have been made to the reserve settlement officer or of which no knowledge shall have been acquired by that officer shall be extinguished:

Provided that if any person shall, within one year of the date of the publication in the *Gazette* of the notice under section 8, claim, and satisfy the Commissioner that he was possessed of, a right in respect of which he might have made a claim and that, through ignorance of the fact that an inquiry was being held or for other sufficient reason, he failed to make such claim, the Commissioner may direct—

(1) that such right shall be revived;

(2) that such right shall be modified; or

(3) extinguished in accordance with the provisions of section 12.

18. No new rights to be acquired without approval in lands to be constituted a forest reserve

During the period between the dates of the publication under section 6 of the notice of the intention to create a forest reserve and of the order under section 15 constituting the forest reserve—

(1) no right shall be acquired in or over the lands comprised within such notice otherwise than by succession or under a grant or contract in writing entered into with the approval of the Commissioner; and

(2) no act or thing shall be done in contravention of section 42 except that any right admitted in the notice published under section 15 may be exercised, to the extent and in the manner described therein, by the communities or persons to whom it was admitted, without prejudice to any subsequent revision or modification as provided for in this Law.

19. Rights in forest reserves may not be alienated without approval

(1) Without the consent of the Commissioner first obtained, it shall be unlawful for any person or community to alienate, by sale, mortgage or transfer, any right admitted in an order made under section 17.

(2) Any sale, mortgage or transfer effected without consent shall be null and void.

20. Non-exercise of rights

Any right in a forest reserve admitted in an order made under section 17 and not exercised for a period of ten years shall be deemed to be extinguished.

21. Rights of way and watercourses may be closed

Provided that another right of way or watercourse is available, the Commissioner may, by notice in the *Gazette*, close any right of way or watercourse in a forest reserve.

22. Lands and rights may be granted absolutely to Government

Notwithstanding any customary law to the contrary, any person, and the chief or head of any community on behalf of the community, shall be entitled to enter into any agreement to grant and convey absolutely to the Government any lands, and any rights in and over any lands, owned by him or it, which it is proposed to constitute a forest reserve under the provisions of this Law.

23. Marking of boundaries

The Commissioner may require any person, with any necessary workmen, to enter upon any lands for the purpose of erecting any beacons or demarcating or cutting any boundary lines within and around any lands which it is proposed to constitute a forest reserve or a protected forest and around any portions of lands included as enclaves.

24. Power to de-reserve

The Commissioner may, by notice in the *Gazette*, direct that, from a date named therein, any lands or any part thereof, constituted a forest reserve under section 17, shall cease to be a forest reserve or part of that reserve and, thereupon, from that date such lands shall cease to be a forest reserve or part of such reserve:

Provided that the rights, if any, which may have been extinguished therein, shall not revive in consequence of the cessation.

PART 3

Administration of Forest Reserves and Protected Forests

25. Control of forest reserves and protected forests

The protection, control and management of forest reserves and protected forests shall be exercised and directed by the Commissioner.

26. Working plans

Where there is a working plan the Commissioner shall publish a notice in the *Gazette* setting out—

(*a*) the name and nature of the working plan;

(*b*) a general description of the area covered by the working plan;

(*c*) the place or places at which a copy of the plan may be inspected by any interested person.

27. Forest produce required for public purposes may be taken

The Commissioner may cause to be taken, from any forest reserve or protected forest, any forest, any forest produce, which may be required for public purposes upon payment of a fair and reasonable price therefor, which price shall not exceed the amount of such fees and royalties as may be specified in regulations made under this Law and are generally applicable in respect of the reserve or protected forest whence the forest produce was taken.

PART 4

Local Government Plantations and Forest Reserves

28. Control of local government forest plantations and forest reserves

At the request of a council, a forest plantation or forest reserve constituted under and in accordance with the provisions of the Local Government Law may, on notification to the effect being published by the Commissioner in the *Gazette*, be placed, temporarily, under the protection, control and management of the Commissioner.

[Cap. L17.]

PART 5

Licences

29. Grant of licences by Commissioner

(1) The Commissioner may grant licences, in such form and in such terms as he may decide, for the taking of forest produce in forest reserves.

(2) Except with the approval of the Commissioner, no licence shall be transferred.

PART 6

Disposal of Fees and Royalties

30. Disposal of fees and royalties

(1) All fees received under this Law shall be paid by the officer receiving them into the Treasury.

(2) Royalties received under this Law in respect of forest produce shall, when individual ownership of the lands from which the forest produce has been taken can be proved, be paid to the individual owner.

(3) In all other cases such royalties shall be deposited in the Treasury of a local government in the name of the local government or governments having jurisdiction in the area in trust for and on behalf of such village, community or group of persons as is specified by the Commissioner.

(4) A local government shall not withdraw any sum so deposited or pay any such sum to any village, community or group of persons other than in accordance with a direction from the Commissioner charged with responsibility for Local Government.

PART 7

Regulations

31. Power of Commissioner to make regulations and prescribe penalties for contravention thereof

(1) The Commissioner may make regulations for all or any of the purposes following and may specify the area or areas to which all or any of the regulations shall apply—

(*a*) providing for the management, protection and utilisation of forest reserves;

(*b*) providing for the protection of forest produce in forest reserves by—

(i) prescribing the time at which and the manner in which the rights set forth in the order constituting the reserve may be exercised;

(ii) prohibiting the taking or destruction of any specified kind of timber or minor forest produce in the exercise of such rights as aforesaid; and

(iii) prohibiting the exercise of all or any of such rights as aforesaid in any specified part of a forest reserve;

(*c*) regulating or prohibiting the destruction of, or any act which may tend to the destruction of or cause injury to, any forest produce or forest growth or forest property in any forest reserve on lands at the disposal of the Government;

(*d*) providing for the control of protected forests and the protection of forest produce in a protected forest *mutatis mutandis* as if such protected forest were a forest reserve;

(*e*) regulating the kindling of fires for any purpose within a protected forest or a forest reserve, and prescribing the persons who may declare the period during which fires may or may not be allowed for any purpose;

(*f*) prohibiting or regulating the taking of forest produce or of any specified kind of forest produce on lands at the disposal of the Government;

(*g*) prohibiting the possession, sale or purchase of forest produce, or of any specified kind of forest produce, by any person other than the holders of licences and permits granted under this Law or by any other persons or by any classes of persons to be specified in the regulations;

(*h*) regulating the grant, issue of and prescribing the form that any licence or permits may take in any particular case—

(i) to take forest produce in forest reserves or on lands at the disposal of the Government;

(ii) to sell or purchase forest produce; or

(iii) to erect or operate sawmills or other manufacturing plant using wood as a raw material;

(*i*) prescribing the procedure for fixing, and making known to the public, the fees to be paid on the application for, and the grant of, any licence or permit and the royalties and fees to be paid by the holders thereof;

(*j*) prescribing the persons who may declare any specified kind of tree to be a protected tree and any specified kind of minor forest produce to be protected minor forest produce under this Law, and the procedure thereof;

(*k*) providing for, and imposing conditions in respect of the collection, payment and disposal of fees, royalties, tolls and cost of survey and demarcation;

(*l*) providing for the cancellation, forfeiture, termination or revocation of licences and permits;

(*m*) providing for the remission or reduction by a forest officer of any royalty, fee or toll charged or payable under the provisions of this Law;

(*n*) requiring the holders of licences and permits to render returns and accounts and to submit their books for inspections;

(*o*) authorising the payment of grants and bonuses out of the public revenue for the encouragement of forestry;

(*p*) regulating the collection, preparation and taking of forest produce;

(*q*) regulating the marking of timber, the registration of marks and the manufacture, possession or use of marking instruments;

(*r*) regulating the transit by land and water of forest produce and by different means and classes of transport;

(*s*) providing for the examination, marking, reporting or stoppage of timber or other forest produce in transit;

(*t*) providing for the establishment, management or control of checking stations to which timber or other forest produce shall be taken for examination by those in charge of it; and the conditions under which such timber or other forest produce shall be brought to, stored at or removed from the checking stations;

(*u*) regulating the salving and disposal of drift timber;

(*v*) prohibiting any act which may cause the obstruction of any waterway or cause danger to navigation;

(*w*) providing for the survey, and demarcation, of any lands for giving effect to the purposes of this Law;

(*x*) providing for the establishment and maintenance of nurseries and for the afforestation of lands, the preservation and production of forest produce and the introduction of new species of trees or other forest produce;

(*y*) generally for giving effect to the purposes of this Law.

(2) The regulations may provide that any contravention thereof shall be punishable by a fine not exceeding two hundred naira or imprisonment not exceeding twelve months or by both such fine and imprisonment.

32. Power to exclude area from regulations

The Commissioner may, by notice in the *Gazette*, exclude any area form the operation of any regulations made under this Law.

PART 8

Offences and Legal Procedure

33. Prevention of offences

Any forest officer, administrative officer or police officer may prevent the commission of any offence under this Law.

34. Inspection of forest produce

A forest officer, administrative officer or police officer may stop any vehicle, vessel or raft engaged in transporting or moving any forest produce on any road or inland waterway for the purpose of inspecting the produce.

35. Seizure of forest produce

(1) Any administrative officer, forest officer, or police officer not below the rank of assistant superintendent of police, may himself, or by any person acting under his directions, seize any forest produce reasonably suspected of having been unlawfully obtained or being unlawfully removed and any instrument or thing reasonably suspected of having been used in the commission of any offence under this Law.

(2) No suit shall lie against the officer, or person acting under his direction, in respect of any deterioration in quality or value of any forest produce, instrument or thing seized in accordance with the provisions of subsection (1).

(3) Where the person suspected of having committed the offence in respect of which the forest produce has been sized has not been charged and the offence has not been compounded as provided in section 46, the officer, after obtaining an order of a magistrate, may—

(*a*) sell such forest produce and pay to the Treasury the proceeds thereof, after deducting the expenses of the sale; or

(*b*) allocate such forest produce to the use of the Government; or

(*c*) destroy such forest produce.

36. Arrest of suspected persons

Any forest officer, administrative officer or police officer may arrest, without a warrant, any person who may be reasonably suspected of having committed any offence under this Law, if such person refuses to give his name and address or gives a name or address which is believed to be false, or if there is reason to believe that he will abscond:

Provided that any person so arrested shall be taken before a court or to the nearest police station without unnecessary delay.

37. Onus of proof

The onus of proof that any forest produce has not been taken in contravention of this Law shall lie upon the person in whose possession the forest produce is found.

38. Admission in evidence of maps of forest officer

Notwithstanding anything contained in the Survey Law, all maps, plans or diagrams made by a forest officer and approved by the Chief Conservator shall be admissible in evidence in any proceedings under this Law in a court or before a reserve settlement officer.

[Cap. S18.]

39. Offences in respect of property and boundary marks

Any person who—

(*a*) forges or fraudulently uses, or aids or abets any person to forge or fraudulently use, any registered hammer or hammer mark or any mark used for denoting the ownership of any forest produce, or any other mark used by the Forest Division in connection with the administration of the provisions of this Law or any mark similarly used by a local government; or

(*b*) alters, removes, destroys or defaces any such mark placed on forest produce or any boundary mark of a forest or of any lands proposed to be included in a forest,

shall be liable to a fine of two hundred naira or imprisonment for two years or to both such fine and imprisonment.

40. Offences in forest reserve

Whoever, in forest reserve, except with the authority in writing of a forest officer not below the rank of Assistant Conservator—

(*a*) takes any forest produce;

(*b*) uproots, burns, strips off the bark or leaves from, or otherwise damages, any tree;

(*c*) sets fire to any grass or herbage, or kindles a fire without taking due precaution to prevent its spreading;

(*d*) smokes or lights a fire in any part of a forest reserve within which, or at a time when, smoking or the lighting of fires is prohibited;

(*e*) pastures cattle or permits cattle to trespass;

(*f*) digs, cuts, turns or cultivates the soil or makes a farm or plantations;

(*g*) trespasses in any part of forest reserve;

(*h*) constructs any dam or weir across any river or stream or otherwise obstructs the channel of any river or stream;

(*i*) resides or erects any building;

(*j*) hunts of fishes;

(*k*) damages, in any way, or destroys any forest property,

shall be liable on summary conviction to a fine of two hundred naira or to imprisonment for twelve months or to both such fine and imprisonment and, in addition thereto, may be required by the court to pay a sum equivalent to the fees and royalties payable on any forest produce removed or damaged and also such amount, if any, as the court may consider as just compensation for any damage done.

41. Saving in respect of section 40

Nothing in the preceding section shall prohibit the exercise by any person or community of any right in a forest reserve if such right has been recognised in the order constituting such forest reserve except such right be restricted in accordance with other provisions of this Law.

42. Offences in protected forest

Whoever in a protected forest, except as provided in section 20 (2) or except with the authority in writing of a forest officer not below the rank of Assistant Conservator, does any act or thing prohibited in a forest reserve by section 40, shall be liable on summary conviction to a fine of one hundred naira or to imprisonment for six months or to both such fine and imprisonment and addition thereto may be required by the court to pay a sum equivalent to the fees and royalties payable on any forest produce removed or damaged and also such amount, if any, as the court may consider just as compensation for any damage done.

43. Additional penalties

In addition to any penalty imposed for an offence against the provisions of this Law or regulations made hereunder, the court may order—

(*a*) the forfeiture and disposal, as the court may direct, of any forest produce in respect of which the offence was committed, or any instrument or thing with which the which the offence was committed;

(*b*) the destruction of any farm or plantation made in contravention of section 40 in a forest of which the offence was committed, or any instrument or thing with which the offence was committed, or any instrument or thing with which the offence was committed;

(*c*) the cancellation of any licence or permit held under this Law;

(*d*) that, where no licence or permit has been taken out and the offender should have taken out a licence or permit, a sum equal to the amount of the fees and royalties that should have been paid in respect of the licence or permit be paid to the authority or person who would otherwise have been entitled to such fee or royalty; or

(*e*) that a portion, not exceeding one half, of any fine that may be recovered from a person convicted by the court be paid to any person or persons on whose information the offence was detected and proved.

44. Forest officer may compound offences

(1) Where a person is reasonably suspected of having committed an offence against this Law, other than an offence under section 40, a forest officer, not below the rank of Assistant Conservator may, instead of taking proceedings against that person a sum of money by way of compensation for the offence that he is suspected of having committed.

(2) On such payment being made—

(*a*) the suspected person, if in custody, shall be released and no further proceedings shall be taken against that person in respect of that offence; and

(*b*) any produce seized as being liable to forfeiture shall be restored and any proceedings pending in court in respect of the same person on the same facts shall be withdrawn.

(3) The officer compounding the offence may then give one of the following directions—

(*a*) that the full amount of such compensation shall be paid into the Treasury;

(*b*) that a portion, not exceeding half the full amount of such compensation, be paid as a reward to the informer, and the balance paid into the Treasury.

45. Presumptions as to ownership of forest produce

When in any proceedings taken under this Law, or in consequence of anything done under this Law, a question arises as to the ownership of any forest produce, such forest produce shall be presumed to be the property of the Government unless the contrary is proved.

46. Defence in proceedings

It shall be a sufficient defence to any proceedings, civil or criminal, against any forest officer, or other person acting under the directions of the Commissioner to show that the officer, or that other person, was, in good faith, purporting to carry out the provisions of this Law.

47. Legal proceedings

In any proceedings for an offence against any provision of this Law, the State may be represented by any forest officer not below the rank of Assistant Conservator or by any forest officer authorised generally or specifically in relation to any particular proceedings or class of proceedings by writing under the hand of a forest officer not below the rank of Assistant Conservator.

PART 9

Repeal and Saving

48. Saving as to existing forest reserves

All forest reserves existing at the time of the coming into force of this Law shall be deemed to have been constituted under and in accordance with the provisions of this Law.

49. Effect of certain things done under Forestry Ordinance

(*a*) Any appointment, notice or notification, made or published; or

(*b*) any inquiry or the decision or judgment of any person holding such inquiry, held or given, whether at the inquiry or on appeal,

under the provisions of the Forestry Ordinance shall be deemed to have been made or published, given or held under the provisions of this Law.

PART 10

Preliminary

50. Interpretation

In the Law—

"Assistant Conservator" means an Assistant Conservator of Forests in the Forestry Division;

"cattle" includes sheep, goats, swine, horses, mules, donkeys and camels;

"Chief Conservator" means the Chief Conservator of Forests in the Forestry Division;

"command lands" means lands in Cross River State at the disposal of a community or of any chief on behalf of the community;

"Commissioner" means the Commissioner for the time being charged with responsibility for Agriculture;

"community" means any group of persons occupying any lands in accordance with the provisions of the Local Government Law;

[Cap. L16.]

"enclave" means an area completely surrounded by a forest reserve and not forming part of the forest reserve;

"forest" includes of forest reserves, protected forests or, where placed, in accordance with section 30, under the protection, control and management of the Commissioner, forest plantations or forest reserves established under the Local Government Law;

[Cap. L16.]

"forest growth" includes anything growing in a forest or any tree protected under this Law;

"forest officer" means any officer of the Forestry Division or any officer appointed, under section 5, for the purpose of giving effect to the provisions of this Law;

"Forest Division" means the Forest Division of the Ministry of Agriculture;

"forest produce" includes—

(*a*) whether found in or brought from a forest or not, timber, firewood, charcoal, rubber, gutta percha, latex, wood oil, gun, resin, natural varnish, tanning extracts, tanning barks, fruits, fibres, bark and lac, and

(*b*) when found in or brought from a forest,—

(i) trees and all other parts or produce of trees not otherwise herein mentioned;

(ii) plants, including climbers and grasses, creepers and all parts or produce of plants;

(iii) wood ashes;

(iv) peat, surface soil and minerals other than minerals within the meaning of any Act or Law, regulating the working of minerals;

(v) gravel, limestone, rock and laterite;

(vi) honey, beeswax, guano, silk-cocoons, humus, and all produce from animals;

"forest property" includes any stock, stores or materials owned by the Government or a council and used or intended to be used in any forest operations or any forestry work, and also boundary marks and pillars, boundary or survey beacons or signs, name plates, machinery, scientific instruments, implements, tools, buildings, tents, fences, vehicles, roads, bridges and cattle;

"forest reserve" means an area constituted or deemed to have been forest reserve under this Law which shall not have ceased to be forest reserve under any enactment;

"the *Gazette*" means the Cross River State *Gazette*;

"girth" means the circumference of a tree measured either at a height of four feet six inches from the ground, or (if the tree is buttressed above that height) measured at one foot above where the highest buttress merges with the bole;

"the Government" means the Government of Cross River State;

"lands at the disposal of the Government" includes any lands which the State has acquired or may acquire by agreement or otherwise and also lands leased to the Government;

"minor forest produce" means any forest produce other than timber;

"protected forest" means any area declared by notice in the *Gazette*, in accordance with the provisions of section 7 or 8, to be a protected forest;

"timber" includes all trees, whether standing, fallen, or felled, stumps of trees and all wood, whether or not cut up or fashioned or hollowed out for any purpose;

"to take minor forest produce" includes to cut, collect, gather or remove that produce;

"to take timber" includes to fell, lop or girdle trees, or to carry away any timber from the lands upon which the trees have fallen or been felled, whether the trees have been felled by cutting or by removing the soil from the roots or by any other method or combination of methods;

"Treasury" means, unless the context otherwise requires, the Government Treasury or a Sub-Treasury thereof in the State;

"tree" includes palm;

"working plan" means, in relation to any forest, any plan of operations or work so decided upon and described as such and approved by the Commissioner.

51. Short title

This Law may be cited as the Forest Law.

CHAPTER F5

FOREST LAW

SUBSIDIARY LEGISLATION

List of subsidiary legislation

1. Forest Regulations.
2. Smoking or the Lighting of Fires Prohibition Order.
3. Forest Law (Prescription of Fees) Regulations.

FOREST REGULATIONS

[made under section 33.]

ARRANGEMENT OF REGULATIONS

REGULATION

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4. Power of the Commissioner.
5. Holder of right may lease such right.
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7. Fires and smoking.
8. Offences of selling, etc., forest produce illegally obtained.
9. Licences under section 31 of the Law.
10. Fee and Stamp duty.
11. Terms of licence.
12. A licence to take out permits.
13. Tenders.
14. Termination of licence.
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16. Issue of permit where licence has been granted.
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REGULATION

18. Period of permit and value, etc.
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21. Destruction, etc., of permit.
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23. Deposit may be required.
24. Timber remaining after expiry of permit.
25. Cancellation of permit.
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27. Return of permits upon expiry, etc.
28. Fees and royalties.
29. Fees and royalties payable in advance.
30. Free permits to fell.
31. Firewood.
32. Marking hammers and instruments to be registered offences.
33. Marks not to be altered or effaced.
34. List of marked trees may be annexed to permit.
35. Registration of marking hammers, etc.
36. Timber not to be moved until marked.
37. Waterways.
38. Demarcation of forest reserve.
39. Penalty.

REGULATIONS

1. Citation and application

(1) These regulations may be cited as the Forest Regulations.

(2) These regulations shall apply to all forest reserves, protected forests and to all lands at the disposal of Government and to communal lands other than—

(*a*) any area for which a notice of withdrawal has been published under section 3 of the Law;

(*b*) any area excluded from the operation of these regulations by a notice given under section 34 of the Law; and

(*c*) any local government plantation or forest reserve placed under the guidance and direction of the Commissioner under section 30 of the Law.

2. Definitions

In these regulations—

"the Law" means the Forest Law;

"licence" includes any agreement contracted or authority to exploit a specified area for a specified period of time;

"permit" means an authority to exploit specified forest produce subject to the provisions of regulation 18, or to commit specified acts in a forest reserve.

3. Power of Chief Conservator with respect to rights in forest reserves

(1) The Chief Conservator may by notice in the *Gazette* order that free permits shall be given for the exercise of any rights set forth in an order constituting a forest reserve.

(2) Such permit shall be obtainable from an Assistant Conservator and shall state the right, specify the kind of forest produce and define the area and the period of time within which such right may be exercised.

(3) Any timber or forest produce taken under such a permit shall be for the domestic use of the holder of such permit only and such permit shall not authorise the holder thereof to take or destroy any protected tree or authorise him to employ any person to assist him in taking or to take on his behalf any timber or forest produce.

(4) Any person who, being a holder of such a permit in the exercise of the rights under such a permit—

(*a*) destroys any protected tree; or

(*b*) employs another to assist him in taking or takes on his behalf any timber or forest produce; or

(*c*) sells, exposes for sale or barter any timber taken by him,

shall be guilty of an offence.

4. Power of the Commissioner

The Commissioner may by order prohibit the exercise of all or any rights set forth in an order constituting a forest reserve for a specified period where it appears to him that such an order would be in accordance with the provisions of a working plan:

Provided that the area to which such an order relates shall not exceed one-quarter of the forest reserve to which it refers.

5. Holder of right may lease such right

(1) The holder of a right in a forest reserve may lease such right with the approval of the Chief Conservator who may impose such conditions as he shall think fit.

(2) This regulation shall not apply to the holder of a free permit issued under regulation 3.

6. Protection of forest reserve and forest produce

Subject to the provisions of the Law, these regulations, and the provisions of any licence or permit issued thereunder, any person who on any lands to which these regulations apply—

(*a*) takes any timber or protected tree or any protected minor forest produce; or

(*b*) uproots, destroys or injures any protected tree or protected minor forest produce or any tree or plant from which any protected minor forest produce is obtainable,

shall be guilty of an offence.

7. Fires and smoking

(1) An Assistant Conservator with the approval of the Chief Conservator may by notice prescribe the times at which smoking or the lighting of fires shall be prohibited in any forest reserve or protected forest and the times at which the setting of fire to forest growth shall be allowed in any forest reserve or protected forest.

(2) Any such notice shall be published in the *Gazette* and shall be posted at the customary courts in the area and on the boundaries of the forest reserve or protected forest to which it relates.

(3) Any person contravening the provisions of any such notice shall be guilty of an offence.

8. Offences of selling, etc., forest produce illegally obtained

Any person who is in possession of or who sells, purchases, or exports any timber or minor forest produce which has been taken in contravention of any provision of the Law shall be guilty of an offence.

9. Licences under section 31 of the Law

Applications for the grant of any licence under the provisions of section 31 of the Law shall be made to the Chief Conservator.

10. Fee and Stamp duty

A licence granted under section 31 of the Law shall be registered and the licensee shall pay the fee for such registration and the appropriate stamp duty thereon.

11. Terms of licence

(1) Subject to the provisions of any order made under regulation 4, the grant of a licence under section 31 of the Law shall not affect the right of any person to any free grant of forest produce, to which he was entitled previous to the grant of the licence and which may be required for *bona fide* domestic purposes, including the construction of agricultural implements, fences, vessels, holdings, bridges or other works but not for sale or barter.

(2) Any licence granted under section 31 of the Law shall be subject to the following terms—

(*a*) an Assistant Conservator may order that any timber may be taken from the area to which such licence relates where it is required on behalf of Government or a local government if the licensee is unable to supply the requirements upon reasonable commercial terms;

(*b*) an Assistant Conservator may order that any tree shall be cut down and removed in the area to which such licence relates in the course of the construction or maintenance of any road, telegraph or other public work;

(*c*) an Assistant Conservator may issue permits for the construction of canoes within the area to which such licence relates subject to any agreement with the licensee.

12. A licence to take out permits

A licensee under section 31 of the Law shall be required to take out in advance permits in the Form 1 in the Schedule to cover the removal of specified forest produce.

[Schedule.]

13. Tenders

(1) With the approval of the Commissioner, the Chief Conservator may invite tenders for or may advertise for sale by public auction a licence to exploit a specified kind of forest produce in a specified area on such terms as he shall think fit.

(2) Tenders or bids may include the fees and royalties payable or such fees and royalties may be payable in addition.

(3) The Chief Conservator shall not be bound to accept the highest or any tender or bid.

14. Termination of licence

Any licence granted under section 31 of the Law may be terminated—

(*a*) by the Commissioner—

(i) if the licensee, his agents, servants or workmen fail to comply with any of the conditions of such licence; or

(ii) if the licensee becomes insolvent or his business is wound up or goes into liquidation;

(*b*) by the licensee,

by giving the Commissioner six months' notice in writing of his intention to do so.

15. Issue of permit

Any permit issued by an Assistant Conservator under the provisions of sections 42 and 44 of the Law shall be in Form 1, 2, 3, 4, 5, 6 or 7 in the Schedule and shall be issued subject to the conditions printed thereon and such other conditions as shall be stated at the time of issue.

[Schedule.]

16. Issue of permit where licence has been granted

Where a permit is issued for an area in respect of which a licence has been granted under section 31 of the Law it shall be read subject to the terms of such licence and it shall not authorise the taking of any tree specified in such licence without the permission of the licensee, and the terms of such licence shall not be affected by the issue of a permit in any way.

17. Fees and royalties payable in respect of a permit

The fees and royalties payable in respect of the permit and the girths assigned to the trees specified in the permit shall be at the rates in force at the time of the issue of the permit as prescribed in the tariff authorised under the provisions of these regulations:

Provided that an Assistant Conservator with the approval of the Chief Conservator may—

(*a*) remit the fees and royalties in the case of timber to be taken for samples;

(*b*) reduce the fees and royalties on any dead, fallen, hollow or misshapen tree;

(*c*) reduce the fees and royalties on any tree removed in the course of silvicultural operations; and

(*d*) reduce the minimum girth for trees to be taken under the permit below that prescribed in the tariff, prepared under regulation 28.

18. Period of permit and value, etc.

(1) A permit shall be valid for six months from the date of issue when it shall expire unless extended in accordance with this regulation.

(2) An Assistant Conservator may, acting in his discretion, extend a permit for further periods which shall not exceed six months in any one case or eighteen months in the aggregate. For each such extension a fee not exceeding ten per cent of the original value of the permit shall be recovered at the discretion of the Assistant Conservator.

(3) No permit shall be issued in respect of timber or minor forest produce to the value of over two hundred naira except when issued under regulation 12.

19. Permit to be produced

Any person to whom a permit has been issued, who shall fail to produce his permit for inspection whenever required to do so by a forest officer, an administrative officer or a police officer, shall be guilty of an offence.

20. Permit to take minor forest produce

A permit to take specified minor forest produce shall not, except with written permission of an Assistant Conservator, authorise the holder thereof to employ any person to assist him in taking or to take on his behalf any minor forest produce.

21. Destruction, etc., of permit

Any person who without the authorisation of an Assistant Conservator alters, defaces or destroys any valid permit, shall be guilty of an offence.

22. Holder of permit to pay compensation

The holder of any permit issued under these regulations shall pay compensation to the owners of any property which is damaged by him in the exercise of any rights conferred by such permit.

23. Deposit may be required

An Assistant Conservator may require any applicant for a permit or any person to whom a permit has been issued to deposit with the Accountant-General a sum not exceeding two hundred naira as security for the fulfilment of his obligations under any permit issued under these regulations and such deposit may be forfeited wholly or in part at the discretion of the Chief Conservator if in the opinion of that officer, he has failed to fulfil such obligations.

24. Timber remaining after expiry of permit

Any timber derived from a tree felled under a permit which, on the expiry of such permit, has not been removed from the place of felling may be disposed of by an Assistant Conservator in his discretion and the holder of the expired permit shall have no right thereto.

25. Cancellation of permit

Any permit issued under these regulations may be cancelled by an Assistant Conservator if the holder of such permit fails to comply with any of the conditions of such permit.

26. Transfer

Any person who transfers a permit to another person without the prior approval of an Assistant Conservator shall be guilty of an offence.

27. Return of permits upon expiry, etc.

Within fifteen days of the date of expiry or cancellation of any permit, the holder thereof shall cause it to be returned to the office from which it was issued.

28. Fees and royalties

(1) The Chief Conservator shall prepare a tariff (hereinafter called the tariff) prescribing the species of protected trees and the rates at which fees and royalties shall be payable in respect of protected trees (of different species) and firewood derived from them, and in respect of minor forest produce taken under a permit issued under these regulations and shall also

prescribe the minimum girths below which protected trees shall not be cut without his authorisation and the rates at which fees and royalties shall be payable in respect of volume of merchants wood.

(2) Any fees payable shall be paid into the Treasury.

(3) Any royalties payable shall be paid to individual owners or as directed by the Commissioner under the provisions of section 32 of the Law.

(4) Where fees and royalties are both payable (hereinafter called "the tariff rate"), the fees shall form eighty per cent of the tariff rate and the royalties twenty per cent thereof, except in the case of protected forests where the fees shall form fifty per cent of the tariff rate and the royalties fifty per cent thereof.

(5) Up-to-date copies of the tariff shall be kept at all forest offices and shall be open to inspection during ordinary office hours or may be had on application to any forest officer on payment of a fee of ten kobo.

29. Fees and royalties payable in advance

(1) All fees and royalties payable under provisions of any permit shall be paid before the issue of such permit.

(2) Until the appropriate fee and royalties have been paid in respect thereof no tree shall be girded or felled and no forest produce shall be taken under a licence granted under section 31 of the Law.

30. Free permits to fell

An Assistant Conservator may issue or cause to be issued free permits in the Form 1 in the Schedule to fell protected trees in forest reserves and protected forests—

(*a*) where the timber is required by the Forest Department for the construction or maintenance of any building, bridge, fence or road under its management and control or for the preparation of specimens of timber or for similar purposes;

(*b*) where the timber is required for any work of public utility in the construction or maintenance of which no contractor or other middleman is engaged with a view to profit, and if other species of suitable timber are not available in any other forest within a reasonable distance:

Provided that no such free permit shall be issued to any village, community, school committee or other public body to which an annual grant is made from the public revenue or to any school or other public institution maintained by Government or for the maintenance of which a contribution is made from public revenue;

(*c*) when the trees are required to be removed in accordance with a working plan.

[Schedule.]

31. Firewood

The holder of a fuel permit shall stack all firewood taken at such places and in such manner as an Assistant Conservator may direct.

32. Marking hammers and instruments to be registered offences

(1) Any person other than an officer or employee of the Government (or a local government who has been duly authorised in this behalf) who has in his possession or who uses any marking hammer or instrument for impressing marks upon timber except when it has been registered in accordance with these regulations shall be guilty of an offence.

(2) Any person, who uses a marking hammer or instrument for impressing marks upon timber which has been registered outside the area specified in the certificate for registration relating thereto, shall be guilty of an offence.

33. Marks not to be altered or effaced

Any person, who alters or effaces any mark impressed upon timber by a forest officer or any person authorised by a local government to mark timber without the authorisation both of an Assistant Conservator and the owner of the timber, shall be guilty of an offence.

34. List of marked trees may be annexed to permit

An Assistant Conservator may require any applicant for a permit in Form 1 of the Schedule to mark with his marking hammer and a consecutive number below the place where it is intended to cut every tree that he wishes to have included in the permit and to submit in duplicate a list of such trees showing the mark and numbers they bear, the species and girth of each tree, its location, the nearest village thereto and the name of the local government within the area of whose authority the tree stands and this list shall be endorsed by him and annexed to the permit.

35. Registration of marking hammers, etc.

(1) An Assistant Conservator may register any marking hammer or marking instrument presented to him for registration and shall issue a certificate of registration therefor upon the payment to him of a fee of ten kobo.

(2) Such certificate of registration shall state the area in respect of which the marking hammer or marking instrument may be used.

(3) Such registration shall be valid for one year from the date thereof.

(4) An Assistant Conservator may refuse to register any marking hammer or marking instrument which gives an impression which in his opinion is unsuitable.

36. Timber not to be moved until marked

Any person who shall move any piece of timber taken under a permit from the place where it was felled until every piece of timber to be moved and the stump of the tree from which it was derived have been marked with the Forest Division pass hammer (and, if an Assistant Conservator shall so direct, with the marking hammer or marking instrument of the owner in addition) shall be guilty of an offence.

37. Waterways

(1) Any person who shall permit any timber taken by him to obstruct or endanger the free navigation of any waterway shall be guilty of an offence.

(2) Any person, other than the owner or his agent authorised in that behalf, who sets adrift any timber formed into a raft or fastened to the bank of or anchored in any waterway shall be guilty of an offence.

38. Demarcation of forest reserve

A forest officer may with his agents, servants and workmen enter upon any land in respect of which a notice has been published under the provisions of section 8 of the Law and upon any land included in or adjoining a forest reserve and may make all inquiries and may do or cause to be done all things necessary for effecting the demarcation of the boundaries of such land.

39. Penalty

Any person convicted of an offence under these regulations shall be liable to a fine not exceeding two hundred naira or imprisonment not exceeding twelve months or to both such fine and imprisonment.

SCHEDULE

CROSS RIVER STATE

Forest Regulations

Book No. ..... Permit No. ..... Original .....

FORM 1

Permit to take Protected Trees

Name of permit holder .....

Address of permit holder .....

Royalties payable to .....

This permit is issued subject to the provisions of the Forest Law and of the regulations made thereunder for the time being in force in the area to which it relates. It is also subject to such

special conditions (if any) as may be hereinafter set out and will expire on the ..... day of ....., 20 .....

No. of Species of Trees	Minimum Girth	Class (in words)

₦ k

Fees .....

Royalties ..... _____

Total ..... ₦ _____

....., 20 .....

..... Issuing Officer

..... Title

..... Division

..... Province

See back of permit for special conditions (if any)

CROSS RIVER STATE

Forest Regulations

Book No. ..... Permit No. ..... Original .....

FORM 2

Fuel Permit

Name of permit holder .....

Address of permit holder .....

Locality in which valid .....

This permit is issued subject to the provisions of the Forest Law and of the regulations made thereunder for the time being in force in the area to which it relates. It is also subject to such special conditions (if any) as may be hereinafter set out and will expire on the ..... day ....., 20 .....

List of Permitted Species	Permit Fee

....

Division *Issuing Officer*

....

Date *Title*

See back of permit for special conditions (if any)

CROSS RIVER STATE

Forest Regulations

Book No. ..... Permit No..... Original .....

FORM 3

Permit to take Protected Trees

Name of permit holder .....

Address of permit holder .....

Locality in which valid .....

FORM 3—*continued*

Royalties payable to .....

This permit is issued subject to the provisions of the Forest Law and of the regulations made thereunder for the time being in force in the area to which it relates. It is also subject to such special conditions (if any) as may be hereinafter set out and will expire on the .....day ....., 20 .....

Amount	Species	Rate	₦	k
			₦	k

Fees .....

Royalties ..... _____

Total ..... ₦ k

....., 20 .....

.....

Issuing Officer

.....

Division

CROSS RIVER STATE

Forest Regulations

Book No. ..... Permit No. ..... Original .....

FORM 4

Permit to Farm within a Government Forest Reserve

..... Permit fee

PERMISSION IS GRANTED TO:

.....

of .....

to farm within the ..... Reserve

During the period ..... to the 31st December, 20 ..... subject to the conditions of the Forest Law and the regulations made thereunder as well as to the conditions specified below—

1. The permit is personal.
2. That only such areas are farmed as are set aside for that purpose by the Assistant Conservator.
3. That the species of trees indicated on the reverse may not be felled or injured when the land is cleared for farming.

FORM 4—*continued*

4. That a breach of any of these conditions will render the permit liable to forfeiture and the holder to the penalties prescribed in the Law.

……., 20 ....

Issuing Officer

.....

Division

See back of permit for special conditions (if any).

CROSS RIVER STATE

Forest Regulations

Book No. ..... Permit No. ..... Original .....

FORM 5

Permit to Reside within a Government Forest Reserve

..... Permit fee

PERMISSION IS GRANTED TO:

.....

of .....

to reside within the ..... Reserve

on the site named on the reserve hereof during the period ..... to the

31st December, 20 ..... inclusive, subject to the conditions of the Forest Law and the regulations made thereunder.

……., 20..... .....

Issuing Officer

.....

Division

See back of permit for special conditions (if any).

CROSS RIVER STATE

Forest Regulations

Book No. ..... Permit No. ..... Original .....

FORM 6

Permit to Hunt within a Government Forest Reserve

..... Permit fee

PERMISSION IS GRANTED TO:

.....

of .....

to hunt within the ..... Forest

Reserve during the period ..... to ..... inclusive, subject to the provisions of the Forest Law and the regulations for the time being in force thereunder.

This permit does not authorise the holder to hunt any protected animal unless the holder is authorised to hunt such animal by or under the Wild Animals Preservation Law (Chapter W1).

……., 20 ....

Issuing Officer

.....

Division

See back of permit for special conditions (if any).

CROSS RIVER STATE

Forest Regulations

Book No. ..... Permit No..... Original .....

FORM 7

Permit to Fish within a Government Forest Reserve

..... Permit fee

PERMISSION IS GRANTED TO:

.....

of .....

to fish within the .....

FORM 7—*continued*

Reserve during the period ..... to ..... inclusive, subject to the conditions of the Wild Animals Preservation Law (Chapter W1) and the Forest Law and the regulations made thereunder or to any other Law/Regulations controlling the taking of fish.

……., 20 ....

Issuing Officer

.....

Division

See back of permit for special conditions (if any).

SMOKING OR LIGHTING OF FIRES (PROHIBITION) ORDER

1. Citation

This order may be cited as the Smoking or the Lighting of Fires (Prohibition) Order.

2. Declaration

All smoking or the lighting of fires in the undermentioned Forest Reserves are hereby prohibited:

(i) Yache Forest Reserve.

(ii) Ikrigon Forest Reserve.

(iii) Achalla Forest Reserve.

FOREST LAW (PRESCRIPTION OF FEES) REGULATIONS

[Commencement: 1st September, 1979]

ARRANGEMENT OF REGULATIONS

REGULATION

1. Fees payable for licence or permit in respect of minor forest produce (Schedule 1).

2. Fees payable for licence in respect of plants and machinery usable for wood industries (Schedule 2).

3. Fees and royalty payable for licence or permit on stumpage basis.

4. Fees payable for poles from plantation wood (Schedule 4).

5. Fees payable for out-turn volume (Schedule 5).

6. Citation.

---

1. Fees payable for licence or permit in respect of minor forest produce (Schedule 1.)

The fee prescribed in column 2 of Schedule 1 to these regulations shall apply to a licence or permit mentioned in column 1 of the said Schedule 1.

2. Fees payable for licence in respect of plants and machinery usable for wood industries (Schedule 2.)

The fee prescribed for a licence in respect of the item in column 1 of Schedule 2 shall be as shown opposite that item in column 2 of that Schedule.

3. Fees and royalty payable for licence or permit on stumpage basis

The fees for a licence and royalty payable in respect of timber shall be prescribed by the Forestry Commission from time to time.

4. Fees payable for poles from plantation wood (Schedule 4.)

In respect of plantation wood the pole fee prescribed in column 3 of Schedule 4 shall be fixed by reference to the measurement of that wood as stipulated in column 1 of that Schedule: Provided that—

(*a*) a pole over 25 cm in diameter shall be at the rate of the out-turn volume per cubic metre;

(*b*) a pole of species other than that specified under this paragraph shall attract, as the case may be, the rate quoted for gmelina, cassia or eucalyptus;

(*c*) the rates quoted under this paragraph shall apply to standing poles only;

(*d*) a pole at the roadside shall attract an additional charge of—

(i) in the case of a pole having a diameter not exceeding 10.2 cm, ₦1.50; and

(ii) in the case of a pole having a diameter above 10.2 cm but not exceeding 25.4 cm, ₦3.50.

5. Fees payable for out-turn volume (Schedule 5.)

In respect of out-turn volume the fee prescribed in column 3 of Schedule 5 shall be fixed by reference to the measurement of that species as stipulated in column 1 of that Schedule.

6. Citation

These regulations may be cited as the Forest Law (Prescription of Fees) Regulations.

SCHEDULE 1

Regulation 1

Produce	Fee Payable
1. Permit to Reside Temporarily	₦10.00 per annum
2. Permit to Farm	₦12.50/hectare (or ₦5.00/acre) per annum
3. Permit to collect Gravel	₦200.00 per annum or ₦20.00 per week

SCHEDULE 1—*continued*

Produce	Fee Payable
4. Permit to collect Sand	₦150.00 per annum or ₦10.00 per week
5. Permit to collect Stone	₦200.00 per annum or ₦20.00 per week
6. Permit to collect Raffia Leaves	₦35.00 per annum
7. Permit to collect Fruits (Irvingia)	₦35.00 per annum
8. Permit to collect Chewing Sticks (*Garcinia mannii*)	₦4.00 per 1.8 metre length
9. Hammering Fee for *Garcinia* billets	₦1.00 per billet
10. Timber Hammering Fee	₦1.50 per plank
11. Permit to collect *ncistrophyllum* (Obong/*Calamus* (Cane))	₦15.00 per annum
12. Permit to collect Fruit Cotton	₦3.00 per annum
13. Permit to tap raffia wine	₦15.00 per annum
14. Permit to collect Oil Palm Fruit	₦15.00 per annum
15. Permit to reside temporarily within Srubbs Creek Forest Reserve	₦2.00 per annum
16. Poles (15.0cm–30cm diameter)	20k each
17. Yam Stakes (i.e. 0–7.5 cm diameter	3k each
18. Fence Posts (i.e. 7.5 cm–15.00 cm diameter)	5k each
19. Bamboo	20k each
20. Plantation Fuelwood (by purchaser)	₦5.00 per cord
21. Plantation Fuelwood (by Forestry Division)	₦15.00 per cord
22. Mangrove/*Sacoglottis* bark (edat)	₦10.00 per annum
23. Permit to collect Clay	₦150.00 per annum or ₦10.00 per week

SCHEDULE 2

Regulation 2

		Fee Payable	
		Registration	Yearly Renewal
1.	Bench, resaw Sawmill	₦100.00	₦50.00
2.	Sawmill (Primary Breakdown)	₦250.00	₦100.00
3.	Ply/Veneer Mill	₦250.00	₦100.00
4.	Pulp and Paper Mill	₦250.00	₦100.00
5.	Fibre board Mill	₦250.00	₦100.00
6.	Particle board factory and wooden tool Handle Mill	₦250.00	
7.	Timber preservation and seasoning plant	₦100.00	₦25.00

SCHEDULE 2—*continued*

		Fee Payable	
		Registration	Yearly Renewal
8.	Furniture Manufacturing Industry	₦25.00	₦10.00
9.	Other Industries using timber as raw material (Cottage Industry)	₦10.00	₦5.00
10.	Timber making Hammer Licence	₦50.00	₦25.00
11.	Powered Chain Saw	₦50.00	₦25.00
12.	Tree Inspection Fee by Uniformed field Staff	₦5.00	Not applicable

SCHEDULE 4

Regulation 4

No.	Basal Diameter	Opepe and Teak	Rate of fee payable Gmelina, Cassia, Eucalytus
1.	0–5cm	33k	15k
2.	5–7.6cm	40k	20k
3.	7.6–10.2cm	65k	40k
4.	10.2–12.7cm	₦1.90	80k
5.	12.7–15.2cm	₦2.30	₦1.60
6.	15.2–17.8cm	₦3.00	₦2.00
7.	17.8–20.3cm	₦3.40	₦1.60
8.	20.3–22.9cm	₦5.60	₦2.00
9.	22.9–25.4cm	₦6.50	₦4.50

SCHEDULE 5

Regulation 5

	Species	Trade\Local Name	Rate per m^3 Under bark Selective Felling Area and concession area
			₦ k
1.	Afrormosia elata	–	10.00
2.	Afzelia spp.	Apa	8.88
3.	Antiaris africana	Afia Ofriyo	4.52
4.	Baphia spp.	–	4.44
5.	Pterocarpus spp.	Canwood	–
6.	Berlinia spp.	Ikpanya	5.52

SCHEDULE 5—*continued*

	Species	Trade\Local Name	Rate per m^3 Under bark Selective Felling Area and concession area
			₦ k
7.	Bombas buonopoznse	Ukim	3.32
8.	Brachysstegia spp.	Okwen	5.52
9.	Canarium schweinfurthii	–	3.32
10.	Ceiba pentandra	–	3.32
11.	Cletis spp.	–	5.52
12.	Chlorophora excelsa	–	10.00
13.	Daniellia ogea	Ogea	5.52
14.	Diospyros spp.	Ebony	4.44
15.	Entandrophragma cylindricum	Mahogany	–
16.	E. utile	–	10.00
17.	Entandrophragma spp.	–	–
18.	Gossweilerodendron balsamifrum	Agba	5.52
19.	Khaya spp.	–	10.00
20.	Gurea spp.	–	10.00
21.	Lophira alata	Ekki	4.44
22.	Lovoa trichiliotdes	Walnut	10.00
23.	Mansonia altissima	–	5.52
24.	Mimusops hecheli	Makure	7.76
25.	Mimusops d'jave	–	4.44
26.	Terminalia ivorensis	Idigbo	6.88
27.	Terminalia superba	–	5.52
28.	Nauclea diderrichii	Opepe	6.88
29.	Pterygota spp.	–	5.52
30.	Pycnanthus angolensis	Ilomba	4.44
31.	Ricinodendron heudelotii	Rimando	4.44
32.	Triplochiton scleroxylon	Obeche	10.00
33.	Piptadeniastrum africanum	Agboin	5.52
34.	Mitragyna ciliate	Abura	5.52
35.	Mitragyna stipulosa	–	5.52
36.	Distemonanthus spp.	–	3.32
37.	Nesogoronia spp.	–	3.32
38.	Manilkara spp.	–	3.32
39.	Albizzia spp.	–	3.32
40.	Guarea cedreta	–	3.32
41.	Turraeeanthus africanus	–	3.32
42.	Funtunia spp.	–	5.52
43.	Others	–	3.32

CHAPTER F6

FORESTRY COMMISSION LAW

ARRANGEMENT OF SECTIONS

PART I

Establishment of Forestry Commission

SECTION

1. Establishment of Forestry Commission.
2. Head office of the Commission.
3. Membership of the Commission.
4. Tenure of office and remuneration.
5. Vacation of office.

PART II

Functions and powers of the Commission

6. Functions of the Commission.
7. General powers.
8. Status and duties of Secretary.

PART III

Structure of the Commission

9. Establishment of Departments.

PART IV

Staff of the Commission

10. Permanent Secretary.
11. Recruitment of staff.

PART V

Pensions and Gratuity

12. Pensions and gratuity.

PART VI

Financial Provisions

13. Funds of the Commission.
14. Expenditure of the Commission.
15. Award of contract.
16. Power to borrow.
17. Annual estimates and expenditure.

PART VII

Establishment of Forestry Reserve Fund

SECTION

18. Annual report.

19. Bank account.

20. Establishment of Reserve Fund.

PART VIII

Miscellaneous

21. Directives by Governor-in-Council.

22. Regulations.

23. Interpretation.

24. Short title.

SCHEDULE

Supplementary Provisions to the Commission

CHAPTER F6

FORESTRY COMMISSION LAW

A Law to make provisions for the establishment of the Forestry Commission and for matters connected therewith.

(30*th November*, 1999)

[Commencement.]

PART I

Establishment of Forestry Commission

1. Establishment of Forestry Commission

(1) There is hereby established a body to be known as the Forestry Commission.

(2) The Commission shall be a body corporate with perpetual succession and a Common Seal and may sue and be sued in its corporate name.

2. Head office of the Commission

The Commission shall have its Head Office in Calabar, Cross River State and shall maintain two Zonal Offices and such other Charge Offices as may be necessary for the discharge of its functions.

3. Membership of the Commission

(1) The Commission shall consist of—

(*a*) a Chairman;

(*b*) two persons to represent NGOs;

(*c*) two persons from the private sector;

(*d*) five *ex officio* members as follows—

(i) the Attorney-General and Commissioner for Justice;

(ii) the Director of Forestry;

(iii) the Permanent Secretary of the Commission who shall be the Secretary of the Commission;

(iv) the Commissioner for Finance; and

(vi) a representative of Environmental Protection Agency.

(2) The Chairman and other members of the Commission shall—

(*a*) be appointed by the Governor of the State; and

(*b*) be persons with work experience or proven ability and interest in forestry and/or conservation/management of natural resources.

(3) All members of the Commission other than the Secretary shall be part-time members.

(4) The supplementary provisions set out in the Schedule to this Law shall have effect with respect to the proceedings of the Commission and the other matters contained therein.

4. Tenure of office and remuneration

(1) Subject to the provisions of section 3 of this Law, a member of the Commission, other than an *ex officio* member, shall hold office for a period of 3 years and may be re-appointed for a further period of 3 years.

(2) There shall be paid to every member of the Commission other than an *ex officio* member such allowances and expenses as may be determined by the State House of Assembly.

5. Vacation of office

(1) Notwithstanding the provisions of section 4 of this Law a person shall cease to hold office as a member of the Commission if—

(*a*) he dies;

(*b*) he becomes bankrupt;

(*c*) he is convicted of a felony or any offence involving dishonesty or fraud; or

(*d*) he becomes of unsound mind or incapable of carrying out his duties; or

(*e*) he is guilty of a serious misconduct in relation to his duties; or

(*f*) in the case of a professional person, if he is disqualified or suspended other than at his own request, from practising his profession in any part of the world by an order of a competent authority made in respect of that member; or

(*g*) he resigns his appointment by a letter addressed to the Governor.

(2) If a member of the Commission ceases to hold office for any reason whatsoever, before the expiration of the term for which he is appointed, any person representing the same interest as that member shall be appointed to the Commission for the unexpired term.

(3) A member of the Commission may be removed by the Governor acting on an address supported by two-thirds majority of the House of Assembly of the State praying that he be removed in the interest of the Commission or the interest of the public.

PART II

Functions and powers of the Commission

6. Functions of the Commission

The functions of the Commission shall be, notwithstanding anything to the contrary in any other law of the State, to—

(*a*) co-ordinate the activities of ministries, parastatals, Local Government, Departments, organisations, statutory bodies as it relates to forest and resource conservation issues in the State;

(*b*) encourage biotechnology and other forms of research that will enhance the development of scientifically sound forestry policies and programmes in line with current conservation, socio-economic and technology options;

(*c*) establish links with relevant national and international regulatory policy-making and funding bodies for the benefit of bio-diversity conservation and sustainable forestry in the State;

(*d*) ensure sound wild life and environmental management outside Cross River National Park;

(*e*) ensure strict compliance with international conventions and treaties on natural resources;

(*f*) develop eco-tourism and generate revenue from tourism;

(*g*) promote planning, research and statistics; and

(*h*) perform such other functions which in the opinion of the Commission are incidental to the conservation and sustainable management of the State's forest resources and revenue generation.

7. General powers

(1) The Commission shall, subject to the provisions of this Law, have power to do such things as are considered necessary and expedient in facilitating the carrying into effect of their activities.

(2) The Commission shall notwithstanding anything to the contrary in any other Law of the State have power to—

(*a*) formulate policies and evolve strategies for the promotion and effective implementation of sustainable forestry development and conservation;

(*b*) subject to the provisions of this Law, make, alter, and revoke rules and regulations of the Commission;

(*c*) review forestry tariffs from time to time subject to approval by the House of Assembly of the State.

8. Status and duties of Secretary

(2) The Secretary shall—

(*a*) be the Chief Executive of the Commission;

(*b*) be responsible for the implementation of policies of the Commission; and

(*c*) generally exercise control over the activities of the Commission.

PART III

Structure of the Commission

9. Establishment of Departments

(1) There shall be established in the Head Office of the Commission the following Departments—

(*a*) Operational and Technical Services Department;

(*b*) Wildlife, Conservation and Eco-tourism Department;

(*c*) Reforestation/Agro Forestry, Non-Timber Forest Product, and Medicinal Department;

(*d*) The Administrative, Finance and Supplies Department; and

(*e*) Research, Planning and Statistics Department.

(2) Each Department shall be headed by an officer not lower than Grade Level 15.

(3) Departmental Heads shall be responsible to the Permanent Secretary.

(4) The Commission may merge or increase the number of Departments subject to the approval of the Executive Council.

PART IV

Staff of the Commission

10. Permanent Secretary

(1) There shall be appointed for the Commission, by the Governor of the State, a Permanent Secretary, who shall be a Civil Servant in the service, and shall be a person with experience and proven ability and interest in Forestry and/or conservation/management of natural resources.

(2) The Permanent Secretary shall—

(*a*) be the Accounting Officer and Secretary of the Commission;

(*b*) be responsible for the day to day administration of the Commission as may be directed by the Commission or Chairman;

(*c*) ensure accountability and proper administration of the Commission; and

(*d*) generally exercise disciplinary control over all the staff of the Commission in accordance with the Civil Service Rules.

11. Recruitment of staff

(1) The Commission may recruit staff from the civil service as in the opinion of the Commission may be necessary and required to perform the functions of the Commission.

(2) The terms and conditions of service, including remuneration, allowances, benefits and pensions, of the staff of the Commission shall be as obtained in the State Civil Service.

PART V

Pensions and Gratuity

12. Pensions and gratuity

(1) The service in the Commission shall be Scheduled Service for the purposes of the Pensions Act.

(2) The officers and other persons employed in the Commission shall be entitled to pensions, gratuities and other retirement benefits as are enjoyed by persons holding equivalent grades in the State Civil Service.

(3) Nothing in subsections (1) and (2) of this section shall prevent the appointment of a person to any office on terms which preclude the grant of pension and gratuity in respect of that office.

PART VI

Financial Provisions

13. Fund of the Commission

(1) The Commission shall establish and maintain a fund from which shall be defrayed all expenditure incurred by the Commission.

(2) There shall be paid and credited into the Fund established pursuant to subsection (1) of this section—

(*a*) any allocation to the Commission from the State Government Account;

(*b*) such revenue as the Commission may generate from—

(i) concessions;

(ii) forestry tariffs;

(iii) fines for violation of extant Forestry Laws and regulations;

(*c*) all such funds that may from time to time accrue from the Ecological Fund;

(*d*) all moneys raised for the purposes of forestry and conservation by way of grants/gifts from—

(i) foreign governments/international agencies;

(ii) non-governmental organisations;

(iii) global environmental facilities;

(*e*) all other sums which may accrue from investments or any other source whatever, from time to time.

(3) The fund shall be managed in accordance with extant financial rules and regulations made by the State Executive Council.

14. Expenditure of the Commission

The Commission shall apply the proceeds of the funds established pursuant to section 13 of this Law to—

(*a*) the cost of administration of the Commission;

(*b*) the payment of salaries, fees, remuneration, allowances, pensions and gratuities payable to the Commission members, and the employees of the Commission;

(*c*) the payment for all contracts including mobilisation fluctuations, variations, professional fees and cost of contract administration and royalties to landlords;

(*d*) the payment for all purchases; and

(*e*) assist from time to time the Landlord Communities in their Community development projects; and

(*f*) undertaking such other activities as are connected with all or any of the functions of the Commission under this Law.

15. Award of contract

The Commission shall have power to award contracts in accordance with the Tenders Rules and Regulations applicable in the State.

16. Power to borrow

The Commission may, by its resolution and subject to such terms and conditions as may be approved by the State Executive Council, borrow such moneys as it may from time to time require, and such moneys shall not be in excess of the budget approved by the State House of Assembly for the Commission.

17. Annual estimates and expenditure

(1) The Commission shall, not later than 30th September, in each year submit to the State Executive Council for the next succeeding year, an estimate of the budget of the Commission.

(2) The Commission shall cause to be kept, proper accounts of the Commission in respect of each year and proper records in relation thereto.

(3) The Commission shall cause the accounts to be audited by auditors to be approved by the State Auditor-General in accordance with guidelines issued by him.

18. Annual report

The Commission shall—

(*a*) prepare and submit to the Governor-in-Council not later than 1st April in each year, an annual report of the Commission during the immediate preceding year; and

(*b*) shall include in such report a copy of audited accounts of the Commission for that year.

19. Bank account

(1) The Commission shall keep and operate a bank account in a reputable bank and all moneys received on behalf of the Commission shall be paid into such bank account.

(2) No withdrawal shall be made from the accounts of the Commission unless the cheque or other instrument in respect of such withdrawal is signed by the Permanent Secretary and the Head of the Finance and Supplies Department and confirmed by the Chairman.

PART VII

Establishment of Forestry Reserve Fund

20. Establishment of Reserve Fund

(1) There is hereby established a Fund to be known as the Forestry Reserve Fund into which shall be deposited all monies received by the Commission in excess of its budgetary

allocation or others sources in accordance with subsection (2) of section 13 of this Law and which monies remain unexpended at the end of the financial year.

(2) The Commission shall not disburse any money from the Reserve Fund without the approval of the Governor-in-Council, and the confirmation by the House of Assembly of the State .

PART VIII

Miscellaneous

21. Directives by Governor-in-Council

Subject to the provisions of this Law, the Governor-in-Council may give to the Commission directives of a general nature relating to matters of policy with regard to the performance by the Commission of its functions and it shall be the duty of the Commission to comply with such directives.

22. Regulations

The Commission may, with the approval of the Governor-in-Council, make regulations, generally for the purposes of giving full effect of this Law.

23. Interpretation

In this Law unless the context otherwise requires—

"Commission" means the Forestry Commission established by section 1 of the Law;

"Chairman" means the Chairman of the Commission;

"conservation" means the protection and maintenance of nature, while allowing for its sustainable ecological use;

"forest" means government forest reserve and community forest;

"forestry" means the art and science of managing the natural resources that occur on and in association with forest lands for human benefit or use;

"forestry tariffs" means approved government rates or charges for forest products;

"forest concession" means a forest given out to a Company or an individual for timber harvesting for a period of time under agreed terms;

"Governor" means Governor of the Cross River State of Nigeria;

"Governor-in-Council" means the Governor in full meeting with the Executive Council;

"he/his" includes both genders;

"State" means Cross River State;

"sustainable forestry" means managing the forest resource such that what is cut or taken equates in continuous production, income, etc.

24. Short title

This Law may be cited as the Forestry Commission Law.

SCHEDULE

Supplementary Provisions to the Commission

1. Proceedings of the Commission

(1) Subject to this Law and section 25 of the Interpretation Act, the Commission may make standing orders regulating its proceedings or those of any of its Committees.

(2) The quorum of the Commission shall be the 7 (seven) members which may include the Chairman of the Commission, and the quorum of any Committee of the Commission shall be as determined by the Commission.

2. Meetings of the Commission

The Commission shall meet whenever it is summoned by the Chairman and if the Chairman is required to do so, by notice given to him, by not less than two other members, he shall summon a meeting of the Commission to be held within 3 days from the date on which the notice is given.

3. Presiding at meetings

(1) At any meeting of the Commission, the Chairman shall preside, and in his absence, the members present at such meeting shall elect one of their members to preside.

(2) The Commission shall hold not more than four meetings a year and not more than 2 emergency meetings.

4. Co-option of member

Where the Commission desires to obtain the advice of any person on a particular matter, the Commission may co-opt such person to the Commission for such period as it deems fit. However, such a person who is in attendance by virtue of this section shall not be entitled to vote at any meeting of the Commission and shall not count towards a quorum.

5. Committees

(1) The Commission may appoint one or more committees to carry out on its behalf such functions as it may determine.

(2) A Committee appointed under this section shall consist of such number of members as may be determined by the Commission.

(3) The Committee may co-opt any person it deems fit, provided the person shall serve on the Committee in accordance with the terms of his appointment.

(4) A report of a Committee of the Commission shall be of no effect until it is ratified by the Commission.

(5) The fixing of the Seal of the Commission shall be authenticated by the signature of the Chairman and the Secretary.

(6) The validity of any proceedings of the Commission or of a Committee shall not be adversely affected by—

(*a*) vacancy in the membership of the Commission or Committee; or

(*b*) a defect in the appointment of a member of the Commission or Committee; or

(*c*) the fact that a person not entitled to do so, took part in the proceedings of the Commission or Committee.

CHAPTER F6

FORESTRY COMMISSION LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER G1

GIRL-CHILD MARRIAGES AND FEMALE CIRCUMCISION (PROHIBITION) LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Prohibition of marriage.
2. Offences.
3. Prohibition of circumcision, etc.
4. Offences.
5. Power of arrest.
6. Interpretation.
7. Short title.

CHAPTER G1

GIRL-CHILD MARRIAGES AND FEMALE CIRCUMCISION (PROHIBITION) LAW

A Law to prohibit Girl-Child Marriages and Female Circumcision or Genital Mutilation in Cross River State.

(18*th July*, 2000)

[Commencement.]

1. Prohibition of marriage

(1) Upon the commencement of this Law, no person shall give in marriage, enter into marriage, consent to the marriage of or force into marriage any girl-child whether or not such a person is a parent to the said girl-child.

(2) No person shall impregnate or put in the family way any girl-child.

2. Offences

(1) Any person who gives in marriage, enters into marriage, consents to the marriage of or forces into marriage or impregnates or puts in the family way any girl-child is guilty of an offence and shall on conviction be liable to a fine of not less than ten thousand naira or to imprisonment not exceeding one year for a first offender and to a fine not exceeding twenty thousand naira or to imprisonment not exceeding three years for each subsequent offence.

(2) It shall not be a defence to a charge under this section to prove that a person has obtained the consent of the girl-child.

3. Prohibition of circumcision, etc.

Upon the commencement of this Law, no person shall circumcise or mutilate the genital organ of any female, whether or not her consent is obtained.

4. Offences

Any person who—

(*a*) performs the operation of female circumcision or female genital mutilation;

(*b*) offers herself for circumcision or genital mutilation;

(*c*) coerces, entices or induces any person to undergo female circumcision or genital mutilation;

(*d*) allows any female who is either a daughter or ward to be circumcised or have the genital organ mutilated,

is guilty of an offence and shall on conviction be liable to a fine of not less than ten thousand naira or to imprisonment not exceeding two years for a first offender and to imprisonment not exceeding three years without an option of fine for each subsequent offence.

5. Power of arrest

Any person who contravenes the provisions of this Law, may be arrested without warrant and taken without delay to the nearest police station where he may be granted bail until he is brought before a magistrate's court for trial.

6. Interpretation

In this Law, unless the context otherwise requires—

"girl-child" means any girl below the age of 18;

"marriage" includes marriage under the Marriage Act of 1914 or any other marriage ordinance or marriage under any Native Law and Custom or under any other Law in Nigeria;

"circumcision" means the act of cutting off of the clitoris of a female;

"genital organ" means the sex organ of a female;

"mutilation" means any cutting, incision, damage or removal of any or all of the female sex organs.

7. Short title

This Law may be cited as the Girl-Child Marriages and Female Circumcision (Prohibition) Law.

CHAPTER G1

GIRL-CHILD MARRIAGES AND FEMALE CIRCUMCISION (PROHIBITION) LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER G2

GOLDSMITHS LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Licence to be obtained to carry on the business of goldsmith.
2. Licences and licensing authorities.
3. Hawking licence.
4. Licensing fees to form part of revenue of Cross River State.
5. Power to refuse a licence and to revoke when granted.
6. Duty of goldsmith to display signboard at business premises.
7. Goldsmiths to keep books and produce books and stock.
8. Receipts to be given by goldsmiths.
9. Power of search to certain officers.
10. Apprentices.
11. Employees.
12. Offences and general penalty.
13. Power to make regulations.
14. Interpretation.
15. Short title.

SCHEDULE

Forms

CHAPTER G2

GOLDSMITHS LAW

A Law to control and regulate the Licensing of Goldsmiths in Cross River State and for Matters connected therewith.

(1*st February*, 1959)

[Commencement.]

1. Licence to be obtained to carry on the business of goldsmith

(1) No person shall carry on the business of a goldsmith unless he has obtained a licence under this Law.

(2) Any person who carries on the business of a goldsmith without such a licence shall be guilty of an offence and shall be liable on conviction to a fine not exceeding the sum of four hundred naira or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

2. Licences and licensing authorities

(1) The Commissioner may appoint the Secretary to a local government to be a licensing authority for the purposes of this Law and shall in such appointment specify the area for which such Secretary is so appointed.

(2) Application for a licence shall be made in quadruplicate to the appropriate licensing authority of the area in which the business premises of the applicant are situate and shall be in Form A in the Schedule.

[Schedule: Form A.]

(3) The licensing authority may grant a licence and such licence shall specify the name, residence and place of business of the goldsmith and shall only have effect in respect of the business premises specified therein and shall be in Form B in the Schedule.

[Schedule: Form B.]

(4) A goldsmith may carry on business at one or more business premises but a separate licence shall be obtained in respect of each such business premises.

(5) A licence shall not be assigned or transferred and shall not confer any right upon any person by reason of his being the executor or administrator of the person to whom such licence was granted.

(6) The fee in respect of the issue of each first licence or of each renewal thereof shall be such amount as shall be prescribed by the regulations made pursuant to the provisions of this Law, and a licence shall, unless revoked or forfeited, continue in force for one year from the date of issue or renewal.

3. Hawking licence

(1) No person shall hawk articles manufactured of gold unless he has obtained a hawker's licence.

(2) Application for a hawker's licence shall be made to any licensing authority, and shall be in Form C in the Schedule.

[Schedule: Form C.]

(3) The fee for a hawker's licence shall be such amount as shall be prescribed by the regulations made pursuant to the provisions of this Law, and a hawker's licence shall, unless revoked or forfeited, continue in force for one year from the date of issue and shall have effect throughout Cross River State.

(4) A hawker's licence shall be in Form D in the Schedule and shall not be transferred.

[Schedule: Form D.]

4. Licensing fees to form part of revenue of Cross River State

The licensing fees payable under the provisions of this Law shall accrue to and form part of the revenue of Cross River State.

5. Power to refuse a licence and to revoke when granted

(1) A licensing authority may in his discretion refuse to grant a licence or to renew any licence which has expired and may revoke any licence which has been issued or renewed.

(2) Any person aggrieved by such refusal or revocation may appeal to the High Court.

6. Duty of goldsmith to display signboard at business premises

A goldsmith shall keep a signboard suspended or fixed on the outside of the licensed premises inscribed in legible letters with his name and the description "LICENSED GOLDSMITH No ……." in letters and figures not less than three inches high.

7. Goldsmiths to keep books and produce books and stock

(1) A goldsmith shall keep within the licensed premises books showing—

(*a*) all purchases by him of gold, raw gold and other matter containing gold and the weight thereof together with the date of each such purchase and the full name, address and description of the vendor; and

(*b*) all articles of gold manufactured by him, the weight of the articles manufactured and the weight of gold manufactured by him from gold purchased; and

(*c*) all articles of gold sold by him and the full names, addresses and descriptions of the persons purchasing such articles; and

(*d*) a description of jewellery received for alteration, repair or re-manufacture including the weight of such jewellery before and after re-manufacture with the full name, address and description of the owner of such jewellery;

(*e*) the number of the receipt issued by him to any vendor, purchaser or owner;

(*f*) such other particulars as may from time to time be prescribed.

(2) Such books and receipts shall be in Forms E, F, G and H in the Schedule respectively and shall be produced on demand for inspection by any licensing authority, administrative officer, officer of the Mines Department of the Federal Ministry of Mines and Power or any police officer not being below the rank of inspector.

[Schedule: Forms E, F, G and H.]

(3) A goldsmith shall keep within the licensed premises a set of accurate troy weights and an accurate goldsmith's balance and shall produce the same together with his stocks of gold, raw gold or other matter containing gold and any articles or parts of articles made or in the course of being made by him wholly or in part of gold, on demand, for inspection by any licensing authority, administrative officer, officer of the Mines Department or any police officer not being below the rank of inspector.

(4) Where a goldsmith is absent from his business premises at the time of any inspection the person in charge of such business premises, who shall be an employee duly authorised under the provisions of this Law, shall comply with the requirements of this section.

(5) Where a licensing authority is satisfied that a licensed goldsmith is illiterate and that the earnings of such goldsmith do not permit him to engage a literate employee he may by order exempt such goldsmith from all or any of the provisions of this section or require such simple form of records or weighing to be kept or used as the degree of literacy of such goldsmith may allow. Any order made under the provisions of this subsection shall be in writing and signed by the licensing authority and a certified copy thereof shall be given to the licensed goldsmith concerned.

8. Receipt to be given by goldsmiths

(1) A goldsmith shall at the time of deposit or purchase issue a receipt to the owner of any article containing gold deposited with him for repair or alteration, and to the vendor of any gold, raw gold or article or matter containing gold purchased by him, and to the purchaser from him of any gold, raw gold or article or matter containing gold.

(2) Any such receipt shall be as nearly as circumstances permit in Form E in the Schedule and such receipt may be given by any duly authorised employee.

[Schedule: Form E.]

(3) A goldsmith shall retain for one year the duplicate of every receipt given under the provisions of this section.

9. Power of search to certain officers

(1) Any member of the Nigerian Police Force not below the rank of inspector may at any time, without a warrant, between the hours of 6 a.m. and 6 p.m. enter and search the business premises of any goldsmith for the purpose of ascertaining what gold, raw gold or other matter containing gold is therein, and seize any article in respect of which it may reasonably be suspected that an offence has been committed.

(2) A magistrate if satisfied upon information on oath that there is reasonable grounds for believing that there is in any building or premises within the area of his jurisdiction—

(*a*) anything in respect of which an offence against the provisions of this Law has been committed or is suspected of having been committed; or

(*b*) anything which will afford evidence as to the commission of any offence against the provisions of this Law; or

(*c*) anything which is intended to be used for the purposes of committing an offence against the provisions of this Law,

may issue a search warrant authorising the persons named therein together with assistants at any time within one month from the date of such warrant to enter or open, if necessary by force, the building or premises named in such warrant and to search for and seize the articles named in the warrant together with any vessel, package or other receptacle containing such articles.

(3) Any article or thing seized under the authority of a search warrant shall, as soon as possible, be brought before a magistrate.

(4) Whoever obstructs any person duly exercising the powers conferred by the section shall be guilty of an offence.

10. Apprentices

No goldsmith shall employ any apprentice except under the provisions of an apprenticeship contract in accordance with the provisions of Part III of the Labour Decree, 1974.

11. Employees

(1) A goldsmith shall not employ in connection with his business as a goldsmith any person whose particulars do not appear in the licence or the renewal and, if during the currency of any licence or renewal any change is to be made in such employees, full particulars in triplicate of the person to be employed shall be given to the licensing authority who issued the licence or renewal and such licence or renewal shall be altered accordingly.

(2) Any employee whose name appears on the licence or renewal issued in respect of any licensed premises shall be a duly authorised employee for the purposes of this Law for such licensed premises.

12. Offences and general penalty

Any person who contravenes or fails to comply with any of the provisions of this Law shall be guilty of an offence and, if no other penalty is herein provided, shall be liable on conviction to a fine not exceeding the sum of two hundred naira or to a term of imprisonment not exceeding one year or to both such fine and imprisonment.

13. Power to make regulations

The Commissioner may make regulations for—

(*a*) the purpose of further securing the effectual control of the business of goldsmiths and the prevention of improper or illegal use of gold, raw gold and other matter containing gold;

(*b*) prescribing further books to be kept and the forms thereof;

(*c*) providing for the further registration or licensing of persons employed by goldsmiths in the course of their business as such;

(*d*) prescribing penalties for offences against any regulation made hereunder;

(*e*) prescribing the fees payable in respect of a goldsmith's licence, the renewal of such licence and of a hawker's licence, and

(*f*) generally carrying into effect the provisions of this Law.

14. Interpretation

In this Law—

"goldsmith" includes any person who makes articles or parts of articles either wholly or in part of gold but not a person who is registered as a dental surgeon under the Medical and Dental Practitioners Act, 1963 in respect of articles made in his professional capacity;

"the Commissioner" means the Commissioner for the time being charged with responsibility for Finance;

"raw gold" means gold in the raw state and includes unrefined gold, amalgam, slimes and scrapings and smelted gold which is not manufactured into any article of commerce.

15. Short title

This Law may be cited as the Goldsmiths Law.

SCHEDULE

FORM A

CROSS RIVER STATE OF NIGERIA

[s. 5.]

THE GOLDSMITHS LAW

Application for the Issue or Renewal of a Goldsmith's Licence

Serial Number	
1. Full name of applicant	

FORM A—*continued*

2. Age of applicant	
3. (*a*) Full address of the premises for which licence is desired	
(*b*) Full address of residence of applicant	
4. (*a*) Whether applicant has previously made an application for a goldsmith's licence	
(*b*) and if so, whether any such application has been refused	
5. If the application is for renewal the number of the existing licence	
6. The full names and full address of all—	
(*a*) indentured apprentices	
(*b*) employees	
at the time of application.	
7. Whether the applicant has even been convicted of an offence against the Goldsmiths Law, the Goldsmiths Act, or the Gold Trading Act, and if so the place and date of the conviction, the nature of the offence and the penalty imposed	

Date ..... , 20 ....

Signature of applicant

FORM B

CROSS RIVER STATE OF NIGERIA

[s. 5.]

THE GOLDSMITHS LAW

Goldsmith's Licence No .....

Licence is hereby granted/renewed to (full name) .....

of (full address of resident) .....

..... at

..... (*indicate and describe premises by full particulars of name, situation or other means of identification*).

FORM B—*continued*

EMPLOYEES

Name	*Employee's full address*	*Date engaged if not employed at time of application for licence*
.....	.....	.....
.....	.....	.....
.....	.....	.....

Name	*Apprentice's full address*	*Date of Indenture*
.....	.....	.....
.....	.....	.....
.....	.....	.....

Dated at ..... this ..... day of ....., 20 .....

This licence will expire on the ..... day of ....., 20 .....

Fee: Issue/Renewal □ ..... k

.....

Licensing Authority for the area of

.....

FORM C

CROSS RIVER STATE OF NIGERIA

[s. 5.]

THE GOLDSMITHS LAW

Application for Hawker's Licence

1. Full name of applicant .....
2. Full address of applicant .....
3. Age of applicant .....
4. Whether the applicant has even been convicted of an offence against the Goldsmiths Law, the Goldsmiths Act, or the Gold Trading Act, and if so the place and date of the conviction, the nature of the offence and the penalty imposed .....

Date ..... , 20 .....

.....

Signature of applicant

FORM D

CROSS RIVER STATE OF NIGERIA

[s. 6.]

THE GOLDSMITHS LAW

Hawker's Licence No .....

Licence is hereby granted to ..... of

..... to hawk articles manufactured within Nigeria.

This licence will expire on the ..... day of ....., 20 .....

Dated at ..... this ..... day of ....., 20 .....

Fee: ₦ k

.....

Licensing Authority for the area of

.....

FORM E

CROSS RIVER STATE OF NIGERIA

[s. 9.]

THE GOLDSMITHS LAW

Receipt for Article containing Gold deposited for Repair or Alteration or Purchased or for Raw Gold Purchased

Serial No .....

Received from (*full name*) .....

Residing at (*full address*) .....

.....

*the following article/articles/raw gold

*deposited for the purposes of repair/alteration

*purchased by me, Licensed Goldsmith No .....

Description .....

Troy weight ..... Oz ..... dwt.

Date ..... , 20 ....

Signature of Licensed Goldsmith

THIS RECEIPT TO BE IN DUPLICATE

*Delete the word which is not applicable to any particular transaction.

FORM F

[Goldsmith S. 9.]

CROSS RIVER STATE OF NIGERIA

THE GOLDSMITHS LAW

Repair or Alteration of manufactured Gold Articles

Entry No.	Date	Article	Full name and full Address of owner	Original troy weight		Receipt No.	Quantity new gold added from stock		Weight after repair or alteration		Quantity gold added to stock		Received by owner (Signature or thumb print)	Date	Amount paid	
				oz.	dwt.		oz.	dwt.			oz.	dwt.			₦	K

FORM G

[Goldsmith S. 9.]

CROSS RIVER STATE OF NIGERIA

THE GOLDSMITHS LAW

Purchases and Sales of manufactured Gold Articles (including manufactured Jewellers Gold Bars)

Entry No.	Date	Article	Full name and full Address of seller and buyer	Original troy weight of article		Receipt No.	Quantity lost in smelting		Weight after smelting added to stock		Quantity of new gold in article made and sold		Amount paid to seller		Amount paid by buyer		Signature or thumb-print of seller or buyer
				oz.	dwt.		oz.	dwt.	oz.	dwt.	oz.	dwt.	₦	K	₦	K	

FORM H

[Goldsmith S. 9.]

CROSS RIVER STATE OF NIGERIA

THE GOLDSMITHS LAW

Purchase of raw Gold or Gold Gold Used..... Gold in Stock

Purchase of manufactured Jewellers Gold Bars, etc., to be shown in Book kept according to Form G

Entry No.	Date	PURCHASES			USED				GOLD STOCK		
		Bought from	Troy weight		How disposed of	Troy weight			Troy weight		
			oz.	dwt.		oz.	dwt.		oz.	dwt.	

CHAPTER G2

GOLDSMITHS LAW

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. Goldsmiths (Renewal of Licenses and Fees) Regulations.

Goldsmiths (Renewal of Licenses and Fees) Regulations

1. Citation

These regulations may be cited as the Goldsmiths (Renewal of Licences and Fees) Regulations.

2. Manner of application for renewal of licence

Application for the renewal of a goldsmith's licence shall be made in quadruplicate to the proper authority at least one month before the date on which the licence or any previous renewal thereof is due to expire and the prescribed fee shall be forwarded therewith.

3. Goldsmith may carry on business pending decision on application

Where application for the renewal of a licence has been made in accordance with the provisions of regulation 2 and the applicant has not been informed of the decision on such application before the date on which the existing licence or renewal is due to expire, the applicant may continue to carry on the business of a goldsmith in accordance with the provisions of the Law unless and until notified that the application has been refused.

4. Date of renewal

Where an application for renewal has been granted such renewal shall be effective from the date on which the existing licence or renewal would, but for such renewal, have expired.

5. Refund of fee on refusal

Where an application for renewal has been refused the prescribed fee which accompanied the application shall be returned to the applicant.

6. The following fees are prescribed for the purpose of the Law:

	Subject Matter	*Fee* ₦ k
A.	For the issue of each first goldsmith's licence the fee shall be	4.00
B.	For each renewal of goldsmith's licence, the fee shall be	1.00
C.	For the issue of hawker's licence, the fee shall be	2.00

CHAPTER G3

GOVERNMENT DEVELOPMENT BONDS LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Creation of bonds.
2. Power to raise funds.
3. Issue and purpose of first bond.
4. Subsequent bonds.
5. Irrevocable letter of Authority.
6. Regulations.
7. Interpretation.
8. Short title.

CHAPTER G3

GOVERNMENT DEVELOPMENT BONDS LAW

A Law to enable the Government of Cross River State to raise internal loans from the Nigerian Capital Market through the issuance of securities in the form of bonds for specific development projects authorised by the State Executive Council and for all other matters connected therewith.

(20*th March*, 2002)

[Commencement.]

1. Creation of bonds

There shall be created and issued to the public from time to time development bonds by the Government of Cross River State for specific projects approved by the Executive Council, subject to the provisions of section 6 of this Law.

2. Power to raise funds

(1) The Commissioner, on behalf of the Governor may from time to time with the approval of the Executive Council and the House of Assembly and subject to the provisions of section 6 of this Law, raise funds for both economic and social developmental purposes in the State by issuing Development Bonds to be known as the Cross River State Floating Rate Redeemable Development Bonds.

(2) Funds raised by Development Bonds as specified in subsection (1) of this section shall not be in excess of four billion, six hundred million naira.

3. Issue and purpose of first bond

The Development Bonds shall be issued by public offers subject to section 6 of this Law for the purposes of undertaking projects approved by the Executive Council.

4. Subsequent bonds

Subject to the provisions of this Law Development Bonds shall be issued from time to time as the need arises on terms to be determined by the Executive Council in respect of projects approved by the Cross River State Executive Council.

5. Irrevocable letter of Authority, Federal Government guarantee

The State shall issue an irrevocable letter of authority in respect of each Development Bond giving the Accountant-General of Federation the authority to deduct at source from the statutory allocation due to the State.

6. Regulations

(1) The Commissioner shall, in respect of each Development Bond to be issued, make regulations published in the *Gazette* for the purpose of giving effect to the provisions of this Law.

(2) The regulations made under subsections (1) of this section may provide and include all or any of the following matters relating to the Development Bonds—

(i) the value;

(ii) the commencement date and tenor;

(iii) the purpose(s);

(iv) the maturity and redemption dates;

(v) the coupon rate;

(vi) the cost of the issue;

(vii) the rate of interest payable;

(viii) the mode of offer;

(ix) the issue price; and

(x) such other matters as the Commissioner may consider necessary.

7. Interpretation

In this Law—

"bondholder" means any person for the time being entered in the register as a holder of unit(s) of the Development Bonds offered under the issue and includes persons so registered as joint holders;

"Commissioner" means the member of the Executive Council with responsibility for finance;

"Development Bond" means the Floating Rate Redeemable Development Bond of the State;

"Executive Council" means the Executive Council of the State;

"*Gazette*" means the Official *Gazette* of the State;

"*Government*" means the Government of the State;

"Governor" means the Governor of the State;

"House of Assembly" means the House of Assembly of Cross River State;

"State" means Cross River State.

8. Short title

This Law may be cited as the Government Development Bonds Law.

CHAPTER G3

GOVERNMENT DEVELOPMENT BONDS LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER H1

HIDES AND SKINS LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Power to make regulations.
2. Citation.

SCHEDULE

Forms

CHAPTER H1

HIDES AND SKINS LAW

A Law to enable regulations to be made for maintaining and improving the quality of hides and skins and for regulating and controlling the sale of hides and skins.

(6*th October*, 1942)

[Commencement.]

1. Power to make regulations

The Commissioner may make regulations for all or any of the following purposes—

(*a*) regulating the method of flaying, drying and preparation of hides and skins and providing for the appointment and payment of instructors;

(*b*) regulating and restricting the purchase, removal and transport of hides and skins and providing for the degree of dryness they shall possess;

(*c*) generally for maintaining or improving the quality of hides and skins;

(*d*) providing for the licensing of premises used for the buying and preparation of skins for export;

(*e*) prescribing the authorities who may grant, withhold or cancel licences, the obligation with regard to the production of licences, the form of licence and the fees payable in respect of them;

(*f*) providing for the appointment of inspectors and other officers to carry out the provisions of any regulations under this Law and investing them with powers necessary for the due execution of their duties and for giving effect to the purposes of this Law;

(*g*) prescribing the fees to be paid for any matter or thing done under any regulation under this Law;

(*h*) prescribing the area or areas to which all or any regulations shall apply.

2. Citation

This Law may be cited as the Hides and Skins Law.

CHAPTER H1

HIDES AND SKINS LAW

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. Hides and Skins Regulations.
2. Prescribed Areas Notice.

HIDES AND SKINS REGULATIONS

1. These Regulations may be cited as the Hides and Skins Regulations.

PART 1

GENERAL

2. In these regulations—

"approved manner of drying" means the method whereby hides are suspended vertically in a frame and skins suspended vertically in a frame or whereby hides or skins are suspended vertically from a pole or are hung lengthwise from head to tail along the middle line of the back over a taut galvanised iron wire with the sides apart and whereby there is a free circulation of air on both sides and whereby the surface of any hide or skin is at least six inches from any other hide or skin;

"approved manner of flaying" means in the case of hides a method whereby the hide is not scarred or cut and in the case of skins a method whereby a knife is used only for making the initial cut and then the skin is drawn off by hand and in the case of both hides and skins a method whereby the hides and skins are short-trimmed;

"authorised person" means a person authorised by the Chief Veterinary Officer or by a Local Government with the approval of the Permanent Secretary and the Chief Veterinary Officer for the purpose of these regulations;

"hide" means the hide of cattle;

"inspector" means a person appointed to be an inspector for the purpose of these regulations either by the Chief Veterinary Officer or by a Local Government with the approval of such Chief Veterinary Officer;

"the Permanent Secretary" means the Permanent Secretary having supervision of matters and departments with responsibility for which the appropriate authority is charged;

"skin" means the skin of sheep or goats;

"thoroughly dried" in reference to a hide or a skin means one that will not lose more than six per centum of its weight, as represented by loss of moisture on being exposed to free circulation of air under a roof for twenty-four hours;

"wet" means any hide or skin which has not been dried at all in any manner.

3. Except as hereinafter expressly provided no hide or skin intended for sale shall be removed from the place where it has been flayed until it has been thoroughly dried.

PART 2

PRESCRIBED AREAS

4. The provisions of this Part of these regulations shall apply only to those areas which the Commissioner may declare by notice in the State *Gazette* to be prescribed areas.

5. All hides and skins shall be flayed in the approved manner of flaying.

6. All hides and skins shall immediately after flaying be hung up to dry until thoroughly dried in the approved manner of drying in the drying shed provided for that purpose or in the shade if no drying shed is provided.

7. (1) In any place where no drying shed or other place suitable for keeping hides and skins overnight at any market or place of flaying exists, such hides and skins may be removed at sunset to the nearest premises approved by an inspector or authorised person where they shall be dried in the approved manner of drying until thoroughly dried.

(2) An inspector or authorised person may require that such hides and skins shall be brought back on the following morning to be dried in the approved manner of drying at the market or place of flaying as the case may be.

8. In any particular circumstances permission may be granted by an inspector or authorised person—

(*a*) to remove hides and skins immediately after flaying to premises approved by him where they shall be hung up to dry immediately in the approved manner of drying until thoroughly dried; or

(*b*) to remove hides to premises where they shall be tanked without delay in an efficient preservation solution and then hung up to dry in the approved manner of drying until thoroughly dried; or

(*c*) to remove wet hides and skins for use in local industries.

9. All hides and skins which are flayed and dried to the satisfaction of an inspector within a prescribed area shall be stamped by such inspector with the stencil and punch mark allotted to that area or to a particular part of that area.

PART 3

MISCELLANEOUS

10. Except as provided by regulations 7 and 8 no person shall purchase or cause to be purchased any hide or skin which—

(*a*) has been taken from the place where it has been flayed before it has been thoroughly dried, or

(*b*) which he has reason to believe has not been dried in the approved manner of drying.

11. Any inspector may at all reasonable hours enter—

(*a*) any private premises or enclosure where hides and skins are dried, or

(*b*) any premises where the business of buying and packing hides and skins is carried on or where he has reason to believe such business is being carried on,

and there inspect any hides and skins.

12. No person, with intent to deceive, shall—

(*a*) treat any hide or skin in any way whatsoever in order to hide, cover up or obliterate any cuts, scratches, scores, brand marks, lesions caused by disease or any other flaw or blemish; or

(*b*) adulterate any hide or skin by or with any substance for the purpose of increasing the weight thereof.

13. (1) An inspector may stop any person who he has reason to believe is carrying hides or skins or he may stop any vehicle, boat or pack animal that he has reason to believe is being used to transport hides or skins and thereupon he may inspect the hides and skins or he may direct the person carrying the hides and skins or in charge of such vehicle, boat or pack animal as the case may be to convey the hides or skins to some suitable place where the inspector may inspect them. An inspector may enter into any railway premises for the purpose of inspecting hides or skins in the court of transport by rail.

(2) The provisions of sub-regulation (1) shall not apply to hides or skins baled for export.

14. (1) No person shall use any premises or enclosures as a place for the buying of or the preparation of hides or skins for export, unless such premises or enclosures are licensed by the Chief Veterinary Officer.

(2) The Chief Veterinary Officer may license premises or enclosures as a place for the buying of and the preparation of hides and skins for export.

(3) A licence shall be in Form B of the Schedule and shall expire on the 31st day of December in the year in which it is issued, and may be renewed from year to year.

(4) The Chief Veterinary Officer may, in his discretion, cancel a licence granted by him, and any person aggrieved by a decision of the Chief Veterinary Officer to cancel a licence or to refuse the grant or renewal of a licence may within fourteen days from the date of such decision, appeal to the Commissioner whose decision thereon shall be final.

(5) No premises or enclosure shall be licensed unless a medical officer for health, or a person nominated by him, and an officer of the Veterinary Division of the Ministry have both first certified that the premises or enclosure, in respect of which an application for a licence is made, is suitable for the buying of and the preparation of hides and skins for export.

(6) Every licence granted under sub-regulation (2) shall be subject to the following conditions—

(*a*) no hides or skins which are not the property of the holder of the licence shall be prepared on the premises or enclosure to which the licence relates;

(*b*) the holder of a licence shall register, with the Chief Veterinary Officer, all shipping marks which are used for marking hides or skins on the premises or enclosure, and shall not change the shipping marks so registered without giving fourteen days previous notice in writing to the Chief Veterinary Officer; and

(*c*) the shipping marks used on the premises or enclosure shall indicate the State in which the premises or enclosure is situated.

(7) An application for a licence shall be made in duplicate, on the Form A in the Schedule, to the Chief Veterinary Officer.

(8) A fee of two naira shall be payable for a licence and for each renewal of a licence.

15. Any person who wilfully interferes with an inspector or authorised person in the execution of his duty is guilty of an offence against these regulations.

16. Any person who contravenes any of the provisions of these regulations shall be liable on conviction for a first offence to a fine of forty naira or imprisonment for three months or both and for any subsequent offence to a fine of one hundred naira or imprisonment for six months or both.

SCHEDULE

FORM A

Application for Licensing of Export Premises

[Reg. 14 (7).]

(1) Full name of Applicant (BLOCK LETTERS) .....

.....

(2) Usual Address .....

(3) Nationality .....

(4) Occupation .....

(5) Address of premises/enclosure for which a licence is sought; if previously licensed, give particulars of licence issued .....

.....

(6) Has a licence in respect of these premises/enclosure ever been withheld or cancelled? If so give details .....

.....

(7) What staff of selectors and supervisors will be employed? .....

.....

Give particulars of their experience .....

.....

FORM A—*continued*

Declaration

I declare that the particulars contained in the foregoing application for the licensing of export premises/enclosure are true to the best of my/our knowledge and belief.

Dated this ..... day of ....., 20 .....

.....
(Signed)

FORM B

Licence to Keep Export Premises

[Reg. 14 (3).]

A licence under sub-regulation (2) of regulation 14 of the Hides and Skins Regulations is hereby granted

to ..... of .....
in respect of the premises/enclosure described herein for the buying and preparation of hides and skins for export.

(Description of premises or enclosure) .....

.....

.....

.....

Fee paid ₦2

Date .....

.....
Chief Veterinary Officer

HIDES AND SKINS (PRESCRIBED AREAS) NOTICE

1. This notice may be cited as the Hides and Skins (Prescribed Areas) Notice.
2. The Cross River State shall be a prescribed area for the purposes of Part 2 of the Hides and Skins Regulations.

CHAPTER H2

HIGH COURT LAW

ARRANGEMENT OF SECTIONS

PART 1

Constitution of the High Court

SECTION

1. How High Court to be styled.
2. Constitution of the court.
3. Further provision as to tenure of office of judge.
4. Salaries and allowances of judges.
5. Acting judges.
6. Powers and jurisdiction of judges.
7. Precedence of judges.
8. Seal of court.

PART 2

Jurisdiction and Law

9. Jurisdiction.
10. Jurisdiction excluded in certain respects.
11. Jurisdiction as to interpretation of the Constitution of the Federation or of a State.
12. Jurisdiction in certain respects.
13. (1) How far law of England in force.
    (2) Rules as to the application of Statutes.
14. Practice and procedure.
15. Probate jurisdiction.
16. Jurisdiction of magistrates' courts concurrent with that of the court.
17. Law and equity to be concurrently administered.
18. Application of local custom.
19. Foreign law or laws and local custom of other States to be decided by judge.
20. Civil jurisdiction of court.
21. Judgments of other courts may be pleaded.
22. Criminal jurisdiction of court where offence only partially committed within jurisdiction.
23. Injunctions and receivers.
24. Orders of *mandamus*, prohibition and *certiorari*.
25. *Quo warranto*.
26. Prerogative orders against officer of a Government of the Federation.
27. Relief against forfeiture for non-payment of rent.

SECTION

28. Reconciliation in civil causes and matters.
29. Reconciliation in criminal causes.
30. Appellate jurisdiction.
31. Further appellate jurisdiction.
32. Powers of courts in civil appeals.
33. Further appeal to the Court of Appeal in civil appeals in certain cases.
34. Appeal by prosecutor.
35. Powers of court in criminal appeals.
36. Power of court on appeal against acquittal or dismissal.
37. Further appeal to Court of Appeal in certain criminal appeals.
38. Statement of case by High Court.
39. Execution of instruments by order of Court.

PART 3

Sittings and Distribution of Business

40. Divisions of High Court.
41. Chief Judge to distribute business of court.
42. Postponement of trial.
43. Court open at all times for general business.
44. Adjournment in absence of Judge.
45. Power of transfer of Judge.
46. Power of transfer of Chief Judge.
47. Power of transfer cause to customary court.
48. Effect of order of transfer.
49. No appeal from order of transfer.

PART 4

General Provisions as to Trial and Procedure

50. Proceedings to be disposed of by single judge.
51. Powers of single judge in court and in chambers.
52. Notice of evidence and minutes of proceedings to be kept by presiding judge.
53. Discharge of orders made in chambers.
54. Protection of judges and persons executing warrants, etc.
55. Inspection.
56. Reference for report to referee.
57. Reference for trial to arbitrator.
58. Powers and remuneration of referees and arbitrators.
59. Courts to have powers as in submissions.
60. Power to order *habeas corpus* to issue.
61. Statement of case pending arbitration.
62. Power of court to impose terms as to costs.

PART 5

Officers of the Court

SECTION

63. Chief Registrar and other officers.
64. Probate Registrar.
65. Duties of officers of the court.
66. Taxing Master.
67. Negligence or misconduct of officers.
68. Restriction on officers of court buying property sold at execution.

PART 6

Commissioners of Oaths – Notaries Public

69. Appointment of commissioner of oaths to take evidence, etc.
70. Protection of commissioners from action.
71. Notaries public to be officers of the court.

PART 7

Witnesses, etc

72. Allowances to witnesses.
73. Forfeiture for neglecting witness summons.
74. Persons in court may be required to give evidence though not summoned.
75. In what cases prisoners may be brought by warrant to give evidence.
76. Prison officer to produce prisoner.
77. Right of audience.

PART 8

Representation of Parties

78. Representation of the State, Government Departments and local governments.
79. Proceeding without authority.

PART 9

Transitional Powers

80. References to former Supreme Court to be reference to High Court in any Law.
81. Saving of pending proceedings.

PART 10

Rules of Court

82. Constitution of the High Court Rules Committee.
83. Powers to make rules of court.
84. First rules of court to be made by the Governor.

PART 11

Preliminary

SECTION

85. Interpretation.

86. Short title.

CHAPTER H2

HIGH COURT LAW

A Law relating to the High Court of Justice for Cross River State of Nigeria and for other purposes relating to the Administration of Justice.

[E.R.N. 20 of 1955, 27 of 1955, 29 of 1955, 21 of 1956, (see 69 and 2nd Schedule), 14 of 1960. E.N. 26 of 1960, 5 of 1961. E.N.L.N. 79 of 1961. E.N. 21 of 1962. 1965 No. 2. 1966 No. 31. 1973 No. 7. 1974 No. 9. 1976 Decree No. 42. 1978 No. 11.]

(3*rd January*, 1955)

[Commencement.]

PART 1

Constitution of the High Court

1. How High Court to be styled

The Court shall be called the High Court of Cross River State of Nigeria.

2. Constitution of the court

For the purposes of section 270 of the Constitution of the Federal Republic of Nigeria, the Judges of the Court shall be—

(*a*) the Chief Judge of the State; and

(*b*) fourteen other judges.

3. Further provision as to tenure of office of judge

A person holding the office of Chief Judge, or other Judge, shall vacate his office when he attains the age of sixty-five years.

4. Salaries and allowances of judges

(1) The salary of—

(*a*) the Chief Judge is a sum not less than seven thousand six hundred naira, and

(*b*) a judge, other than the Chief Judge, is a sum of not less than six thousand six hundred naira.

(2) There shall also be paid to each judge on account of expenses incurred in connection with his office or otherwise such allowances as are considered reasonable by the Governor.

5. Acting judges

A person may be appointed to act as judge of the court if he is qualified to be appointed a judge under that Constitution.

6. Powers and jurisdiction of judges

Subject to the provisions of any written law, all the judges of the court shall have and may exercise in all respects equal power, authority and jurisdiction; and any judge may exercise all and any part of the jurisdiction by this Law or otherwise vested in the court, and for such purpose shall be and form a court.

7. Precedence of judges

(1) In the absence of the Chief Judge, the acting Chief Judge shall have precedence over all other judges.

(2) Other than the Chief Judge or, as the case may be, the acting Chief Judge, the judges shall have precedence in the order in which they were first appointed judges in Nigeria.

8. Seal of court

The court shall have and use, as occasion may require a seal, having a device or impression of the Arms of Cross River State, with the inscription "The High Court of Cross River State".

PART 2

Jurisdiction and Law

9. Jurisdiction

(1) The court shall be a superior court of record and in addition to any other jurisdiction conferred by this Law or any other written law shall, within the limits and subject as is mentioned in this Law or any other written law, possess and exercise all the jurisdiction, powers and authorities which were on the thirtieth day of September, 1960, vested in the High Court of Justice in England.

---

*In addition to the jurisdiction conferred upon I by this Part, the High Court has had conferred upon it by the State Courts (Federal Jurisdiction) Act (F. & L. 1958, Cap. 177) jurisdiction in matters which are in the exclusive legislative competence of the Federal legislature including jurisdiction in divorce and matrimonial causes.

Also there is the following provision which was inserted by L.N. 47 of 1955 in which has become the Law (Miscellaneous Provisions) Act (F. & L. 1958, Cap. 89) and is to be seen in section 44 thereof:

"**44.** (1) Where jurisdiction is conferred by any Law upon a High Court or a magistrate's court established for a State with respect to—

(*a*) the summary trial and conviction; or

(*b*) the examination and commitment for trial on indictment; or

(*c*) the trial and conviction on indictment,

of offenders or persons charged with offences against the laws of the State and with respect to the hearing and determination of appeals arising out of any such trial or conviction or out of any proceedings connected therewith, such court shall, except in so far as other provision is made by law in force in the State, have the like jurisdiction with respect to offenders or persons charged with offences against a Federal law committed in the State or who may lawfully be tried for offences committed elsewhere.

(2) In this section 'Federal Law' means any law enacted by the National Assembly or having effect as if so enacted, which relates to a matter within the exclusive legislative competence of the National Assembly."

(2) Subject to the provisions of sections 10, 11, and 12 of this Law and of section 33 of the Rent Control and Recovery of Premises Law, any jurisdiction vested in the court shall include the judicial hearing and determination of matters in difference, the administration or control of property or persons, and the power to appoint or control guardians of infants and their estates, and also keepers of the estates of idiots, lunatics and such as being of unsound mind are unable to govern themselves and their estates.

[Cap. R4.]

(3) Subject to the provisions of this Law, the jurisdiction vested in the court shall include all Her Majesty's criminal jurisdiction which at the commencement of this Law was, or at any time afterwards may be, exercisable within the jurisdiction of the court for the repression or punishment of crimes or offences or for the maintenance of order.

10. Jurisdiction excluded in certain respects

The court shall not exercise original jurisdiction—

(*a*) in any dispute between the Federation and the State or between the State and another State, if so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends;

(*b*) in any matter arising under any Treaty; or

(*c*) in any matter affecting consular officers or other representatives of countries or of international or similar organisation outside Nigeria.

11. Jurisdiction as to interpretation of the Constitution of the Federation or of a State

(1) (*a*) If any question as to the interpretation of the Constitution of the Federation or of a State arises in any proceedings in any court established in the State other than the High Court the person presiding in that court may apply to the High Court for an order of the court referring the question to the Supreme Court:

Provided that he shall so apply to the court—

(*a*) if any party to the proceedings so requires; or

(*b*) if the question appears to him to be a substantial question of law as to the validity of a law enacted by the Federal Legislature.

(*b*) If any application is made in pursuance of this subsection to the court, the court may, if it sees fit, either make the order or refuse it:

Provided that if the court is required by a law enacted by the Federal Legislature to make the order, or if, in the opinion of the court, the application relates to a substantial question of law as to the validity of a law enacted by the Federal Legislature, the court shall make the order.

(2) If any question as to the interpretation of the Constitution of the Federation or of a State arises in any proceedings in the High Court, the Court may, if it sees fit, refer that question to the Supreme Court:

Provided that if the court is required by any law enacted by the Federal Legislature to refer the question to the Supreme Court or if, in the opinion of a law enacted by the Federal Legislature, the court shall refer the question to the Supreme Court.

12. Jurisdiction in certain respects

Except in so far as the Governor may by order otherwise direct and except in suits transferred to the High Court under the provisions of the Customary Courts Law the court shall not exercise original jurisdiction in any cause or matter which is subject to the jurisdiction of a

customary court relating to marriage, family status, the guardianship of children, or the inheritance or disposition of property on death.

[Cap. C21.]

13. How far law of England in force

(1) Subject to the provisions of this section and except in so far as other provision is made by any law in force in the State the common law of England, the doctrines of equity and the statutes of general application that were in force in England on the first day of January, 1900, shall, in so far as they relate to any matter for which the Legislature of the State is for the time being competent to make laws, be in force within the jurisdiction of the court.

Rules as to the application of statutes

(2) (*a*) All statutes of general application or other Acts of Parliament of the United Kingdom which apply within the jurisdiction of the court by reason of this Law or any other written law shall be in force so far only as the limits of the local jurisdiction and local circumstances permit.

(*b*) It shall be lawful for the court to construe such statutes or Acts with such verbal alterations, not affecting the substance, as may be necessary to make the same applicable to the proceedings before the court.

(*c*) Every judge or officer of the court, having or exercising functions of the like kind or analogous to the functions of any judge or officer referred to in any such statute or Act, shall be deemed to be within the meaning of the enactments thereof relating to such last mentioned judge or officer.

(*d*) Whenever the Great Seal or any other seal is mentioned in any such statute or Act it shall be read as if the seal of the court were substituted therefor.

(*e*) In matters of practice all documents may be written on ordinary paper, notwithstanding any practice or direction as to the printing or engrossing on vellum, parchment or otherwise.

14. Practice and procedure

The jurisdiction vested in the court shall be exercised (as far as regards practice and procedure) in the manner provided by this Law and in any other written law or by such rules and orders of court as may be made pursuant to this Law or any other written law, and, in default thereof, in substantial conformity with the law and practice observed in England in the High Court of Justice, on the thirtieth of September, 1960.

15. Probate jurisdiction

The jurisdiction of the court in probate causes and matters shall, subject to the law and to any rules of court, be exercised in conformity with the law and practice in force in England on the thirtieth day of September, 1960.

16. Jurisdiction of magistrates' courts concurrent with that of the court

No jurisdiction conferred upon magistrates' courts by any written law shall in any way restrict or affect the jurisdiction of the court, but the judges of the court shall have, in all causes and matters, civil and criminal, an original jurisdiction concurrent with the jurisdiction of the magistrates' courts.

17. Law and equity to be concurrently administered

(1) Subject to the provisions of this Law or of any other written law in every civil cause or matter which shall be commenced in the court, law and equity shall be administered concurrently.

(2) The court, in the exercise of the jurisdiction vested in it by this Law, shall have power to grant and shall grant, either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies or reliefs whatsoever, interlocutory or final, as any of the parties thereto may appear to be entitled to, in respect of any and every legal or equitable claim or defence properly brought forward by them respectively, or which shall appear in such case or matter; so that, as far as possible, all matters in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

(3) In all matters in which there is any conflict or variance between the rules of equity and the rules of common law with reference to the same matter, the rules of equity shall prevail.

18. Application of local custom

(1) The court shall observe and enforce the observance of every local custom and shall not deprive any person of the benefit thereof except when any such custom is repugnant to natural justice, equity and good conscience or incompatible, either directly or by its implication, either of any law for the time being in force.

(2) Such local custom shall be deemed applicable in any civil cause or matter where the parties thereto are persons of Nigerian descent also in any civil cause or matter between persons of Nigerian descent and persons who are not of Nigerian descent where it may appear to the court that substantial injustice would be done to either party by a strict adherence to the rules of any law or laws other than local custom.

(3) No party shall be entitled to claim the benefit of any local custom if it shall appear either from express contract or from the nature of the transaction out of which any civil cause or matter shall have arisen, that such party agreed or must be taken to have agreed that his obligations in connection with any such transaction should be regulated exclusively by some law or laws other than local custom or that such transaction is one which is unknown to local custom.

19. Foreign law or laws and local custom of other States to be decided by judge

Where for the purpose of disposing of any cause or matter which is being tried in the court by a judge with or without a jury it is necessary to ascertain the law of any other country or the law or the local custom of any State or part of Nigeria which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law or custom shall be decided by the judge alone and not submitted to the jury.

20. Civil jurisdiction of court

(1) The court shall have jurisdiction to hear and determine any suit for specific performance or any suit founded upon a breach of contract if the contract was made within the jurisdiction of the court though the breach occurred elsewhere, or if the breach occurred within the jurisdiction though the contract was made elsewhere, or if the contract ought to have been performed within the jurisdiction or if the defendant or one of the defendants resides within the jurisdiction.

(2) The court shall have jurisdiction to hear and determine any civil cause or matter other than one referred to in subsection (1) in which the defendant or one of the defendants resides or carries on business within the jurisdiction of the court.

21. Judgments of other courts may be pleaded

A judgment of any court of competent jurisdiction at any time established by law may, in respect of the same subject matter, be pleaded as a defence to any proceedings commenced in the Cross River State by the unsuccessful party.

22. Criminal jurisdiction of court where offence only partially committed within jurisdiction

The court shall have jurisdiction to hear and determine any criminal cause or matter notwithstanding—

(*a*) that it is uncertain whether an offence was committed within the jurisdiction of the court or not; or

(*b*) that an offence is committed partly within the jurisdiction of the court and partly outside such jurisdiction; or

(*c*) that an offence is a continuing one and continues to be committed partly within the jurisdiction of the court and partly outside such jurisdiction; or

(*d*) that an offence consists of several acts some of which are committed within the jurisdiction of the court and some of which are committed outside such jurisdiction.

23. Injunctions and receivers

(1) The court may grant an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the court to be just or convenient so to do.

(2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.

(3) If, whether before, or at, or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the court thinks fit, whether the person against whom the injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

24. Orders of *mandamus*, prohibition and *certiorari*

(1) The court shall have all the jurisdiction of the High Court of Justice in England to make an order of *mandamus* requiring any act to be done, or an order of prohibition prohibiting any proceedings or matter, or an order of *certiorari* removing any proceedings, cause or matter into the High Court or any division thereof for any purpose.

(2) The said orders shall be called respectively an order of *mandamus*, an order of prohibition and an order of *certiorari*.

(3) No return shall be made to any such order and no leadings in prohibition shall be allowed, but the order shall be final, subject to any right of appeal therefrom.

(4) In any written law references to any writ of *mandamus*, prohibition or *certiorari* shall be construed as references to the corresponding order and references to the issue or award of any such writ shall be construed as references to the making of the corresponding order.

25. ***Quo warranto***

(1) The court shall have all the jurisdiction of the High Court of Justice in England to make an order granting an injunction to restrain any person from acting in an office in which he is not entitled to act where, before the passing of the Administration of Justice (Miscellaneous Provisions) Act, 1938, an information in the nature of *quo warranto* would have lain against him and may (if the case so requires) declare such office to be vacant.

(2) No proceedings for an injunction under this section shall be taken by a person who would not immediately before the commencement of this Law have been entitled to apply for an information in the nature of *quo warranto* to the former Supreme Court of Nigeria.

(3) Proceedings under this section shall be deemed to be civil proceedings whether for purposes of appeal or otherwise.

26. Prerogative orders against officer of a Government of the Federation

The power conferred on the court by sections 24 and 25 of this Law to grant an injunction or to make an order of *mandamus* or prohibition may be exercised notwithstanding that the injunction or the order is made against an officer or authority of a Government of the Federation as such.

27. Relief against forfeiture for non-payment of rent

Subject to the provisions of any written law, in the case of any action for a forfeiture brought for non-payment of rent, the court shall have power to give relief in a summary manner and subject to the same terms and conditions in all respects as to payment of rent, costs and otherwise as could on the thirtieth day of September, 1960, have been imposed by the High Court of Justice in England and if the lessee, his executors, administrators or assigns are so relieved they shall hold their demised premises according to the terms of the lease and without the necessity of a new lease.

28. Reconciliation in civil causes and matters

In civil causes or matters the court may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

29. Reconciliation in criminal causes

In criminal causes the court may promote reconciliation and encourage and facilitate the settlement in an amicable way, of proceedings for common assault or for any other offence not amounting to a felony and not aggravated in degree, on terms of payment or compensation or other terms approved by the court, and may thereupon order the proceedings to be stayed.

30. Appellate jurisdiction

The court shall have appellate jurisdiction to hear and determine all appeals from the decisions of magistrates' courts in civil and criminal causes and matters given in the exercise of the original jurisdiction of the said courts as well as cases stated by magistrates in accordance with the provisions of this Law or of any other written law.

31. Further appellate jurisdiction

The court shall have appellate jurisdiction to hear and determine appeals from subordinate courts in accordance with the provisions of any written law relating thereto.

32. Powers of court in civil appeals

On the hearing of a civil appeal from the magistrate's court, the court may draw any inference of fact and either—

(*a*) confirm, vary or set aside the order of the magistrate; or

(*b*) order a new trial on such terms as the court thinks just; or

(*c*) order judgment to be entered for any party; or

(*d*) make a final or other order on such terms as the court thinks proper to ensure the determination on the merits of the real questions in controversy between the parties.

33. Further appeal to the Court of Appeal in civil appeals in certain cases

A person aggrieved by a decision of the High Court in a civil appeal in respect of a State matter may appeal further to the Court of Appeal in the same manner and as if such appeal were from a decision of the High Court in the exercise of its original civil jurisdiction.

34. Appeal by prosecutor

Notwithstanding anything contained in this Law to the contrary, a prosecutor aggrieved by a decision of the court in a criminal proceeding to acquit or discharge a person may appeal as of right to the Federal Court of Appeal against such a decision on the ground that it is erroneous in law.

35. Powers of court in criminal appeals

(1) On an appeal from conviction in a magistrate's court, the court may—

(*a*) maintain the conviction and dismiss the appeal; or

(*b*) allow the appeal and set the conviction aside if it appears to the court that the conviction should be set aside on the ground that it was, having regard to the evidence adduced, unreasonable, or that the conviction should be set aside on the ground of a wrong decision on any question of law, or on the ground that there was a substantial miscarriage of justice:

Provided that the court, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, shall dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred; or

(*c*) set aside the conviction and convict the appellant of any offence of which he might lawfully have been convicted by the magistrate upon the evidence and sentence him accordingly; or

(*d*) set aside the conviction and order that the appellant be retried in a court of competent jurisdiction; or

(*e*) substitute for the conviction a special finding that the appellant was insane at the time that he did the act or made the omission constituting the offence with which he was charged before the magistrate and, in such a case the provisions of the Criminal Procedure Law shall apply in respect of the appellant; or

[Cap. C17.]

(*f*) declare the proceedings before the magistrate to be a nullity either through want of jurisdiction or otherwise and order the appellant to be dealt with by a court of competent jurisdiction.

(2) On an appeal against sentence, the court shall if it appears to the court that a different sentence should have been passed upon the appellant, quash the sentence and pass such other sentence as could have been passed in the magistrate's court (whether more or less severe) in substitution therefor as the court thinks ought to have been passed, and in any other case shall dismiss the appeal.

36. Power of court on appeal against acquittal or dismissal

On an appeal against an acquittal or dismissal, the High Court—

(*a*) may affirm the decision of the trial court and dismiss the appeal; or

(*b*) may remit the case, together with the judgment of the High Court on the case, to the trial court for determination, whether or not by way of rehearing, with such directions as the High Court may think necessary; and

(*c*) shall make any amendment or any consequential or incidental order that appears just and proper.

37. Further appeal to Court of Appeal in certain criminal appeals

(1) A person who, having the right to appeal under the provisions of section 57 and 59 of the Magistrates' Courts Law, in respect of a State matter and having so appealed, is aggrieved by the decision of the High Court upon his appeal, may appeal further to the Court of Appeal on a matter of law, but not on a matter of fact or against sentence without leave of the Court of Appeal.

[Cap. M1.]

(2) Every such further appeal shall be entered within thirty days of the pronouncement of the decision appealed against or within such further time as may be ordered by the High Court.

(3) The provisions of this Law and any other written law relating to judgments which may be pronounced by the High Court on appeals from decisions of magistrates' courts shall *mutatis mutandis* apply to any such appeal to the Court of Appeal.

38. Statement of case by High Court

(1) At any time during the hearing in the court of a criminal cause whether in its original or appellate jurisdiction and before the final decision of the court has been announced, a person who is a party to a proceeding before the court and is aggrieved by an order, decision, or other proceedings of the court, may question the proceeding on the ground that it is—

(*a*) wrong in law, or

(*b*) in excess of jurisdiction,

by applying to the court to state a case for the opinion of the Federal Court of Appeal on the question of law or jurisdiction involved.

(2) Nothing contained in subsection (1) prevents the court, on its own motion, from stating a case for the opinion of the Court of Appeal on any criminal cause pending before it before the final determination of such a cause.

(3) Subject to subsection (4), if the court is of the opinion that an application under this section is frivolous, it may refuse to state a case and, if the applicant so requires, shall give him a certificate stating that the application has been refused.

(4) The court shall not refuse to state a case if the application is made by or under the direction of the Attorney-General.

(5) Where the court refuses to state a case, the Federal Court of Appeal may, on the application of the person who applied for the case to be stated, make an order of *mandamus* requiring the court to state a case.

39. Execution of instruments by order of court

Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract or other document, or to indorse any negotiable instrument, the court may on such terms and conditions as may be just order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be indorsed by such person as the court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or indorsed shall operate and be for all purposes as valid as if it had been executed or indorsed by the person originally directed to execute or indorse it.

PART 3

Sitting and Distribution of Business

40. Divisions of High Court

(1) For the more convenient dispatch of business the court may sit in two or more divisions.

(2) The Governor on the recommendation of the Chief Judge may divide the State into judicial divisions and the Chief Judge shall thereupon direct one or more judges to sit in each such division.

(3) The Chief Judge may by order appoint the places within such judicial divisions and the times at which the court shall sit for the trial of criminal and civil causes and matters and the disposal of any other legal business pending. At such sittings (which shall be called sessions) all criminal causes shall as far as practicable and subject to the provisions of any written law, be tried and determined in propriety to other business.

41. Chief Judge to distribute business of court

The Chief Judge may determine the distribution of the business before the court among the judges thereof and may assign any judicial duty to any judge or judges.

42. Postponement of trial

The court may postpone any trial when it considers it in the interests of justice to do so.

43. Court open at all times for general business

The court shall be open throughout the year except on Sundays and Public Holidays for the transaction of legal business.

44. Adjournment in absence of judge

In case the judge before whom any cause or matter is to be heard shall for any reason, be unable or fail to attend on the day appointed, and no other judge shall attend in his stead the

court shall stand adjourned *de die in diem* until a judge shall attend, or until the court shall be adjourned or closed by order under the hand of a judge.

45. Power of transfer of judge

(1) A judge may by order under his hand and the seal of the court at any time or at any stage of the proceedings before final judgment, and either with or without application from any of the parties thereto, transfer any cause or matter before him to a magistrate's court or to a judge in the same or any other judicial division.

(2) Such an order may apply either to any particular cause or matter entirely or in respect of any part thereof or proceeding required to be taken thereon.

46. Power of transfer of Chief Judge

(1) The Chief Judge may by order under his hand and the seal of the court at any time or at any state of the proceedings before final judgment and either with or without application from any of the parties thereto, transfer any cause or matter before a judge to any other judge.

(2) Such an order may apply either to any particular cause or matter entirely or in respect of any part thereof or proceeding required to be taken thereon.

(3) Such power of transfer may be exercised by the Chief Judge in respect of any causes or matters described in such order and may extend to future causes or matters as well as such as may be before the court at the time of the making of the order.

(4) The Chief Judge may at any time cancel or vary the terms of any order of transfer made under the provisions of subsection (3) of this section.

47. Power to transfer cause to customary court

(1) The court may at any time or at any stage of the proceedings before final judgment by order direct that any civil cause or matter pending before it be transferred to a customary court having jurisdiction in such cause or matter:

Provided that this subsection shall not apply to any suit which raises any issue as to the title to land or as to the title to any interest in land.

(2) The court shall not transfer, or retransfer, to a customary court any cause or matter which has been transferred to the High Court under the provisions of the Customary Courts Law.

[Cap. C21.]

48. Effect of order of transfer

Every order of transfer shall operate as a stay of proceedings before the judge to whom it is addressed in any cause or matter to which the order extends or is applicable, and the process and proceedings in every such cause or matter, and an attested copy of the record shall be transmitted to the judge, magistrate or customary court to whom the same shall be transferred as the case may be.

49. No appeal from order of transfer

There shall be no appeal from any order made by the court under the provisions of section 44, 45, or 46.

PART 4

General provisions as to Trial and Procedure

50. Proceedings to be disposed of by single judge

Subject to the provisions of this Law or any rules of court made thereunder or any other written law all civil and criminal causes or matters and all proceedings in the court and all business arising therefrom shall so far as is practicable and convenient be tried, heard and disposed of by a single judge, and all proceedings in an action subsequent to the hearing or trial down to and including the final judgment or order, shall, so far as practicable and convenient, be taken before the judge before whom the trial or hearing took place.

51. Powers of single judge in court and in chambers

A judge may, subject to rules of court, exercise in court or in chambers all or any part of the jurisdiction vested in the court, in all such causes and matters and in all such proceedings in any causes or matters as could on the thirtieth day of September, 1960, have been heard in court or in chambers respectively by a single judge of the High Court of Justice in England.

52. Notice of evidence and minutes of proceedings to be kept by presiding judge

(1) In every cause or matter the presiding judge shall take down in writing the purport of all oral evidence given before the court and minutes of the proceedings and shall sign the same at any adjournment of the case and at the conclusion thereof.

(2) No person shall be entitled as of right, to the inspection of or to a copy of the records so kept save as may be expressly provided for by rules of court.

(3) The record so kept or a copy thereof purporting to be signed and certified as a true copy by the registrar shall at all times, without further proof be admitted as evidence of such proceedings and of the statements, made by witnesses.

53. Discharge of orders made in chambers

Subject to the provisions of this Law, every order made by a judge in chambers, except an order as to costs only which by law is left to the discretion of the court, may upon notice be set aside or discharged by the judge sitting in court.

54. Protection of judges and persons executing warrants, etc.

(1) No judge or person appointed under the provisions of section 5 of this Law to act as a judge shall be liable for any act done or thing said by him in the course of any proceedings before him, provided that at the time he, in good faith, believed himself to have jurisdiction in such proceeding.

(2) No person required or bound to execute any warrant or order issued by a judge or by a person acting as a judge shall be liable in any action for damages in respect of the execution of such warrant or order unless it be proved that he executed either in an unlawful manner.

55. Inspection

In any cause or matter the court may on the application of either party, or of its own motion, make such order for the inspection by the court, the party or witnesses, of any movable or immovable property, the inspection of which may be material to the proper determination of the question in dispute, and give such direction respecting such inspection as to the court may seem fit.

56. Reference for report to referee

(1) Subject to any rules of court a judge may appoint a referee and refer to him for inquiry or report any question arising in any cause or matter other than a criminal proceeding.

(2) The report of a referee may be adopted wholly or partially by the judge and if so adopted may be enforced as a judgment or order to the same effect.

(3) No person shall be appointed a referee under this section without his consent.

57. Reference for trial to arbitrator

(1) In the cause or matter, other than a criminal proceeding—

(*a*) if all the parties interested who are not under disability consent; or

(*b*) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the court conveniently be conducted by the court through its ordinary officers; or

(*c*) if the question in dispute consists wholly or in part of accounts,

the court may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before one or more arbitrators respectively agreed on by the parties.

(2) No person shall be appointed an arbitrator under this section without his consent.

58. Powers and remuneration of referees and arbitrators

(1) In all cases of reference to a referee or arbitrator, the referee or arbitrator shall be deemed to be an officer of the court, and subject to rules of court shall have such authority, and conduct the reference in such manner as the court may direct.

(2) The report of a referee or award of an arbitrator on any reference shall, unless set aside by the court, be equivalent to a finding of the court.

(3) The remuneration to be paid to a referee or arbitrator to whom any matter is referred under an order of the court shall be determined by the court.

59. Courts to have powers as in submissions

The court shall, in relation to references have such powers as are conferred by the Arbitration Law on the court in relation to submissions.

[Cap. A18.]

60. Power to order *habeas corpus* to issue

The court may order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before a referee or arbitrator.

61. Statement of case pending arbitration

A referee or arbitrator may at any stage of the proceedings under a reference, and shall if so directed by the court, state in the form of a special case for the opinion of the court any question of law arising in the course of the reference.

62. Power of court to impose terms as to costs

A reference or order made under the provisions of this Part relating to inquiries by referees and trials by arbitrators may be made on such terms as to costs or otherwise as the court thinks fit.

PART 5

Officers of the Court

63. Chief Registrar and other officers

(1) The Judicial Service Commission may from time to time appoint a fit and proper person to be the Chief Registrar of the High Court, who shall perform such duties in execution of the powers and authorities of the court as may from time to time be assigned to him by any rules of court or subject thereto, by any special order of the Chief Judge.

(2) The Public Service Commission may from time to time appoint registrars, and such other officers as may be deemed necessary to any division who shall perform all such duties with respect to business before the court as may be directed by any rules of court or any order of the Chief Judge.

64. Probate Registrar

The Registrar shall be the Probate Registrar for Cross River State.

65. Duties of officers of the court

Subject to any rules of court or special orders of the Chief Judge, the Chief Registrar or any registrar appointed under the provisions of section 64 to any division shall perform such duties as were on the thirtieth day of September, 1960, performed by a registrar of the High Court of Justice in England and, in particular, shall issue all summonses, warrants and writs of execution, and shall register all orders and judgments and shall keep a record of all the proceedings of the court, and shall have the custody and keep an account of all fees and fines payable or paid into court, and of all moneys paid into or out of court, and shall keep proper accounts thereof.

66. Taxing Master

Any registrar appointed under the provisions of section 64 to any division shall be the Taxing Master of the court for that division and shall tax all bills of costs referred to him by the court in accordance with the scale of fees for the time being in force and any rules of court, subject to the review of such taxation by the court.

67. Negligence or misconduct of officers

If any officer of the court, employed to execute an order, wilfully or by neglect or omission loses the opportunity of executing it, then on complaint of the person aggrieved and proof of the fact alleged, the court may, if it thinks fit, order the officer to pay the damages sustained by the person complaining, or part thereof, and the order shall be enforced as an order of the court directing payment of money.

68. Restriction on officers of court buying property sold at execution

No officer of the court shall or may directly or indirectly or by the intervention of a trustee or otherwise purchase any property sold at execution, and in the event of any such person purchasing or being interested in the purchase of any property at an execution sale, such purchase shall be entirely void:

Provided that nothing herein contained shall prevent any such person from purchasing by leave of the court at an execution sale any property which it may be necessary for him to purchase in order to protect the interest of himself, his wife or child.

PART 6

Commissioners of Oaths – Notaries Public

69. Appointment of commissioner of oaths to take evidence, etc.

The Chief Judge may appoint under his hand and the seal of the court, from time to time such and so many persons as may be requisite to be commissioners for taking affidavits and declarations and receiving production of documents or for taking the examination of witnesses, or interrogatories or otherwise, in respect of any proceedings before the court, and any order of the court, for the attendance and examination of witnesses or production of documents before any such commissioner within the jurisdiction of the court, shall be enforced in the same manner as an order to attend and be examined or produce documents before the court.

70. Protection of commissioners from action

No action shall be brought against any commissioner in respect of any act or order *bona fide* performed or made by him in the execution, or supposed execution, of the powers or jurisdiction vested in him, but every such act or order if in excess of such powers and jurisdiction shall be liable to be revised, altered, amended or set aside upon application to the court.

71. Notaries public to be officers of the court

(1) Every notary public shall be deemed to be an officer of the court.

(2) No notary public shall exercise any of his powers as a notary public in any proceedings or matter in which he is interested.

PART 7

Witnesses, etc.

72. Allowances to witnesses

(1) The presiding judge may in any cause or matter order and allow to all persons required to attend or be examined as witnesses, such sum or sums of money as may be specified by rules of court as well as for defraying the reasonable expenses of such witnesses for allowing them a reasonable compensation for their trouble and loss of time.

(2) All sums of money so allowed shall be paid in any civil cause or matter by the party on whose behalf the witness is called, and shall be recoverable as ordinary costs of suit if the court shall so order, and in any criminal cause or matter they shall, unless by the court ordered to be paid by the party convicted or the prosecutor, be paid out of the general revenue of the State.

73. Forfeiture for neglecting witness summons

Subject to the provisions of the Evidence Act, any person summoned as a witness in the court who—

[Cap. E.14 LFN.]

(*a*) refuses or neglects, without sufficient cause, to appear or to produce any documents required by the summons to be produced; or

(*b*) refuses to be sworn or make an affirmation or give evidence,

shall forfeit a sum not exceeding two hundred naira as the judge may direct:

Provided that no person so summoned shall forfeit a sum unless there has been paid or tendered to him at the time of the service of the summons such amount in respect of his expenses as may be prescribed including in such cases as may be prescribed as compensation for loss of time.

74. Persons in court may be required to give evidence though not summoned

Any person present in court, whether a party or not in a cause or matter, may be ordered by the court to give evidence, and to produce any document in his possession or in his power, in the same manner as if he had been summoned to give evidence, or to produce such document and may be treated for any refusal to obey the order of the court as if he had been guilty of a contempt of court.

75. In what cases prisoners may be brought by warrant to give evidence

A judge may issue a warrant under his hand for bringing up any person confined as a prisoner under any sentence, or otherwise, or under civil process to be examined as a witness in any cause or matter pending, or to be inquired of, in the court:

Provided that such warrant shall not be granted unless the judge shall have probable grounds for believing that the evidence of the prisoner is likely to prove material.

76. Prison officer to produce prisoner

The superintendent of prisons or person in whose custody such prisoner may be shall forthwith obey such warrant by bringing to the court the prisoner in his custody or by delivering him to an officer of court, as the warrant may order, and if the prisoner shall under the terms of the warrant be delivered to any officer of court, the superintendent of prisons or other person shall not be liable for the escape of such prisoner.

77. Right of audience

Subject to the provisions of any written law, any person admitted to practise in the Supreme Court shall be entitled to practise in any court throughout Cross River State.

PART 8

Representation of Parties

78. Representation of the State, Government Departments and local governments

(1) Subject to this section, in the case of a prosecution—

(*a*) by or on behalf of the State, or

(*b*) by a public officer in his official capacity,

the State or that public officer may be represented by—

(i) a law officer;

(ii) a police officer; or

(iii) a legal practitioner duly authorised in that behalf by the Attorney-General or in a revenue case authorised by the head of the department concerned.

(2) In a civil cause or matter in which—

(*a*) the State; or

(*b*) a public officer in his official capacity as a party, or in a civil cause or matter affecting the revenues of the State,

the State or that public officer may be represented by—

(i) a law officer, or

(ii) a legal practitioner duly authorised in that behalf by the Attorney-General or the head of the department concerned.

(3) In the case of—

(*a*) a prosecution by or on behalf of a local government, or

(*b*) a suit brought by or against that local government,

the local government may be represented in court, at any state of the proceedings, by—

(i) a legal practitioner, or

(ii) an officer or employee of the local government who shall satisfy the judge that he has the authority to represent the local government.

(4) Where the State is concerned in right of the Government of the Federation, the reference in this section to—

(*a*) Attorney-General, and

(*b*) a law officer,

shall be construed, as the case may be, as a reference to—

(*c*) the Attorney-General of the Federation; and

(*d*) a Federal law officer.

79. Proceeding without authority

Any legal practitioner or other person doing any act or taking any proceeding in the court in the name or on behalf of another person, not being lawfully authorised thereunto, and knowing himself not to be so authorised shall be deemed guilty of contempt of court.

PART 9

Transitional Powers

80. References to former Supreme Court to be reference to High Court in any Law

Whenever in any Law or any document reference is made to the former Supreme Court, such reference shall be read, in so far as the context will permit, to mean a reference to the High Court established under the provisions of this Law and where in any such Law or document reference is made to any judge, registrar or other officer of the former Supreme Court, such reference shall be read so far as the context will permit, to mean a judge, registrar or other officer as aforesaid of the High Court.

* The references in this Part to the "former Supreme Court" are references to the Supreme Court which formerly exercised jurisdiction in the Eastern Region of Nigeria until replaced by the High Court, and not references to the Supreme Court defined in section 2. That former Supreme Court is not referred to in the Laws included in this edition, but it is in some Laws or former Ordinances, which are not included.

81. Saving of pending proceedings

All proceedings instituted, commenced or taken in accordance with the rules or practice of the former Supreme Court in respect of any cause, matter or petition and all appeals from a magistrate's court pending at the date of the coming into force of this Law in which the High Court has jurisdiction under the provisions of this Law shall be valid and effectual as though they had been instituted, commenced or taken under the provisions of this Law and such proceedings shall continue before the court under the provisions of this Law.

PART 10

Rules of Court

82. Constitution of the High Court Rules Committee

(1) For the purposes of this Law, there is constituted a committee which shall be called the High Court Rules Committee, consisting of—

(*a*) the Chief Judge;

(*b*) a judge appointed by the Chief Judge;

(*c*) the Attorney-General or a member of his Ministry nominated, for the purpose, by him; or

(*d*) not more than six legal practitioners appointed, for the purpose by the Chief Judge.

(2) The term of office of any person who is a member of the High Court Rules Committee by virtue of appointment shall be such as may be specified in the appointment.

(3) Subject to the provisions of section 83 no rule shall be valid except if it has been made by the Chief Judge and not less than two other members of the High Court Rules Committee.

(4) The Chief Registrar shall be the Secretary to the High Court Rules Committee.

83. Powers to make rules of court

(1) The High Court Rules Committee may make rules for carrying this Law into effect and in particular for regulating all or any of the following matters—

(*a*) the pleading, practice and procedure of the court in respect of civil matters connected with the forms to be used and the fees to be payable, their amount and the method and time of payment;

(*b*) the practice and procedure for election petitions presented under and by virtue of any written law which confers the right to present an election petition to the High Court;

(*c*) the practice and procedure for appeals from orders of surcharge made by auditors under the provisions of any written law;

(*d*) the procedure in cases where an order of *mandamus*, prohibition or *certiorari* is sought or proceedings are taken for an injunction under section 25;

(*e*) the employment in causes and fees of legal practitioners and the taxation and recovery of their fees and disbursements;

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* The High Court Rules Committee has also been given, by section 5 of the Foreign Judgments (Reciprocal Enforcement) Act (No. 31 of 1960), power to make rules for the purposes set out in the section.

(*f*) the duties and powers of the Chief Registrar and of the several officers of the court;

(*g*) the procedure for the grant of probate and letters of administration and for securing the due administration of estates, including the fees to be payable, their amount and the time of payment of the same;

(*h*) the form and procedure relating to civil and criminal appeals to the court;

(*i*) the procedure relating to the transfer of civil causes or matters or proceedings within the High Court to any inferior court;

(*j*) the sittings of the court and of the judges of the court whether sitting in court or in chambers;

(*k*) the costs in and arising out of civil causes, matters or proceedings in the court;

(*l*) the taxation and payment of costs in any cause, matter or proceeding before the court;

(*m*) for prescribing what part of the business, which may be transacted by, and of the jurisdiction which may be exercised by, judges in chambers, may be transacted or exercised by registrars or other officers of the court;

(*n*) the duties of referees and arbitrators and the practice and procedure with respect to references to referees and arbitrators;

(*o*) the means by which any judgment or decree of the Supreme Court, of the Federal Court of Appeal, or of any High Court established or to be established elsewhere in Nigeria may be proved or enforced in the State;

(*p*) the means by which particular facts may be proved, and the mode in which evidence thereof may be given, in any causes, matters or proceedings;

(*q*) the arrest of absconding debtors and for giving security of their release;

(*r*) the payment of allowances and travelling expenses of witnesses in civil causes, matters or proceedings;

(*s*) the imposition of penalties on any person who fails to take any action required by a rule of court or who disobeys any rule of court.

(2) Rules of court made under this section shall apply to all proceedings by or against the State.

84. First rules of court to be made by the Governor

(1) Notwithstanding the provisions of sections 82 and 83 the first rules of court shall be made by the Governor and shall come into force on the date on which this Law comes into operation.

(2) Such rules of court which may be for all or any of the purposes specified in subsection (1) of section 82 may be revoked or amended by the High Court Rules Committee at any time.

(3) Rules of court made under this section shall apply to all proceedings by or against the State.

PART 11

Preliminary

85. Interpretation

In this Law, unless the context otherwise requires—

"cause" includes any action, suit or other original proceeding between a plaintiff and a defendant and any criminal proceeding;

"Chief Judge" means the Chief Judge of Cross River State;

"committed for trial" includes every case of a person ordered to be tried on information, whether imprisoned or admitted to bail;

"defendant" includes every person served with any writ of summons or process, or served with notice of, or entitled to attend as a defendant, any proceeding in a civil cause, and also every person charged under any process of the court with any crime of offence;

"Division" means a Judicial Division of the High Court;

"Federal Republic" means the Federal Republic of Nigeria;

"judge" includes the Chief Judge;

"judgment" includes decree;

"law officer", where used with reference to—

(i) criminal proceedings, means the Attorney-General;

(ii) civil proceedings, means the Attorney-General, the Solicitor-General, a Senior State Counsel or a State Counsel;

"local custom" includes a rule which, in a particular district or among the members of a tribe or clan or class of persons, has, from long usage, obtained the force of law and also local customary law;

"matter" includes every proceeding in the court not in a cause;

"plaintiff" includes every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the proceeding is by action, suit, petition, motion, summons or otherwise;

"prescribed" means prescribed by rule of court;

"reference" means a reference under an order made by the court under the provisions of Part 5;

"Registrar" includes the Chief Registrar;

"State matter" means a matter with respect to which, by virtue of the Constitution (Basic Provisions) Decree, 1975, the Military Governor has power to make laws, without the prior consent of the Federal Military Government;

"suit" includes action, and a civil proceeding commenced by writ of summons, or in such other manner as may be prescribed by rules of court, but not a criminal proceeding;

"Supreme Court" means the Supreme Court of Nigeria established by the Constitution of the Federation;

"the court" or **"the High Court"** means the High Court of Justice of Cross River State of Nigeria established by the Constitution of Eastern Nigeria;

"the Court of Appeal" means the Court of Appeal established by the Constitution of the Federal Republic;

"the State" means Cross River State.

86. Short title

This Law may be cited as the High Court Law.

CHAPTER H2

HIGH COURT LAW

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

[Citation.]

1. High Court of Cross River State (Judicial Divisions) Order.
2. Administration of Justice (Hours of Business) Order.

HIGH COURT OF CROSS RIVER STATE (JUDICIAL DIVISIONS) ORDER

ORDER

1. The Cross River State of Nigeria is hereby divided into the Judicial Divisions specified in the first column of the Schedule hereto, each of which consists of the area mentioned in the second column thereof opposite each Judicial Division respectively.

2. This Order may be cited as the High Court of Cross River State (Judicial Divisions) Order.

SCHEDULE

Judicial Division	*Area Comprising Division*
1. Akamkpa Judicial Division	Local Government Areas of Akamkpa and Biase
2. Akpabuyo	Local Government Areas of Akpabuyo and Bakassi
3. Calabar Judicial Division	Local Government Areas of Calabar Municipality, Calabar South and Odukpani
4. Ikom Judicial Division	Local Government Area of Boki, Etung and Ikom
5. Obubra	Local Government Areas of Obubra
6. Obudu	Local Government Areas of Obanliku and Obudu
7. Ogoja	Local Government Areas of Bekwarra, Ogoja and Yala
8. Ugep	Local Government Areas of Abi and Yakurr

ADMINISTRATION OF JUSTICE (HOURS OF BUSINESS) ORDER 1973

ORDER

1. Hours of business

(1) The ordinary hours of sittings of the High Court and the Magistrates' Courts throughout the State shall continue to be as follows—

Monday to Friday	9 a.m. to 2 p.m.

(2) The respective Registries of the High Court and the magistrates' courts shall remain open throughout the year except on Sundays and Public Holidays (in accordance with section 45 of the High Court Law and section 61 of the Magistrates' Courts Law) for the transaction and disposal of legal business pending as follows—

Monday to Friday	7.30 a.m. to 3.30 p.m.
Saturday.....	7.30 a.m. to 10 a.m.

(3) Notwithstanding the provisions of subparagraphs (1) and (2) of this paragraph, any such court shall sit and any such Registry shall remain open (except on Sundays and Public Holidays) for any longer period or periods than that or those prescribed above if necessary or desirable in the interest of the administration of justice in the State.

2. Citation

This Order may be cited as the Administration of Justice (Hours of Business) Order.

CHAPTER I1

ILLITERATES PROTECTION LAW

ARRANGEMENT OF SECTIONS

SECTION

PART 1

1. Verification of letters written for illiterate persons.
2. Penalty.
3. Legal practitioners exempt from the provisions of this Law.

PART 2

4. Application of Part 2.
5. Fee to be marked.
6. Receipt to be given.
7. Reward for writing letters.
8. Definition.
9. Short title.

SCHEDULE

Fees

CHAPTER I1

ILLITERATES PROTECTION LAW

A Law to provide for the Protection of Illiterate Persons.

(Part 1 – 15*th December*, 1915
Part 2 – 25*th March*, 1920)

[Commencement.]

PART 1

1. Verification of letters written for illiterate persons

Any person who shall write any letter or document at the request, on behalf, or in the name of any illiterate person shall also write on such letter or other document his own name as the writer thereof and his address; and his so doing shall be equivalent to a statement—

(*a*) that he was instructed to write such letter or document by the person for whom it purports to have been written and that the letter or document fully and correctly represents his instructions; and

(*b*) if the letter or document purports to be signed with the signature or mark of the illiterate person, that prior to its being so signed it was read over and explained to the illiterate person, and that the signature or mark was made by such person.

2. Penalty

If the writer of any such letter or document shall fail to write thereon his name and address, or if, having done so, any statement which under the last preceding section is in consequence implied shall be found to be untrue, the writer shall be guilty of an offence and liable on conviction to a fine of one thousand naira or to imprisonment for six months.

3. Legal practitioners exempt from the provisions of this Law

This Law shall not apply to the writing of any letter or other document written in the course of his business by or at the direction of any person admitted to practise and practising as a legal practitioner.

PART 2

4. Application of Part 2

This Part shall apply to such part or parts of the State as may be ordered by the Executive Council.

5. Fee to be marked

In addition to the obligation imposed upon him by section 1, every writer shall state in writing on the letter or document, and each copy thereof—

(*a*) whether or not any fee or reward has been or is to be charged or taken by him for writing such letter or document; and

(*b*) the nature or amount of such fee or reward, if any; and

(*c*) the total number of copies of such letter or document written by him, including the original.

Penalty for omission or false statement: a fine of one hundred naira or in default of payment imprisonment for six months.

6. Receipt to be given

Every writer shall give a receipt for the full amount of every fee or reward, whether in money or kind, taken by him for or in connection with the writing of any letter or document.

Penalty: a fine of five hundred naira or in default of payment imprisonment for three months.

7. Reward for writing letters

A writer may not charge or take any fee or reward exceeding the rates specified in the Schedule to this Law.

Penalty: a fine of one thousand naira or in default of payment imprisonment for six months.

8. Definition

In this Law, unless the context otherwise requires—

"writer" means any person who shall write any letter or document at the request, on behalf, or in the name of any illiterate person, except as provided in section 3.

9. Short title

This Law may be cited as the Illiterates Protection Law.

SCHEDULE

Fees

	₦	k
For every original letter or document per hundred words or part thereof	0	50
For the first copy (if any), per hundred words or part thereof	0	20
For the second and subsequent copies, per hundred words or part thereof	0	05

CHAPTER I1

ILLITERATES PROTECTION LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER I2

INCORPORATION (MINISTRY OF FINANCE) LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Ministry of Finance to be corporation sole.
2. Powers of the corporation generally.
3. Powers of the corporation in respect of investments to secure money lent by Government.
4. Execution of documents.
5. Power of Commissioner to transfer property by order to public officers or authority.
6. Validity of previous instruments, etc.
7. Vesting of previous investments in the corporation.
8. Interpretation.
9. Short title.

CHAPTER I2

INCORPORATION (MINISTRY OF FINANCE) LAW

A Law to create the Ministry of Finance a corporation sole for the purpose of executing instruments, enforcing and defending claims and for all other matters incidental to or connected therewith.

(16*th June*, 1960)

[Commencement.]

1. Ministry of Finance to be corporation sole

(1) On and from the date of commencement of this Law the Ministry of Finance shall be deemed to be a corporation sole having perpetual succession and power to sue and be sued in its corporate name.

(2) The Corporation shall have a corporate seal which may from time to time be broken, changed, altered and made anew in any manner deemed fit by the Corporation and until a seal is provided under this subsection a stamp bearing the inscription "Ministry of Finance, Cross River State of Nigeria" may be used as such corporate seal.

2. Powers of the corporation generally

The Corporation may enter into contract and acquire, purchase, take, hold and enjoy movable and immovable property of every description, and may convey, assign, surrender and yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with any movable or immovable property vested in the Corporation upon such terms as to the corporation seems fit.

3. Powers of the Corporation in respect of investments to secure money lent by Government

(1) The Corporation may enter into, sign, seal, execute and perfect any contract, instrument, mortgage, deed, surrender or assurance for securing the repayment of money, together with interest thereon if any, lent by the Accountant-General or by any person appointed by the Commissioner to other parties or of money due and payable to the Government of the State by other parties, and may sign and execute in the same manner receipts, release, reconveyances and acquittances and other assurances of the lands and property which shall have been mortgaged as security therefor, and may consent to any such alteration of the conditions of the said securities or any of them as the Commissioner shall think fit.

(2) Without prejudice to the generality of the provisions of subsection (1) of section 3 of this Law the Corporation may commence any action or other proceeding in any court for the recovery of any sum of money, right, title, interest, property or thing whatsoever due or payable or for the enforcement of any covenant under any of the securities referred to in subsection (1) of this section and also may take such other lawful means for recovering any such sum of money as occasion may require.

4. Execution of documents

(1) All deeds and other instruments requiring the seal of the Corporation shall be sealed with the seal of the Corporation in the presence of the Permanent Secretary and signed by the Permanent Secretary on the written authority of the Commissioner and such signing shall be sufficient evidence that the said seal was duly and properly affixed and that the same is the lawful seal of the Corporation.

(2) Any other document requiring the signature of the Corporation shall be signed by the Permanent Secretary or by any officer authorised by him in that behalf.

5. Power of Commissioner to transfer property by order to public officers or authority

The Commissioner after consultation with the Executive Council may, by order, vest in any public officer or authority any property, movable or immovable, for the time being vested in the Corporation and, upon the coming into operation of any such order, the property to which such order relates shall, without any conveyance, assignment or transfer whatever, vest in such officer or authority for the purposes as the same was vested or held immediately before the coming into operation of the order.

6. Validity of previous instruments, etc.

(1) Any contract, instrument, mortgage, deed, surrender or assurance for securing the repayment of money entered into, signed, sealed, executed or perfected by, any receipt, release, reconveyance or acquittances or other assurance of lands or property which shall have been mortgaged as security signed or executed by, and any consent given to an alteration of the conditions of any security by the Financial Secretary of the Eastern Region of Nigeria prior to the 1st day of October, 1954, or after that date by the Ministry of Finance or any other Ministry or person acting on behalf of the Government of Eastern Nigeria shall continue to be valid and shall be deemed to have been entered into, signed, sealed, executed, perfected or given as the case may be by the corporation under and in accordance with the provision of this Law:

Provided that nothing in this subsection shall operate to validate or cure any defect in any of the said instruments which were invalid or defective immediately prior to the coming into operation of this Law.

(2) All contracts, instruments, mortgages, deeds, surrenders or assurances executed by the former Financial Secretary of Eastern Nigeria or any of his predecessors in office or the Permanent Secretary, Ministry of Finance, or in any other official representative capacity to secure the repayment of money lent or by or on behalf of the Government of Eastern Nigeria vested in the Corporation and ensuring for the benefit of the Consolidated Revenue Fund or any other public fund immediately prior to the coming into operation of this Law shall continue to vest in the Corporation and enure for the benefit of the Consolidated Revenue Fund or such other public fund as may be specified by or under any written law and all receipts, releases, reconveyances and acquittances and other assurances of lands and property which shall have been mortgaged as security for money lent as aforesaid, executed by the Permanent Secretary on behalf of the corporation whether before or after the coming into operation of this Law or executed by any previous holder of the office of the Financial Secretary of Eastern Nigeria, are hereby declared to be effectual discharges of such sums repaid.

(3) The foregoing provisions of this section shall have effect in the State only so far as the interest formerly vested in the Ministry of Finance of Eastern Nigeria in any contract, instrument, mortgage, deed, surrender or assurance is, by virtue of of any Law, vested in the Ministry of Finance of the State.

7. Vesting of previous investments in the Corporation

Any investment, share or stock made or held by any officer or person or group of persons acting on the behalf of the Government of the State shall continue to be valid and shall be deemed to have been made or held by or vested in the Corporation under and in accordance with the provisions of this Law, without any further assurance.

8. Interpretation

In this Law—

"the Corporation" means the Ministry of Finance referred to in section 3 of this Law;

"the Commissioner" means the Commissioner charged with responsibility for matters relating to Finance;

"the Ministry" means the Ministry of Finance, of the State;

"the Permanent Secretary" means the Permanent Secretary of the Ministry or an officer for the time being having control over the Departments of Government within that Ministry;

"property" includes all estates, interest, easements and rights, whether equitable or legal in to or out of property, and things in action.

9. Short title

This Law may be cited as the Incorporation (Ministry of Finance) Law.

CHAPTER I2

INCORPORATION (MINISTRY OF FINANCE) LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER I3

INDISCRIMINATE DUMPING OF REFUSE (PROHIBITION) LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Enactment
2. Offences and penalty.
3. Mode of payment of fine.
4. Power to arrest.
5. Enforcement of law.
6. Jurisdiction.
7. Interpretation.
8. Short title.

CHAPTER I3

INDISCRIMINATE DUMPING OF REFUSE (PROHIBITION) LAW

A Law to Prohibit the Indiscriminate Dumping of Refuse in unauthorised places in Cross River State.

(18*th July*, 2000)

[Commencement.]

1. Enactment

Notwithstanding anything to the contrary in any other enactment or Law, no person shall, as from the commencement of this Law, dump any refuse of any kind on any street, drain, highway, or public place within the State.

2. Offences and penalty

(1) Any person who dumps refuse on any street, drain, highway or public place in the State other than at properly designated points, shall for the purpose of this Law be guilty of an offence and liable on conviction—

(*a*) in the case of a first offender, to a fine of ₦500.00;

(*b*) in the case of a second offender, to a fine of ₦1,000.00;

(*c*) in the case of a third offender, or subsequent offender, to a fine of ₦5,000.00 or three months imprisonment or both.

Where the refuse is thrown from a moving vehicle, the driver of the vehicle at the time or the owner of the vehicle or both such driver and owner shall be liable.

Where to the knowledge of an adult, refuse is dumped by a child who is in the company of an adult, the adult shall be liable to pay a prescribed fine.

Where the refuse is dumped by a child unaccompanied by an adult, the parents or whoever serves as guardian of such child shall be liable to pay the prescribed fine.

3. Mode of payment of fine

All payments of fines made shall be receipted for with approved Treasury Receipts.

4. Power to arrest

(1) Arrest of offenders under this Law shall be affected by any member of the Nigeria Police Force or enforcement Officers designated for the purpose.

(2) Upon arrest, offenders may be detained at the police station and shall be arraigned before a magistrate's court within 24 hours of such detention.

5. Enforcement of Law

The Relevant Enforcement Authority, shall be responsible for the enforcement of this Law within the respective Local Government Areas of the State.

6. Jurisdiction

All offences created under this Law shall be heard and disposed of by the Magistrate's Court within the Magisterial District where the offence is committed.

7. Interpretation

In this Law—

"child" means any young person under the age of 13 years;

"dump" means to unload refuse in unauthorised places;

"public place" means any place not designated as a refuse dump;

"refuse" means and includes all forms of litter, rubbish, and waste;

"relevant enforcement authority" includes Sanitation Agencies, Urban and Rural Development Agencies;

"State" means Cross River State of Nigeria.

8. Short title

The Law is cited as the Indiscriminate Dumping of Refuse (Prohibition) Law.

CHAPTER I3

INDISCRIMINATE DUMPING OF REFUSE (PROHIBITION) LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER I4

INFANTS LAW

ARRANGEMENT OF SECTIONS

PART I

Contractual Capacity and Liability of Infants

SECTION

1. When contracts by infants are void.
2. No action to be brought on ratification of infant's contract.
3. Subsequent agreement by an infant to pay a loan founded on void contract, remains void.
4. Certain contracts binding on an infant to remain binding unless repudiated.

PART II

Settlements by Infants

5. Marriage settlements.

PART III

Guardianship and Custody of Children

6. Application of Part III.
7. Right of surviving parent as to guardianship.
8. Power of father and mother to appoint testamentary guardian.
9. Power of guardians.
10. Equal right of either parent to apply to Court.
11. The Court may make orders as to custody.
12. Power of Court to remove guardian.
13. Power of the Court where joint guardians are unable to agree.
14. Separation deed giving custody to mother not invalid.
15. Power of Court as to production of child.
16. Power of Court to order repayment of costs of bringing up a child.
17. Court in making order to have regard to conduct of parent.
18. Power of Court as to child's religious education.
19. Power of Court to consult child's wishes.
20. Definition of "parent" and "person".

PART IV

Miscellaneous and Supplementary

21. Enforcement of order for payment of money by attachment of income.
22. Notice of change of address by person ordered to pay money penalty.

SECTION

23. Principle on which decisions relating to custody, upbringing, etc., of children are to be decided.

24. Saving of existing orders.

25. Saving of jurisdiction of the Court and Customary Law.

26. Interpretation.

27. Short title.

CHAPTER I4

INFANTS LAW

The Cross River State House of Assembly hereby makes the following—

LAW

(20*th December*, 1991)

[Commencement.]

PART I

Contractual Capacity and Liability of Infants

1. When contracts by infants are void

All contracts, whether by special or by simple contract (except any contract into which an infant may enter by virtue of this Law or any other written law or by the rules of common law or equity) henceforth entered into by infants for the repayment of money lent, or of goods supplied or to be supplied (other than contracts for necessaries) and all accounts stated with infants shall be absolutely void.

2. No action to be brought on ratification of infant's contract

No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age.

3. Subsequent agreement by an infant to pay a loan founded on void contract, remains void

(1) If any infant who has contracted a loan which is void in law agrees, after he comes of age, to pay any money which in whole or in part represents or is agreed to be paid in respect of any such agreement and any instrument, negotiable or other, given in pursuance of or for carrying into effect such agreement or otherwise in relation to the payment of money representing or in respect of such loan shall, so far as it relates to money which represents or is payable in respect of such loan and is not a new advance, be void absolutely as against all persons whomsoever.

(2) Where an infant, after attaining full age pays any money by way of interest, commission or otherwise in respect of such loan as mentioned in subsection (1), he shall be entitled to a refund of such money.

(3) For the purpose of this section any interest, commission or other payment in respect of such loan shall be deemed to be part of the loan.

4. Certain contracts binding on an infant to remain binding unless repudiated

Where an infant enters into a valid contract under which he acquires an interest in a subject matter of a permanent nature with continuing or recurring obligations attached to such interest, the contract remains valid and binding on the infant after full age unless he repudiates it during infancy or within a period of not more than one year after attaining full age.

PART II

Settlements by Infants

5. Marriage settlements

(1) It shall be lawful for every infant, upon or in contemplation of his or her marriage, with the sanction of the Court to make a valid and binding settlement or contract for a settlement of all or any part of his or her property or property on which he or she has any power of appointment whether real or personal and whether in possession, reversion, remainder or expectancy, and every conveyance, appointment and assignment of such real or personal estate or contract to make a conveyance, appointment or assignment or thereof, executed by such infant with the approbation of the Court, for the purpose of giving effect to such settlement shall be as valid and effectual as if the person executing the same were of the full age of eighteen years:

Provided that this section shall not extend to powers of which it is expressly declared that they shall not be exercised by an infant.

(2) The sanction of the Court to any which settlement or contract for a settlement may be given upon petition presented by the infant or his or her guardian in a summary way without the institution of a suit, and if there is no guardian the Court may require a guardian to be appointed or not as it shall think fit, require that any person interested or appearing to be interested in the property shall be served with notice of such petition.

PART III

Guardianship and Custody of Children

6. Application of Part III

Nothing in this Part shall apply to who are subject to Customary law or to children who are issues of marriage under Custody law only.

7. Right of surviving parent as to guardianship

(1) On the death of the father of a child, the mother if surviving shall, subject to the provisions of this Law, be the guardian of the child, either only or jointly with any guardian appointed by the father or if the guardian or guardians appointed by the father is or are dead or refuses or refuse to act, the Court may if it thinks fit appoint a guardian to act jointly with the mother.

(2) On the death of the mother of a child, the father, if surviving, shall, subject to the provision of this Law, be guardian of the child, either alone or jointly with any guardian appointed by the mother and when no guardian has been appointed by the mother of if the guardian or guardians appointed by the mother is or are dead or refuse to act, the Court may if it thinks fit appoint a guardian to act jointly with the father.

8. Power of father and mother to appoint testamentary guardian

(1) The father of a child may by dead or will appoint any person to be guardian of the child after his death.

(2) The mother of a child may by dead or will appoint any person to be guardian of the child after her death.

(3) Any guardian so appointed shall act jointly with the mother or father as the case may be, as the guardian of the child so long as the mother or father remains alive unless the mother or father objects to his so acting.

(4) If the mother or father so objects, or if the guardian so appointed as aforesaid considers that the mother or father is unfit to have the custody of the child, the guardian may apply to the Court, and the Court may either refuse to make an order in which case the mother or father shall remain sole guardian or make an order that the guardian as appointed shall act jointly with the mother or father, or that he shall be sole guardian of the child, and in the latter case may make such order regarding the custody of the child and the right of access thereto of his mother or father as, having regard to the welfare of the child as the Court may think fit, and may further order that the mother or father pay to the guardian towards the maintenance of the child such monthly or other periodical sum as, having regard to the means of the mother or father, the Court may consider reasonable.

(5) Where guardians are appointed by both parents, the guardians so appointed shall after the death of the surviving parent act jointly.

(6) If under section 7 a guardian has been appointed by the Court to act jointly with the surviving parent, he shall continue to act as guardian after the death of the surviving parent; but if the surviving parent has appointed a guardian, the guardian appointed by the Court shall act jointly with the guardian appointed by the surviving parent.

9. Power of guardians

Every guardian under sections 9 and 10 shall have all such powers over the estate and the person, or over the estate, as the case may be, if a child has a guardian appointed by will or otherwise as by virtue of the rules of common law or equity.

10. Equal right of either parent to apply to Court

Either parent of a child shall have like powers to apply to the Court in respect of any matter whatsoever affecting the child.

11. The Court may make orders as to custody

(1) The Court may, upon the application of the father or mother of a child, make such order as it may think fit regarding the custody of such child and the right of access thereto of either parent, having regard to the welfare of the child, and may alter, vary, or discharge such order on the application of either parent, or, after the death of either parent, or any guardian under this Law; and in every case may make such order respecting costs as it may think just.

(2) The power of the Court under subsection (1) of this section to make an order as to the custody of a child and the right of access thereto may be exercised upon the application of the father of a child in like manner as those powers may be exercised upon application of the mother of the child notwithstanding that the mother of the child is then residing with the father of the child.

(3) Where the Court under subsection (1) of this section makes an order giving the custody of the child to the mother, then, whether or not the mother is then residing with the father, the Court may further order that the father shall pay to the mother towards the maintenance of the child such monthly or other periodical sum as the Court, having regard to the means of the father, may think reasonable.

(4) No such order, whether for custody or maintenance, shall be enforceable, and no liability thereunder shall accrue while the mother resides with the father, and any such order shall cease to have effect if for a period of three months after it is made the mother of the child continues to reside with the father.

(5) Any orders so made may, on the application either of the father or mother of the child, be varied or discharged by a subsequent order.

12. Power of Court to remove guardian

The Court may, in its discretion, on being satisfied that it is for the welfare of the child, remove from his office any guardian, and may also, if the Court shall deem it to be for the welfare of the child, appoint another guardian in place of the guardian so removed.

13. Power of the Court where joint guardians are unable to agree

(1) Where two or more persons act as joint guardian of a child and they are unable to agree on any question affecting the welfare of the child any of them may apply to the Court for its direction, and the Court may make such order regarding the matters in difference as it may think proper.

(2) The power of the Court under subsection (1) of this section to make orders regarding matters in difference between persons acting as joint guardians of an infant shall, where one of the said persons is the mother or father of the infant, include power—

(*a*) to make such orders regarding the custody of the infant and the right of access thereto or his mother or father as having regard to the welfare of the infant the Court may think fit;

(*b*) to order the mother or father or pay towards the maintenance of the infant such monthly or other periodical sum as, having regard to the means of the mother or father, the Court may consider reasonable; and

(*c*) to vary or discharge any order previously made under the said subsection.

(3) The powers conferred on the Court by section 9 of this Law in cases where an appointed guardian is to be the sole guardian of an infant to the exclusion of his mother or father may be exercised at any time and shall include power to vary or discharge any order previously made by virtue of those powers.

14. Separation deed giving custody to mother not invalid

(1) No agreement contained in any separation deed made between the father and the mother of a child shall be held to be invalid by reason only of its providing that the father of such child shall give up the custody or control thereof to the mother.

(2) The Court shall not enforce any such agreement if it is of opinion that it will not be for the benefit of the child to give effect thereto.

15. Power of Court as to production of child

Where the parent of a child applies to the Court for a writ or order for the production of the child, and the Court is of opinion that the parent has abandoned or deserted the child, or that he has otherwise so conducted himself that the Court should refuse to enforce his right to the custody of the child, the Court may, in its discretion, decline to issue the writ or make the order.

16. Power of Court to order repayment of costs of bringing up a child

If at the time of the application for a writ or order for the production of the child, the child is being brought up by another person, the Court may, in its discretion if it orders the child to be given up to the parent, further order that the parent shall pay to such person the whole of the costs properly incurred in bringing up the child, or such portion thereof as shall seem to the Court to be just and reasonable, having regard to the circumstances of the case.

17. Court in making order to have regard to conduct of parent

Where the parent has—

(*a*) abandoned or deserted his child; or

(*b*) allowed his child to be brought up by another person at that person's expense for such a length of time and under such circumstances as to satisfy the Court that the parent was unmindful of his parental duties,

the Court shall not make an order for the delivery of the child to the parent unless the parent has satisfied the Court that, having regard to the welfare of the child he or she is a fit person to have the custody of the child.

18. Power of Court as to child's religious education

Upon any application by the parent for the production or custody of a child, if the Court is of opinion that the parent ought not have the custody of the child, and that the child is being brought up in a religion contrary to the wish of the parent, the Court shall have power to make such order as it may think fit to secure that the child be brought up in the religion in which the parent wishes that the child should be brought up.

19. Power of Court to consult child's wishes

Nothing contained in sections 15 and 18 shall interfere with or affect the power of the Court to consult the wishes of the child in considering what order ought to be made under the last preceding section, or diminish the right which any child now possesses to the exercise of his own free choice.

20. Definition of "parent" and "person"

For the purposes of sections 15 and 18 **"parent"** includes any person at law liable to maintain such child or entitled to its custody; and **"person"** includes any Local Government, school or institution.

PART IV

Miscellaneous and Supplementary

21. Enforcement of order for payment of money by attachment of income

(1) Where the Court has made any order for the payment of money in pursuance of this Law the Court shall, in addition to any other powers for enforcing compliance with the order, have power in any case where there is any pension or income payable to the person against whom the order is made and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, to order that such part as the Court may think fit of any such pension or income, be attached and paid to the person named by the Court.

(2) Such further order as mentioned in subsection (1) of this section shall be an authority to the person by whom pension or income is payable to make the payment so ordered.

(3) The receipt of the person to whom the payment is ordered to be made shall be a good discharge to the person by whom the pension or income is payable.

22. Notice of change of address by person ordered to pay money penalty

(1) Any person for the time being under an obligation to make payment in pursuance of any order for the payment of money under this Law shall give notice of any change in his address to such person (if any) as may be specified in the order.

(2) Any person failing without reasonable excuse to give such notice shall be liable on summary conviction to a fine of one thousand naira.

23. Principle on which decisions relating to custody, upbringing, etc., of children are to be decided

Where in any proceeding before any Court the custody or upbringing of a child or the administration of any property belonging to or held on trust for a child, or the application of the income thereof, is in question, the Court in deciding that question, shall regard the welfare of the child as the first and paramount consideration and shall not take into consideration whether from any other point of view or any right at common law possessed by the father, the claim of the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father.

24. Saving of existing orders

Notwithstanding the provisions of this Law any order lawfully made by any Court relating to the guardianship or custody of an infant before the commencement thereof shall continue in force, so far as the same may not be rendered inapplicable shall be made under and by virtue of this Law.

25. Saving of jurisdiction of the Court and Customary Law

(1) Nothing in this Law shall restrict or affect the jurisdiction of the Court to appoint or remove guardians by virtue of the High Court Law or any other written Law.

(2) Nothing in this Law shall apply to transactions governed by Customary Law.

26. Interpretation

In this Law unless the context otherwise requires—

"Court" means the High Court;

"guardian" means the person who is guardian of an infant by virtue of the provisions of this Law or a person lawfully appointed to be the guardian of an infant by deed of will or by order of a Court of competent jurisdiction;

"infant" means a person under age of eighteen years but for the purposes of Parts II and III does not include a person who is or has been married;

"necessaries" means goods, services or other items suitable to the condition of life of an infant and to his actual requirements at the time of the sale, delivery or provision of the goods, services or other items.

27. Short title

This Law shall be cited as the Infants Law.

CHAPTER I4

INFANTS LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER I5

INNKEEPERS AND HOTEL PROPRIETORS LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Innkeeper's liability to receive guests.
2. Innkeeper's liability for safety of guest's person.
3. Liability of innkeepers other than hotel proprietors for safety of guest's goods.
4. Liability of hotel proprietor for safety of guest's goods.
5. Modification of liability of hotel proprietor.
6. Limit of hotel proprietor's liability.
7. Right of hotel proprietor as to deposit of goods.
8. Effect of the unjustified refusal to accept; or prevention of property of guests for safe custody.
9. Notice to be conspicuously exhibited.
10. Hotel proprietors lien on guest's goods or chattels.
11. Hotel proprietors right to sell and dispose of guest's goods or chattels for debt.
12. Interpretation.
13. Short title.

SCHEDULE

CHAPTER I5

INNKEEPERS AND HOTEL PROPRIETORS LAW

The House of Assembly of Cross River State hereby makes the following Law.

(20*th December*, 1991)

[Commencement.]

1. Innkeeper's liability to receive guests

An innkeeper shall receive in his inn any person presenting himself as requiring any of the services and facilities offered by the inn and who appears able and willing to pay a reasonable sum for such services and facilities, and who is in a fit state to be received, unless the innkeeper has reasonable ground for refusal.

2. Innkeeper's liability for safety of guest's person

It is the duty of an innkeeper to take reasonable care for the safety of the person of his guests so that the guest is not injured by anything happening to him through the misconduct or negligence of the innkeeper or his servant while he is the innkeeper's guest.

3. Liability of innkeepers other than hotel proprietors for safety of guest's goods

An innkeeper, other than a hotel proprietor, is not liable for the property of his guests which is lost, stolen or damaged within the premises of the inn unless the loss or damage is caused by the misconduct or negligence of the innkeeper or his servant.

4. Liability of hotel proprietor for safety of guest's goods

Subject as hereinafter provided, a hotel proprietor is liable for the property of his guest which is lost, stolen or damaged within the premises of the hotel unless—

(*a*) the loss or damage is caused by the misconduct of negligence of the guest who suffers the loss or damage; or

(*b*) the loss or damage arises from an act of God or of alien enemies; or

(*c*) the loss or damage is in respect of a motor vehicle or property left therein.

5. Modification of liability of hotel proprietor

(1) Without prejudice to any other liability incurred by a hotel proprietor with respect to property brought to the hotel by a guest, the hotel proprietor shall not be liable to make good to any guest any loss of or damage to such property except where—

(*a*) at the time of the loss or damage, sleeping accommodation at the hotel had been engaged for the guest; and

(*b*) the loss or damage occurred during the period of engagement for which the person was a guest at the hotel and entitled to use the accommodation so engaged.

(2) Without prejudice to any other liability or right of his with respect to it, a hotel proprietor shall not be liable to make good to any guest of his any loss of or damage to any motor vehicle or trailer brought to the hotel or any property left therein; but nothing in this Law shall be construed as precluding the hotel proprietor and the guest from entering into a contract for the safety of the motor vehicle or property therein.

6. Limit of hotel proprietor's liability

Where a hotel proprietor is liable to make good the loss of or any damage to property brought to the hotel, his liability to any one guest shall not exceed five hundred naira in respect of any one article, or two thousand naira in the aggregate, except where—

(*a*) the property was stolen, lost or damaged through the default, neglect or wilful act of the hotel proprietor or some servant of his; or

(*b*) the property was deposited by or on behalf of the guest expressly for safe custody with the hotel proprietor or some servant of his authorised, or appearing to be authorised, for the purpose; or

(*c*) at a time after the guest had arrived at the hotel, either the property in question was offered for deposit as aforesaid and the hotel proprietor or his servant refused to receive it, or the guest or some other guest acting on his behalf wished so to offer the property in question but, through the default of the hotel proprietor or his servant, was unable to do so.

7. Right of hotel proprietor as to deposit of goods

In the case of such deposit as is mentioned in section 6, it shall be lawful for the hotel proprietor, or his servant, if he thinks fit—

(1) to require, as condition of his liability—

(i) that he be given a reasonable opportunity to inspect the goods or chattels to determine whether or not they are harmful, dangerous or otherwise unlawful to keep; or

(ii) that such goods or chattels shall be deposited in a box or other receptacle, fastened and sealed by the person depositing the same; or

(2) to reject the goods or chattels on the ground—

(i) that they are reasonably believed to be harmful, dangerous or otherwise unlawful to keep; or

(ii) that because of the size, shape or form of the goods or chattels, he has no suitable deposit facilities for him.

8. Effect of the unjustified refusal to accept; or prevention of property of guests for safe custody

If any hotel proprietor or his servant, without just cause, refuses to receive for safe custody, as mentioned in sections 6 and 7, any goods or chattels of his guest, or if any such guest is through any default of such hotel proprietor or his servant, unable to deposit such goods or chattels as aforesaid, such hotel proprietor shall not be entitled to the benefit of section 6 in respect of such goods or chattels.

9. Notice to be conspicuously exhibited

(1) Every hotel proprietor shall cause the Notice in the Schedule to this Law, printed in plain type, to be exhibited in a conspicuous part of the hall or entrance to his hotel, and also in the sleeping room.

(2) The Notice referred to in subsection (1) shall be both in the English language and in another Nigerian language widely spoken in the area where the hotel is situated.

(3) A hotel proprietor shall be entitled to the benefit of section 6 in respect of such goods and chattels only as are brought into his hotel while such Notice as is mentioned in this section is exhibited in the manner prescribed.

10. Hotel proprietors lien on guest's goods or chattels

A hotel proprietor has a lien upon, and may detain, any property brought into the hotel by the guest as a guest, whether or not deposited with the hotel proprietor, for the price of the guest's unpaid bill for board or lodging:

Provided that such a right of lien shall not extend to the apparels worn by the guest at the time of the exercise of the right of lien.

11. Hotel proprietors right to sell and dispose of guest's goods or chattels for debt

(1) A hotel proprietor shall in addition to his lien, have the right, subject to the provisions of this section, absolutely to sell and dispose by public auction of any goods or chattels which may have been deposited with him or left in the hotel, or in the premises appurtenant or belonging thereto, where the person depositing or leaving such goods or chattels is or becomes indebted to the said hotel proprietor either for board or lodging:

Provided that the debt for the payment of which a sale is made shall not be any other or greater debt than the debt for which the goods or chattels could have been retained by the innkeeper under his lien.

(2) No such sale shall be made until after the said goods or chattels have been for the space of twelve weeks in such charge or custody or in or upon such premises without such debt having been paid or satisfied.

(3) Such hotel proprietor, after having, out of the proceeds of such sale, paid himself the amount of any such debt, together with the costs and expenses of such sale, shall on demand pay to the person depositing or leaving any such goods or chattels the surplus (if any) remaining after such sale.

(4) At least one month before any such sale the hotel proprietor shall cause to be inserted in one newspaper circulating in the district where such goods or chattels or some of them have been deposited or left, an advertisement containing notice of such intended sale and giving a brief description of the goods and chattels intended to be sold, together with the name of the owner or person who deposited or left the same, where known.

(5) For the purposes of this section the expression **"goods or chattels"** includes motor vehicles, trailers, wares or merchandise.

12. Interpretation

In this Law—

"guest" means any person for whom sleeping accommodation has been reserved in the hotel;

"hotel" means an inn offering, if so required, sleeping accommodation;

"hotel proprietor" means the owner of a hotel;

"inn" means an establishment held out by the keeper or proprietor as offering food or drink without special contract, to any person presenting himself who appears able and willing to pay a reasonable sum for the services and facilities provided and who is in a fit state to be received, and in the case of a hotel, which offers sleeping accommodation if so required;

"innkeeper" means the owner of an inn;

"motor vehicle" means any mechanically propelled vehicle intended or adopted for use on road or water;

"trailer" means any vehicle drawn by a motor vehicle on land.

13. Short title

This Law may be cited as the Innkeepers and Hotel Proprietors Law.

SCHEDULE

[Section 9.]

Notice to be given by the hotel proprietor.

NOTICE

Loss of or damage to guest's property

1. Under the Innkeeper and Hotel Proprietors Law 1991 a hotel proprietor may in certain circumstances be liable to make good any loss of or damage to a guest's property even though it was not due to any fault of the proprietor or staff of the hotel.

2. This liability however—

(*a*) extends only to the property of guests who have engaged sleeping accommodation at the hotel;

(*b*) is limited to five hundred naira for any one article and a total of two thousand naira in the case of any one guest, except in the case of property which has been deposited, or offered for deposit, for safe custody;

(*c*) does not cover motor cars or other vehicles of any kind or any property left in them, but the hotel proprietor and the guest may enter into a contract for the safety of the motor vehicle.

3. This Notice does not constitute an admission either that the Law applies to this hotel or that liability thereunder attaches to the proprietor of this hotel in any particular case.

CHAPTER I5

INNKEEPERS AND HOTEL PROPRIETORS LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER I6

INTERPRETATION LAW

ARRANGEMENT OF SECTIONS

Commencement, distance and time

SECTION

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2. Measurement of distance.
3. Computation of time.
4. Reference to time.

Repeal, re-enactment and amending legislation

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6. Repeal and substitution.
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CHAPTER I6

INTERPRETATION LAW

GENERAL PROVISIONS

(*9th November*, 1939)

[Commencement.]

Commencement, distance and time

1. Time of commencement

Where any Law, or any part of a Law, or any notice, order, regulation, rule of court, warrant, scheme, letters patent, or other instrument having the effect of law made, granted or issued under a power conferred by any Law or by any competent authority, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the next day preceding such day.

2. Measurement of distance

In the measurement of any distance for the purposes of any Law, that distance shall, unless the contrary intention appears, be measured in a straight line of a horizontal plane.

3. Computation of time

In computing time for the purposes of any Law, unless the contrary intention appears—

(*a*) a period reckoned by days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done;

(*b*) if the last day of the period is Sunday or a public holiday (which days are in this section referred to as excluded days), the period shall include the next following day not being an excluded day;

(*c*) when any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the day next afterwards not being an excluded day;

(*d*) when an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.

4. Reference to time

(1) Whenever any expression of time occurs in any Law, Government or public notice or other instrument having the effect of law, deed or legal document, the time referred to shall, unless the contrary intention appear, be held to be standard time.

(2) **"Standard time"** means standard time as used in Nigeria, namely, sixty minutes in advance of Greenwich Mean Time.

Repeal, re-enactment and amending legislation

5. Repealed Laws not revived by repeal of repealing Law

Where any Law repealing in whole or in part any former Law is itself repealed, such last repeal shall not revive the Law or provisions before repealed, unless words be added reviving such Laws or provisions.

6. Repeal and substitution

Where any Law repeals wholly or in part any former Law and substitutes other provision therefor, the repealed Law shall remain in force until the substituted provision comes into operation.

7. Reference to the re-enacted provisions

Where any Law repeals and re-enacts with or without modifications any provision of a former Law, references in any other Law to the provisions so repealed shall, unless the contrary intention appear, be construed as references to the provisions so re-enacted.

8. Reference in Laws to provisions of Acts

Where in any Law reference is made to any provision of an Act and that provision is subsequently repealed and re-enacted without substantial modification, such reference shall, if the context so requires and unless the contrary intention appears, be construed as a reference to the provisions so re-enacted.

9. Construction of amending Law

When any Law amends or adds to any Law, the amending Law shall, so far as is consistent with the tenor thereof, and unless the contrary intention appear, be construed as one with the amended Law; and the amended Law may, in the amending Law, be referred to as the principal Law.

10. Effect of repealing Law

The repeal of any Law or any part thereof shall not, unless the contrary intention appear—

(*a*) revive anything not in force or existing at the time at which the repeal takes effect; or

(*b*) affect the previous operation of any Law so repealed or anything duly done or suffered under any enactment so repealed; or

(*c*) affect any right, privilege, obligation or liability accrued or incurred under any enactment so repealed; or

(*d*) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any Law so repealed; or

(*e*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Law had not been passed.

(*f*) When the penalty, forfeiture or punishment imposed by the repealing Law is heavier than that imposed by the repealed Law, the provision by which the lighter penalty, forfeiture or punishment is imposed shall, unless such repealing Law otherwise provides, be applied if the court decides to inflict any punishment.

11. Construction of Laws to be subject to the Constitution

Every Law enacted by the State Legislature shall be read and construed subject to the Constitution so as not to exceed the legislative power of that legislature, to the intent that where any provision of any such Law would, but for this section, have been construed as being in excess of that power, such Law, shall nevertheless be construed as valid to the extent to which it provisions are not in excess of that power.

12. Use of defined terms in subsidiary legislation

When terms defined in a Law are used in any order, regulation, rule of court, proclamation or other instrument having the effect of law under such Law, such terms shall have the meanings assigned to them by the Law, unless they are otherwise defined in the order, regulation, rule of court, proclamation or other instrument or are inconsistent with the subject or context.

13. Use of expression "the Law"

Any reference in any order, proclamation, regulation, rule of court or other instrument having the effect of law to the expression "the Law" shall be read and construed as a reference to the Law conferring the power to make or issue such order, proclamation, regulation, rule or other instrument.

14. Exercise of statutory powers between enactment and commencement of Law

When any Law is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant or issue any instrument, to give notice or make orders, regulations or rules of court, to prescribe forms, or to do any other thing for the purpose of the Law, that power may, unless the contrary intention appear, be exercised at any time after the Law has been assented to by the Governor, so far as may be necessary or expedient for the purpose of bringing the Law into operation at the date of commencement thereof:

Provided that orders, instruments, regulations or rules of court so made shall not take effect till the commencement of the Law.

15. Effect of repeal on subsidiary legislation

When a Law or part of a Law is repealed, all orders, regulations, rules of court, proclamations, other instruments having the effect of law and notices issued or made in virtue thereof shall remain in force, so far as they are not inconsistent with the repealing Law and, unless the contrary intention appear, until they shall have been repealed or have been replaced by orders, regulations, rules of court, proclamations, other instruments or notices, as the case may be, issued or made under the provisions of the said repealing Law.

16. Inconsistent Laws

Where any Law prevails over any other Law in the circumstances described in section 4 (5) of the Constitution of the Federation the provisions of sections 5, 10 and 17 of this Law shall apply in relation to—

(*a*) any Law prevailed over;

(*b*) anything duly done or suffered, or any right, privilege, obligation or liability accrued or incurred, or any penalty, forfeiture or punishment incurred;

(*c*) any orders, regulations, rules of court, proclamations and notices issued or made by or under the Law or the part of a Law which becomes void in accordance with the provisions of the aforementioned sections,

as though the Law or the part of a Law which becomes void were a repealed Law, and the Law or part of a Law which prevails were a repealing Law.

17. Power to make orders, regulations, rules of court and other instruments having the effect of law

(1) Where an Act or Law confers power on any authority to make orders, regulations, rules of court or other instruments having the effect of law, the following provisions shall have effect with reference to the making and operation of such order, regulation or rules of court—

(*a*) any order, regulation, rule of court or other instrument may be at any time amended, varied, rescinded, or revoked by the same authority and in the same manner by and in which it was made;

(*b*) there may be annexed to the breach of any order, regulation or other instrument such penalty not exceeding one thousand naira, or such imprisonment not exceeding six months, or both, as the order or regulation making authority may think fit;

(*c*) there may be annexed to any rule of court such penalty not exceeding five hundred naira or imprisonment not exceeding three months as the rulemaking authority may think fit on any person who fails to take any action required by rule of court or who disobeys any rule of court;

(*d*) no order, regulation or rule of court shall be inconsistent with the provisions of any Law in force in the State.

(2) Where such authority has been replaced wholly or partially by another authority the power conferred upon the original authority may be exercised by the replacing authority concerning all matters or things within its jurisdiction as if it were the original authority.

(3) Where a Law conferring power to make a particular form of subsidiary legislation is repealed or amended so that while a subsidiary legislative power over similar subject is provided the form thereof is changed, any subsidiary legislation made and in force under the repealed or amended Law shall, in so far as it concerns any matter or thing within the jurisdiction of the authority constituted under the repealing or amending Law be deemed to have been made by that authority and shall continue in force until other provisions are made by virtue of the repealing or amending Law.

(4) All orders, regulations, rules of court and other instruments having the effect of law made under any Law shall be published in the State *Gazette*.

(5) All orders, regulations, rules of court and other instruments having the effect of law shall have the force of law upon the publication thereof, in accordance with the provisions of this section or from the date named therein.

(6) Where any Law prescribed the manner in which any by-law, rule, or order or notice made or given by any Local Government shall be published, any such by-law, rule, order or notice shall come into operation on publication in the prescribed manner unless otherwise provided therein.

(7) Notwithstanding subsections (4) and (5) where a rule, by-law or order is made by any authority or any rule of court is made by any authority under a Law the Commissioner may by Order published in the State *Gazette* prescribe the manner in which such rule, by-law, order or rule of court shall be published and any rule, by-law, order or rule of court shall come into operation on publication in the prescribed manner, unless it is otherwise provided therein.

(8) A copy of any such rule, by-law or order, as mentioned in subsection (7), certified by an administrative officer as made and published in the prescribed manner shall be admitted in evidence in any court without further proof thereof.

(9) The breach of any order, regulation or rule of court may be presented in a summary manner.

(10) The provisions of this section shall not apply where a contrary intention appears in a Law conferring the power to make the order, regulation or rule of court.

18. Subsidiary legislation may provide for fees and charges for reduction, waiver, or refund

(1) Where any Law confers power on any authority to make orders, regulations, rules of court or other instruments having the force of law and to make provision therein in respect of fees or charges, such authority may provide in the orders, regulations or rules of court—

(*a*) specified fees or charges;

(*b*) maximum or minimum fees or charges;

(*c*) maximum and minimum fees or charges;

(*d*) for the purposes of fees or charges either generally or under specified conditions; and

(*e*) for the reduction, the waiver or the refund in whole or in part of any such fees or charges either upon the happening of certain events or in the discretion of any person.

(2) Where any reduction, the waiver or the refund in whole or in part of any fee or charge is provided, such reduction, waiver or refund may be made to apply either generally or specifically—

(*a*) in respect of certain matters or classes of matters;

(*b*) in respect of certain documents or classes of documents;

(*c*) where any event happens or ceases to happen;

(*d*) in respect of certain persons or classes of persons; and

(*e*) in respect of any combination of such matters, persons, documents or events,

and may be made to apply subject to such conditions as may be set out in the orders, regulations, rules of court or other instruments or in the discretion of any specified person.

(3) The reduction, waiver or refund mentioned in subsection (2) may be made to apply subject to such conditions as may be set out in the orders, regulations rules of court or the discretion of any specified person.

19. General provisions with respect to power given to any authority to make orders, regulations, rules of court, and other instruments having the effect of law

(1) Where an Act or Law confers power on any authority to make orders, regulations, rules of court or other instruments having the effect of law, the following provisions shall have effect with reference to the making and operation of such orders, regulations or rules of court—

(*a*) any order, regulation, rule of court or other instrument may be at any time amended, varied, rescinded or revoked by the same authority and in the same manner by and in which it was made;

(*b*) where such authority has been replaced wholly or partially by another authority the power conferred herein upon the original authority may be exercised by the replacing authority concerning all matters or things within its jurisdiction as if it were the original authority;

(*c*) there may be annexed to the breach of any order, regulation or other instrument such penalty not exceeding one hundred naira, or such imprisonment not exceeding six months, or both, as the order or regulation making authority may think fit;

(*d*) there may be annexed to any rule of court such penalty not exceeding fifty naira or imprisonment not exceeding three months as the rule-making authority may think fit on any person who fails to take any action required by a rule of court or who disobeys any rule of court;

(*e*) no order, regulation or rule of court shall be inconsistent with the provisions of any Law in force in the State.

(2) Where a Law conferring powers to make a particular form of subsidiary legislation is repealed or amended so that while a subsidiary legislative power over similar subjects is provided the form thereof is changed, any subsidiary legislation made and in force under the repealed or amended Law shall, in so far as it concerns any matters or things within the jurisdiction of the authority constituted under the repealing or amending Law be deemed to have been made by that authority and shall continue in force until other provision shall be made by virtue of the repealing or amending Law.

(3) All orders, regulations, rules of court and other instruments having the effect of law made under any Law shall be published in the State *Gazette*.

(4) All orders, regulations, rules of court and other instrument having the effect of law shall have the force of law upon the publication thereof, in accordance with the provisions of this section or from the date named therein.

(5) Notwithstanding subsections (3) and (4) where a rule, by-law or order is made by any authority or any rule of court is made by any authority under a Law the Commissioner by Order published in the State *Gazette* may prescribe the manner in which such rule, by-law, order or rule of court shall be published and any such rule, by-law, order or rule of court shall come into operation on publication in the prescribed manner, unless it is otherwise provided therein.

(6) A copy of any such rule, by-law or order, as in subsection (5) mentioned, certified by an administrative officer as made and published in the prescribed manner shall be admitted in evidence in any court without further proof thereof.

(7) The breach of any order, regulation or rule of court may be prosecuted in a summary manner.

(8) The provisions of this section shall not apply where a contrary intention appears in the Law conferring the power to make the order, regulation or rule of court.

20. Subsidiary legislation may provide for fees and charges and in certain cases for reduction, waiver, or refund thereof

(1) Where any Law confers power on any authority to make orders, regulations, rules of court or other instruments having the force of law and to make provision therein in respect of fees or charges, such authority may provide in the orders, regulations or rules of court—

(*a*) specified fees or charges;

(*b*) maximum or minimum fees or charges;

(*c*) maximum and minimum fees or charges;

(*d*) for the payment of fees or charges either generally or under specified conditions;

(*e*) and for the reduction, the waiver or the refund in whole or in part of any such fees or charges either upon the happening of certain events or in the discretion of any person.

(2) Where any reduction, waiver or refund in whole or in part of any fee or charge is provided, such reduction, waiver or refund may be made to apply either generally or specifically—

(*a*) in respect of certain matters or classes of matters;

(*b*) in respect of certain documents or classes of documents;

(*c*) where any event happens or ceases to happen;

(*d*) in respect of certain persons or classes of persons; and

(*e*) in respect of any combination of such matters, persons, documents or events,

and may be made to apply subject to such conditions as may be set out in the order, regulations, rules of court or other instruments or in the discretion of any specified person.

21. Act for which payment is required need not be performed till payment be made

(1) Where any person, public officer, public department or local government is required to do anything for which a fee is to be paid or a charge made under any Law, order, regulation or rule of court, such person, officer, responsible officer of the public department or local government may decline to do that thing till the fee is paid or payment be made and, where the precise amount of the payment to be made cannot be ascertained until the thing is done, till there be paid such an amount as may be estimated to be the correct amount by the person, officer, responsible officer of the department or local government required to do that thing.

(2) Where a thing has been done for which an estimated amount shall have been paid such amount shall be adjusted to the correct amount either by means of a further payment or by a refund of the amount overpaid.

22. Extent of power to issue proclamation

When power is given to the Governor to issue a proclamation or notification, it shall include the power of amending, revoking or suspending the said proclamation or notification, and of declaring the date of its coming into force and also of substituting another therefor.

23. Orders or regulations made by the Governor to override others

Subject to any express provision in any Law where power is given to the Governor to make orders, regulations or other instruments having the effect of law, any such orders, regulations or instruments when made by him shall take precedence over any orders, regulations or instruments made by any other authority in which is also vested by any Law (in force in the State) subsidiary legislative powers in respect of the same matters, and where any orders or regulations conflict the orders, regulations or instruments made by the Governor shall prevail.

24. Coming into force of proclamation

Proclamations, notifications and other instruments having the effect of law of the Governor shall come into operation on the date of their publications in the State *Gazette* unless otherwise specified.

25. State *Gazette* and publication by Government Printer *prima facie* evidence

The production of a copy of the *Gazette* containing an order, regulation, rule of court, proclamation, Government or legal notice or other instrument having the effect of law, or of any copy of any order, regulation, rule of court, proclamation, Government or legal notice, or other instrument purporting to be printed by the Government Printer, shall be *prima facie* evidence, in all courts and for all purposes whatsoever, of the due making and tenor of such order, regulation, rule of court, proclamation, Government or legal notice, or other instrument.

Powers and Appointments

26. Powers to be exercised and duties to be performed from time to time

When any Law confers any power or imposes any duty, then, unless a contrary intention appears, the power may be exercised or the duty shall be performed from time to time as occasion arises.

27. Powers may be performed by acting officers

Where any Law confers a power or imposes a duty on the holder of any office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office or by a person appointed to act for him.

28. Power to appoint to include power to suspend or dismiss

Where by or under any Law a power to make any appointment is conferred, then, unless the contrary intention appears, the authority having power to make the appointment shall also have power to remove, suspend, dismiss, reappoint or reinstate any person appointed by it in exercise of the power.

29. Construction of enabling words

Where in any Law power is given to any person to do or enforce the doing of any act or thing all such powers shall be understood to be also given as are reasonably necessary to enable the person to do or enforce the doing of the act or thing.

30. Appointment of officers by name or office

Where by a Law the Governor or any public officer or body is empowered to appoint or name a person to have and exercise any powers or perform any duties, the Governor or such public officer or body may either appoint a person by name, or direct the person for the time being holding the office designated by the Governor or such public officer or body to have and exercise such powers and perform such duties; and thereupon, or from the date specified by the Governor or the public officer or body, the person appointed by name or the person holding the office aforesaid shall have and may exercise such powers or perform such duties accordingly.

31. Official designation to include officer executing duties

When reference is made in any Law, Government or legal notice, letters patent, warrant, or process of any kind made or issued by the governor or any body or person having authority under any Law to make or to issue the same, to any public officer by the term designating his office, such officer shall include the officer for the time being executing the duties of such office or any portion of such duties.

32. Power to provide for execution of duties of public officer during temporary absence or inability

Where by any Law any powers are conferred or any duties are imposed upon a public officer, the Civil Service Commission may direct that, if during any period owing to absence or inability to act from illness or any other cause such public officer shall be unable to exercise the powers or perform the duties of his office in any place under his jurisdiction or control, such powers shall be had and may be exercised and such duties shall be performed in such place by the person named or the public officer holding the office designated by the Civil Service Commission; and thereupon such person or public officer, during any period aforesaid, shall have and may exercise the powers and shall perform the duties aforesaid, subject to such conditions, exceptions and qualifications as the Public Service Commission may direct.

33. Public officers to exercise functions within State province or area for which office held

(1) Where by a Law any functions are conferred upon, or any direction, approval, confirmation or consent is to be, or may be, given by the holder of a public office in the State, province or other area of Cross River State of Nigeria, any reference to the holder of such office shall be deemed to be a reference to every holder of the office in and for the State province or area, as the case may be, in which the Law is in force, and every holder of such an office shall exercise the functions and may give the direction, approval; or confirmation or consent in and for the State, province or area in which he holds the office.

(2) For the purposes of this section, functions include powers and duties.

34. Power of a Commissioner to delegate certain functions

(1) Subject to this section, where a written law empowers a Commissioner of Cross River State of Nigeria to exercise a power or perform a duty, that commissioner may depute—

(*a*) a person by name; or

(*b*) the person for the time being holding the office designated by him, to exercise that power or perform that duty on behalf of the Commissioner, subject to such conditions, exemptions and qualifications as the Commissioner may prescribe and on that event, or from a date specified by the Commissioner, the person so deputed shall have and exercise that power and perform that duty, subject as aforesaid.

(2) Nothing in subsection (1) authorises a Commissioner to depute a person to make regulations under the power on that behalf conferred upon him by a written law.

(3) A delegation made under subsection (1) is revocable at will and no delegation prevents the exercise of a power by the Commissioner.

Citation of Laws

35. Mode of citing Laws

When any Law is referred to, it shall be sufficient for all purposes to cite such Law either by the short title (if any), by which it is made citable, or by the year in which it was made and its number among the Laws of that year, or in the case of a revised edition of the Laws issued under any Law providing for the issue of a revised edition, by its short title or its chapter number; and the reference may in all cases be made according to the copies of Laws printed by the Government Printer.

36. Construction of references to written Laws

In any Law a description or citation of a portion of any Act or Law shall, unless the contrary intention appear, be construed as including the word, section, or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

37. Collective titles

If it is provided that any Law may, as to the whole or any part thereof, cited with any group of Laws, that group shall be construed as including that Law or part, and, if the collective title of the group states the first and last year of the group, the year in which the Law is passed shall be substituted for the last year of the group, and so on as often as a subsequent Law or part is added to the group.

Miscellaneous

38. Gender and number

In any Law—

(*a*) words importing the masculine gender shall include females; and

(*b*) words in the singular shall include the plural, and words in the plural shall include the singular.

39. Laws deemed to be Public Laws

Every Law shall be deemed to be public Law and every such Law shall be judicially taken notice of as such unless the contrary be expressly provided by such Law.

40. Schedules

Every Schedule to any Law shall, together with any note thereto, be construed and have effect as part of the Law.

41. Subdivisions of Laws to be recognised

When a Law is divided into parts, chapters, titles, or other sub-divisions, the fact and particulars of such division shall, with or without express mention thereof in the Law, be taken notice of in all courts and for all purposes whatsoever.

42. Forms

Whenever forms are prescribed in any Law slight deviations therefrom, not affecting the substance or calculated to mislead, shall not invalidate them.

43. Reprint of Laws

When a Law is amended the Government Printer may, with the authority of the Commissioner for Justice, print copies of the Law with all the necessary actions, omissions, substitutions and amendments effected by the amending Law or Laws and such copies shall be deemed to be authentic copies of the Law so amended.

44. Meaning of any reference to the number of a line

A reference in any Law to the number of a line of any section of any Act or Law shall mean such line in the latest official printed copy of such Act or Law at the time of the passing of the Law containing such reference.

45. Reference in marginal notes to other legislation

(1) Where any Law, or section, subsection or paragraph of any Law is taken verbatim or is substantially identical with any Act or enactment of a State, a reference, in such abbreviated form as may be thought fit to such Act or enactment or any section, subsection or paragraph thereof may be added to the marginal note of the section, subsection or paragraph of the Law.

(2) Any such reference shall not be taken to have any legislative effect whatever and shall not be deemed in any way to vary, limit or extend the interpretation of any Law.

46. Meaning of "or", "other" and "otherwise"

Where the words "or", "other" and "otherwise" are used, they shall, unless a contrary intention appear, be construed disjunctively and not as implying similarity, unless the word "similar" or some other word of like meaning is added.

47. Meaning of service by post

Where any Law authorises or requires any document to be served by post, whether the expression "serve", "give" or "send" or any other expression is used, then, unless the contrary intention appear, the service shall be deemed to be effected by properly addressing, preparing, and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

48. Signification of order of Governor, Executive Council or Commissioner

Where power is given to the Governor or the Executive Council or to a Commissioner to make an order, regulation, declaration or appointment or to give an authorisation, exemption, notice, direction, approval, permission or consent, it is sufficient, unless it is otherwise expressed—

(*a*) in the case of the Governor, for the exercise of the power to be signified under the hand of either the Secretary to the Executive Council or the Commissioner charged with responsibility for the matter in question; or

(*b*) in the case of the Executive Council, for the exercise of the power to be signified under the hand of the secretary thereto; or

(*c*) in the case of a Commissioner, for the exercise of the power to be signified under the hand of either the Commissioner or the Permanent Secretary of the Ministry.

49. Evidence of signature of fiat or consent of the Governor or public officer

Whenever the fiat or consent of the Governor or of any public officer is necessary before any prosecution or action is commenced, any document purporting to bear the fiat or consent of the Governor or of the public officer concerned shall be received as *prima facie* evidence in any proceeding without proof being given that the signature to such fiat or consent is that of the Governor or the public officer concerned.

50. Power of majority and person presiding

Save as may be otherwise expressly provided by any written law—

(*a*) whenever any act or thing is by any written law required to be done, or any decision taken, by a body of persons consisting of not less than three such act or thing may be done, or such decision taken, in the name of that body by a majority of those persons;

(*b*) whenever such body is assembled the chairman or other member presiding shall, in all matters in which a decision is taken by vote by whatever name such vote may be called, have a casting as well as a deliberative vote.

51. Public officers

A reference in any Law to any public officer by the usual or common title of his office shall, if there be such an office customarily in the State and unless the contrary intention appears, be read and construed as referring to the person for the time being holding or carrying out the duties of that office in the State.

52. *Ex officio* proceedings not to abate on death

Any civil or criminal proceedings taken by or against any person in virtue of his office shall not be discontinued or abated by his death, resignation, or absence or removal from office, but may be carried on by or against, as the case may be, the person appointed to perform the duties of the office.

Penal provisions

53. Imposition of penalty not a bar to civil action

The imposition of a penalty by any Law, in the absence of express provision to the contrary, shall not relieve any person from liability to answer for special damages to a person injured.

54. Provisions as to offences under two or more laws

Where any act or omission constitutes an offence under two or more Laws or under a Law and under an Act, the offender shall, unless the contrary intention appears, be liable to be prosecuted and liable to be punished twice for the same office.

55. Penalties prescribed to be deemed maximum penalties

Whenever in any Law penalty is prescribed for an offence against such Law, the same shall indicate that such offence shall be punishable, upon conviction, by a penalty not exceeding (except as may be otherwise provided in the Law) the penalty prescribed.

56. Indication of penalties

Whenever in any Law penalties are set out at the foot of any section, the same shall indicate that any contravention of the section, whether by act or omission, shall be an offence against the Law punishable upon conviction by a penalty not exceeding (except as may be otherwise provided in the Law) the penalty provided.

57. Meaning of imprisonment

Whenever any court is empowered to award to any convicted prisoner any sentence of imprisonment, such sentence shall be deemed to be a sentence of imprisonment with or without hard labour at the discretion of the court awarding the same and if the form of imprisonment is not specified such imprisonment shall be with hard labour.

58. Carrying out of certain orders

Where in any Law power is given to any authority to impose any fine or make any order or give any direction whatever and it is stated that such fine, order or direction shall be imposed, be recoverable or in any manner have effect as if the same were a fine, order or direction, imposed, made or given by a court or by a judicial or other officer, any such court or judicial or other officer having jurisdiction in the place where such fine, order or direction was imposed, made or given, or where the person who was ordered to pay the fine or who is required to obey the order or direction resides or may happen to be, may take the necessary steps to enforce the payment of the fine or the carrying out of the order or direction, as the case may be, in all respects as if the fine, order or direction had in fact been imposed, made or given by such court or judicial or other officer.

59. Application of fees, fines and forfeitures

(1) Where under any Law any person is required to pay any charge or fee for any act or thing done, or document issued, or signature or seal affixed to any document, by any public officer or department, or where any person is adjudged by any court, or other authority duly authorised by law, to pay or forfeit any sum of money, such charge or fee and such sum of money shall be paid into the Treasury, unless the contrary is otherwise provided; and if any such charge or fee, or if any commission on money received or taken possession of, realised, or otherwise dealt with, is required to be paid to any public officer or department, such officer or department receiving the same shall pay it into or account for the same in due course to the Treasury.

(2) Where under any Law anything or any animal is adjudged by any court, or other authority duly authorised by law, to be forfeited, it shall, unless the contrary is otherwise provided, or unless it is expressed by law to be forfeited to any person, be forfeited to the state, and the net proceeds thereof, if it is ordered by competent authority to be sold, shall be paid into the Treasury, unless the contrary is otherwise provided.

(3) Nothing in this section shall affect any provision in any Law whereby any shares of fines or forfeitures, or of proceeds of forfeitures, are expressed to be recoverable by any person, or may be granted by any authority to any person.

The State

60. Saving of rights of the State

No Law shall in any manner whatsoever affect the rights of the State, unless it is therein expressly stated, or unless it appears by necessary implication, that the State is bound thereby.

61. Law binding on the State

This Law shall be binding on the State.

62. Definitions

(1) Definitions—

"Accountant-General" means the chief accounting officer of the receipts and payments of the Government;

"act" used with reference to an offence or civil wrong includes a series of acts, and words which refer to acts done extend to illegal omissions;

"Act" or **"Act of Parliament"** means an enactment of the Federal Legislature or any other enactment which has effect as such;

"Chapter", **"Part"**, **"section"** and **"Schedule"** denote respectively a Chapter Part, and section of, and Schedule to, the Law in which the word occurs, and subsection denotes a subsection of the section in which the word occurs;

"Chief" means a person who is for the time being recognised as a chief under a law in force in Cross River State of Nigeria;

"commencement", used with reference to a law means the time at which the Law comes into operation;

"Commonwealth" means Nigeria, a member of the Commonwealth and a dependency of such a member;

"Concurrent Legislative List" means the list in Part 2 of the Schedule to the Constitution of the Federation;

"Commissioner", when no particular Commissioner is specified in the context, means the Commissioner charged with responsibility for the matter to which the context relates or, if no Commissioner is so charged, the Governor;

"Constitution" means the Constitution of the Federal Republic of Nigeria 1999 or any subsequent Constitution of the Federation for the time being in force;

"consul" or **"consular officer"** includes Consul-General, Consul, Vice-Consul, Consular Agent and any person for the time authorised to discharge the duties of a Consul-General, Consul or Vice-Consul;

"Court of Appeal" means the Court of Appeal established by the Constitution;

"crew" in relation to a ship or other vessel includes masters, mates, pilots, engineers, stokers, deckhands, and all persons engaged in the navigation or service of the ship or other vessel;

"Crown Agents" means the persons for the time being acting as Crown Agents for Overseas Governments and Administrations;

"customary court" means a customary court established or deemed to have been established under any Law authorising the establishment of customary courts;

"daily penalty", **"weekly penalty"** and **"monthly penalty"** mean a penalty for each day, week or month respectively on which an offence is continued after conviction therefor;

"definitions" when followed by terms defined means that those terms shall have the meanings assigned to them unless there is anything in the subject or context repugnant to such meaning;

"dependency" when used in relation to a member of a Commonwealth, means a colony, territory, protectorate, protected state, mandated or trust territory of that member;

"Exclusive Legislative List" means the List in Part 1 of the schedule to the Constitution of the Federation;

"Federation" means the Federal Republic of Nigeria established by the Constitution;

"financial year" means a period of twelve months beginning on the first day of April in a year or such other date as the Legislature of Cross River State of Nigeria may prescribe;

"first-class Chief" means a chief who is for the time being recognised as a first-class Chief under a law in force in Cross river State of Nigeria;

"*Gazette*" and **"State *Gazette*"** mean the Cross River State of Nigeria *Gazette*;

"Government" means the Government of Cross River State of Nigeria;

"Government notice" means any announcement not of a legislative character by a commissioner in Cross River State of Nigeria *Gazette*;

"Governor" includes the Officer Administering the Government and, to the extent to which a Deputy for the Government is authorised to act, that Deputy;

"Governor in council" means the Executive Council of Cross River State of Nigeria;

"High Court" means the High Court established by the Constitution of Nigeria;

"immovable property" or **"lands"** includes land and everything attached to the earth or permanently fastened to anything which is attached to the earth, and all chattels real, but not minerals;

"inland waters" includes all rivers, creeks and lagoons inside the river bars of Nigeria;

"judge" includes any person appointed to exercise the powers of a judge;

"Law" means an enactment of a State Legislature or any other enactment which has effect as such, and any order, regulation, rule of court, proclamation or other instrument having the effect of law made under the authority of any such Law and the expression **"the Law"** when used in any such order, regulation, rule, rule of court, proclamation or other instrument means the Law under which such order, regulation, rule, rule of court, proclamation or other instrument, as the case may be, was made;

"Law Officers" mean the persons for the time being holding the offices respectively of Attorney-General and Solicitor-General;

"legal notice" means a notice published in the Cross River State of Nigeria *Gazette* under this title or published in such the manner as may be prescribed by law;

"legal practitioner" means a person admitted and enrolled to practice as a barrister and solicitor in the supreme court;

"legislature", or **"colonial legislature"**, when used with reference to a part of the Commonwealth, means the authority, other than the Parliament of the United Kingdom or Her Majesty in Council, competent to make laws for that part;

"Local Government" means a Local Government established under the Local Government Law, and in relation to any particular matter **"the Local Government"** means the Local Government having authority in relation to that matter;

[Cap. L16.]

"Local Government area" means the area of authority of a Local Government;

"Local Government Secretary" or **"Secretary to the Local Government"** means the Secretary appointed to discharge the functions set out in section 24 of the Local Government Law in relation to a Local Government established under the said Law;

"magistrate" means a person appointed to be a magistrate under any law creating the office of magistrate in Cross River State;

"magistrate's court" includes the court of a magistrate established by the Law of a State;

"master" used with reference to a ship means any person (except a pilot or harbour master) having for the time being control or charge of the ship;

"Member of the Commonwealth", means Nigeria or a country to which the Constitution of the Federal Republic applies;

"military forces" includes all officers, warrant officers, non-commissioned officers and civilians, Nigerian, non-Nigerian and all Nigerian rank and file belonging to and borne on the strength of the Nigerian Army, the Nigerian Navy or the Nigerian Air Force;

"monogamous marriage" means a marriage which is recognised by the law of the place where it is contracted as a voluntary union of one man and one woman to the exclusion of all others during the continuance of the marriage;

"month" means calendar month;

"Nigeria" means the Federation together with all the inland and territorial waters thereof;

"Nigerian" means a citizen of Nigeria;

"non-Nigerian" means a person other than a citizen of Nigeria;

"Notice" or **"State Notice"** means any announcement not of a legislative character by a Commissioner in the Cross River State of Nigeria *Gazette*;

"oath", **"swear"** and **"affidavit"** includes any application to the affirmation or declaration of any person by law allowed to make an affirmation or declaration in lieu of an oath;

"Parliament" means the National Assembly of the Federal Republic;

"person" includes any company or association or body of persons corporate or unincorporated;

"police officer" means any member of a police force, and **"superior police officer"** means any police officer of or above the rank of assistant superintendent;

"prescribed" means prescribed by or under the Law in which the word occurs;

"President" means the President of the Federal Republic;

"public holiday" means any day which, under the provisions of any written law for the time being in force in the state, is to be observed as a public holiday;

"public notice" or **"State public notice"** means a notice published in the *Gazette* under this title or published in such other manner as may be prescribed by law;

"public service", when used in relation to the State, means the service of the State in a civil capacity in respect of the Government;

"qualified medical practitioner" means a person registered in Nigeria as a medical practitioner under the law for the time being relating to the registration of medical practitioners;

"regulations" includes rules and by-laws;

"rules of court" means, when used in relation to any court, rules made by the authority having for the time being power to make rules and orders regulating the practice and procedure of such court, together with the forms necessary thereto;

"sale" and **"sell"** include exchange, barter and offering or exposing for sale;

"seaman" includes every person (except masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship;

"ship" includes every description of vessel used in navigation not exclusively propelled by oars or paddles;

"sign" with reference to a person who is unable to write his name includes mark;

"a State" means a State of the Federation;

"the State" means Cross River State;

"the State legislature" means the authority in and for the State having power to make laws for the peace, order and good Government of the State;

"statutory declaration" if made—

(*a*) in the state means a declaration made under the Statutory Declarations Law or Act;

(*b*) in the Commonwealth beyond Nigeria, means a declaration made before a justice of the peace, notary public, or other person having authority therein under the law for the time being in force to take or receive a declaration;

(*c*) in any other place, means a declaration made before a consul or before any person having authority under any Law for the time being in force to take or receive a declaration;

"Supreme Court" means the Court established by the Constitution of the Federal Republic of Nigeria;

"traditional ruler", or **"traditional paramount ruler"** means a person who is for the time being recognised as a traditional ruler under a law in force in the State;

"Treasury" means the Treasury of the State;

"United Kingdom" means in relation to anything done before the date of the Constitution of the Irish Free State, Great Britain and Ireland, and in relation to anything done or to be done after that date, Great Britain and Northern Ireland;

"vessel" includes floating craft of every description;

"will" includes a codicil;

"written law" includes all Laws, Acts and all orders, proclamations and letters patent and all regulations and rules of court and other instruments having the effect of law made by any person or body having authority under any statutory or other enactment to make the same in and for Nigeria or any part thereof;

"writing" any expression referring to writing includes printing, lithography, photography, typewriting and other modes of representing or reproducing words or figures in a visible form;

"year" means a year reckoned according to the Gregorian calendar.

(2) Where a Law states the meaning to be given to any term or word used therein, such term or word shall have that meaning unless the context otherwise requires.

63. Application

This Law shall apply to this Law and to all Laws in force at the date of this Law and to all Laws hereafter enacted.

64. Short title

This Law may be cited as the Interpretation Law.

CHAPTER I6

INTERPRETATION LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER I7

INTER-TRIBAL BOUNDARIES SETTLEMENT LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Power to determine inter-tribal boundary.
2. Inquiry with assessors.
3. Legal practitioners not to appear.
4. Power of Governor to review.
5. Application of section 2 to section 4.
6. Power to summon witnesses.
7. Registration of settlements.
8. Penalties.
9. Interpretation.
10. Short title.

CHAPTER I7

INTER-TRIBAL BOUNDARIES SETTLEMENT LAW

A Law to provide for the settlement of Disputes with regard to Inter-Tribal Boundaries.

(30*th November*, 1933)

[Commencement.]

1. Power to determine inter-tribal boundary

Any secretary to a Local Government may, with the approval of the Permanent Secretary, Ministry of Local Government inquire into and decide any dispute between two or more tribes as to the boundaries between the lands of such tribes.

2. Inquiry with assessors

In any inquiry under the last preceding section, the Secretary to the Local Government may, if he thinks fit, be assisted by such one or more persons as he may select as assessors, whom he may summon as occasion requires. The opinion of each assessor shall be given orally and shall be recorded in writing by the Secretary to the Local Government but the decision shall rest exclusively with the Secretary to the Local Government and no settlement shall be deemed invalid if any, or all, of the assessors so summoned shall not be present throughout the whole of the inquiry.

3. Legal practitioners not to appear

No legal practitioner shall appear or act for or assist any party in any inquiry held under this Law unless he is a member of the tribes which are parties to the dispute, is personally interested in its settlement, and receives no remuneration for his services in the inquiry.

4. Power of Governor to review

The Governor may, if he thinks fit review the proceedings of any inquiry held under any of the preceding sections and may, in his discretion, affirm, set aside, or vary any decision given thereunder, either in the first instance or on review, or may order any Secretary to a Local Government to hold a further inquiry.

5. Application of section 2 to section 4

The provisions of section 2 shall apply to any further inquiry held under section 4.

6. Power to summon witnesses

For the purposes of any inquiry under this Law the Secretary to the Local Government shall have all the powers of a magistrate in connection with any civil cause in respect of enforcing the attendance of witnesses and compelling the production of documents.

7. Registration of settlements

Any decision or order given on any inquiry under this Law shall be recorded in writing and shall be signed by the officer giving the same, and shall be registered and preserved by the Permanent Secretary, Ministry of Local Government.

8. Penalties

Any person who acts in disregard or defiance of any decision which may be in force under this Law or, without due authority removes, damages or defaces any boundary or other mark erected during the course and for the purposes of any inquiry under this Law or erected in connection with any decision or order given under this Law, shall be guilty of an offence and shall be liable to a fine of one hundred naira or to imprisonment for six months or to both such fine and imprisonment.

9. Interpretation

In this Law—

"tribe" includes a sub-tribe, clan of a tribe, an administrative unit or other similar community and the inhabitants of a village.

10. Short title

This Law may be cited as the Inter-Tribal Boundaries Settlement Law.

CHAPTER I7

INTER-TRIBAL BOUNDARIES SETTLEMENT LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER I8

IZIZIGBO GROUP (PROSCRIPTION) LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Proscription of Izizigbo group.
2. Izizigbo group dissolved.
3. Prohibition of Izizigbo activities.
4. Surrender of property, etc.
5. Prohibition of associations similar to Izizigbo.
6. Power to arrest.
7. Short title.

CHAPTER I8

IZIZIGBO GROUP (PROSCRIPTION) LAW

(1*st January*, 1989)

[Commencement.]

1. Proscription of Izizigbo group

This Izizigbo group in Ediba Village in Obubra Local Government Area is hereby proscribed.

2. Izizigbo group dissolved

The Izizigbo group and its executive committee (by whatever name called) are hereby dissolved.

3. Prohibition of Izizigbo activities

Any person who purports to be a member of the Izizigbo Group or to hold any office in the said Group, or carries on or attempts to carry on any of the activities of the Izizigbo Group, shall be guilty of an offence and liable upon conviction to a fine of ₦20,000 or imprisonment for two years or to both such fine and imprisonment.

4. Surrender of property, etc.

(1) Any person having in his possession any property or asset whatsoever, belonging to the Izizigbo Group shall forthwith surrender such property or asset to the Divisional Police Officer in charge of Ediba Village.

(2) Any person who contravenes the provisions of subsection (1) of this section shall be guilty of an offence and liable on conviction to a fine of ₦20,000 or imprisonment for two years or to both such fine and imprisonment.

5. Prohibition of associations similar to Izizigbo

Any person who is a member or purports to be a member of any association whatsoever which carries on, or attempts to carry on any activities similar in any respect to those carried on by the Izizigbo Group shall be guilty of an offence and liable upon conviction to a fine of ₦20,000 or imprisonment for two years or to both such fine and imprisonment.

6. Power to arrest

Any police officer may arrest without warrant any person suspected of committing any offence under this Law.

7. Short title

This Law may be cited as the Izizigbo Group (Proscription) Law.

CHAPTER I8

IZIZIGBO GROUP (PROSCRIPTION) LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER J1

JOINT LOCAL GOVERNMENT ACCOUNTS LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Establishment of the Committee.
2. Membership of the Committee.
3. Establishment of the Joint Local Government Account.
4. Functions of the Committee.
5. Formula for distribution among the Local Government Councils *inter se*.
6. Decision of the Committee.
7. Regulation of procedure.
8. Interpretation.
9. Short title.

CHAPTER J1

JOINT LOCAL GOVERNMENT ACCOUNTS LAW

A Law to provide for the establishment of Joint Local Government Accounts and for matters connected thereto.

(14*th January*, 2001)

[Commencement.]

1. Establishment of the Committee

There is hereby established for the State a body to be known as the Joint Local Government Accounts Allocation Committee which shall have and exercise the power conferred on it by this Law.

2. Membership of the Committee

The Committee shall consist of—

(*a*) the member of the Executive Council of the State charged with responsibility for Local Government matters who shall be the Chairman;

(*b*) the State Commissioner for Finance or his representative;

(*c*) the Accountant-General of the State or his representative; and

(*d*) the Chairman of each Local Government Council of the State.

3. Establishment of the Joint Local Government Account

There is hereby established an account to be known as the Joint Local Government Account to be managed by the Committee and into which shall be paid all allocations made to the Local Government Councils in the State from the Federation Account and from the Government of the State.

4. Functions of the Committee

(1) The functions of the Committee shall be—

(*a*) to ensure that allocations made to the Local Government Councils in the State from the Federation Account and from the Government of the State are promptly paid into the account established under section 3 of this Law;

(*b*) to distribute to all the Local Government Councils in the State such allocations under section 3 of this Law using the criteria set out in section 5 of this Law; and

(*c*) to ensure that returns are made to reach the Accountant-General of the State not later than 60 days following the end of each financial year so as to enable the Accountant-General to submit his report within 90 days thereafter to the State House of Assembly.

(2) The report of the Accountant-General shall state whether or not the payments made to the Local Government Councils were correctly made under this Law or any other law.

5. Formula for distribution among the Local Government Councils *inter se*

The percentage of Revenue Allocation standing to the credit of all the Local Government in the Federation Account and from the Government of the State shall be distributed among the Local Government Councils in the State using the following criteria—

(*a*) equality 45 per cent;

(*b*) population 40 per cent;

(*c*) land mass 5 per cent;

(*d*) primary school enrolment 5 per cent; and

(*e*) revenue generating capacity 5 per cent.

6. Decision of the Committee

A decision of the Committee shall be taken by a majority of the members present and voting at a meeting of the Committee and each member shall be entitled to one vote but the Chairman or other person presiding shall be entitled to a casting vote in the case of a tie.

7. Regulation of procedure

The Committee may regulate its own proceedings and, subject to its rules of procedure, act or take any decision notwithstanding any vacancy in its membership or the absence of any member provided that four days' notice of the meeting was given.

8. Interpretation

In this Law unless the context otherwise requires—

"Committee" means the Joint Local Government Allocation Committee;

"Governor" means the Governor of Cross River State;

"revenue generating capacity" means an average of internally generated revenue of a Council for the past twelve months;

"State" means the Cross River State.

9. Short title

This Law may be cited as Joint Local Government Accounts Law.

CHAPTER J1

JOINT LOCAL GOVERNMENT ACCOUNTS LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER J2

JUDICIAL SERVICE COMMISSION LAW

ARRANGEMENT OF SECTIONS

SECTION
1. Establishment of the Judicial Service Commission.
2. Composition of members.
3. Qualification for membership of the Commission.
4. Tenure of office.
5. Removal from office.
6. Functions of the Commission.
7. Remuneration of members.
8. Secretary to the Commission.
9. Independence of the Commission.
10. Quorum.
11. Decisions of the Commission, how taken.
12. Powers and procedures.
13. Interpretation.
14. Citation.

CHAPTER J2

JUDICIAL SERVICE COMMISSION LAW

A Law to establish the Judicial Service Commission and for purposes connected therewith.

[1979 (October – December) No. 2.]

[1*st October*, 1979]

[Commencement.]

1. Establishment of the Judicial Service Commission

The State Judicial Service Commission (hereafter in this Law referred to as "the Commission") is hereby established.

2. Composition of members

(1) The Commission shall consist of—

(*a*) the Chief Judge of the State, who shall be the Chairman;

(*b*) the Attorney-General of the State;

(*c*) the President of the Customary Court of Appeal, if any;

(*d*) one member who is a legal practitioner, and who has been qualified to practise as a legal practitioner for not less than ten years;

(*e*) one other person, not being a legal practitioner, who in the opinion of the Governor is of unquestionable integrity.

(2) The Chairman and members of the Commission shall be appointed by the Governor and the appointment shall be subject to confirmation by a resolution of the State House of Assembly.

3. Qualification for membership of the Commission

(1) No person shall be qualified for appointment as a member of the Commission if—

(*a*) he is not qualified or if he is disqualified for election as a member of the State House of Assembly;

(*b*) within the preceding ten years he has been removed as a holder of any office on the ground of misconduct.

(2) Any person employed in the public service of a State shall not be disqualified for appointment as Chairman or member of the Commission: Provided that where such a person, not being an *ex officio* member of the State Council of Chiefs, has been duly appointed, he shall on his appointment be deemed to have resigned his former office as from the date of the appointment.

(3) No person shall be qualified for appointment to the Commission if, having previously been appointed as a member otherwise than as an *ex officio* member of the Commission, he has been reappointed for a further term as a member of the Commission.

Tenure of Office of Members

4. Tenure of office

(1) A member of the Commission shall remain a member thereof—

(*a*) in the case of an *ex officio* member, whilst he holds the office by virtue of which he is a member of the Commission;

(*b*) in the case of a person who is a member otherwise than as an *ex officio* member, for a period of five years from the date of his appointment.

(2) A member of the Commission shall cease to be a member thereof if any circumstances arise that, if he were not a member of the Commission would cause him to be disqualified for appointment as such a member.

5. Removal from office

A member of the Commission shall only be removed from office by the Governor acting on an address supported by two-thirds majority of the State House of Assembly praying that he be so removed for inability to discharge the functions of his office (whether arising from infirmity of mind or body or from any other cause) or for misconduct.

6. Functions of the Commission

The Commission shall have power subject to such conditions as may be prescribed—

(*a*) to advise the Governor in nominating persons for appointment, subject to approval of the State House of Assembly as respects the appointments of—

(i) the Chief Judge of the High Court of the State;

(ii) the President of the Customary Court of Appeal of the State, if any;

(*b*) to advise the Governor on the appointment of—

(i) Judges of the High Court of the State;

(ii) Judges of the Customary Court of Appeal, if any;

(*c*) to recommend to the Governor the removal from office of the judicial officers specified in paragraph (*b*) of this section and to exercise disciplinary control over such officers; and

(*d*) to appoint, dismiss and exercise disciplinary control over the Chief Registrar and Deputy Chief Registrar of the High Court , the Chief Registrar, if any, of the Customary Court of Appeal, Magistrates, Judges and members of Customary Courts.

7. Remuneration of members

(1) Members of the Commission shall be paid such salaries as may be prescribed by the State House of Assembly.

(2) The salaries payable to members of the Commission and their conditions of service other than allowances shall not be altered to their disadvantage after their appointment.

8. Secretary to the Commission

(1) The Secretary to the Commission shall be—

(*a*) a legal practitioner, who has been so qualified for not less than five years; or

(*b*) an officer in the public service of the State, not below the rank of Senior Assistant Secretary, deployed to the Commission by the Governor.

(2) The Secretary shall be responsible for the day-to-day administration of the affairs of the Commission and shall carry out such other duties as may be assigned to him by the Commission.

(3) The Secretary shall be assisted in his duties by such persons in the civil service as may be deployed to the Commission.

9. Independence of the Commission

In exercising its powers to make appointments or to exercise disciplinary control over persons, the Commission shall not be subject to the direction and control of any other authority or person.

10. Quorum

Three members of the Commission including the State Attorney-General shall constitute a quorum.

11. Decisions of the Commission, how taken

A decision of the Commission shall be taken by a majority of the members present and voting at a meeting of the Commission and each member shall be entitled to one vote but in the event of a tie the Chairman or other person presiding shall be entitled to a second or casting vote:

Provided that no decision shall be taken without the supporting vote of the Attorney-General.

12. Powers and procedures

The Commission may, with the approval of the Governor, by rules or otherwise regulate its own procedure or confer powers or impose duties on any officer or authority for the purpose of discharging its functions:

Provided that in exercising such powers the Commission shall not confer powers or impose duties on any officer or authority of the Federation except with the prior approval of the President.

13. Interpretation

In this Law, unless the context otherwise requires—

any reference to **"*ex officio* member"** shall be construed as a reference to a person who is a member by virtue of his holding or performing the functions of an office in the public service of the State;

"function" includes power and duty;

"office" means an office in the public service of the State;

"President" means the President of the Federal Republic of Nigeria;

"State" means the Cross River State of Nigeria.

14. Citation

This Law may be cited as the Judicial Service Commission Law.

CHAPTER J2

JUDICIAL SERVICE COMMISSION LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER J3

JUDICIARY ACCOUNT LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Establishment of Judiciary Account.
2. Withdrawal from Consolidated Revenue Fund.
3. Bank account.
4. Books of accounts.
5. Audit of account.
6. Government financial regulation.
7. Interpretation.
8. Short title.

CHAPTER J3

JUDICIARY ACCOUNT LAW

(1*st January*, 1988)

[*Commencement*.]

1. Establishment of Judiciary Account

(1) There is hereby established an account to be known as the Cross River State Judiciary Account.

(2) The Account shall consist of all monies withdrawn from the Consolidated Revenue Fund of the State to meet—

(*a*) the recurrent expenditure of the judicial offices of the State (in addition to the salaries and allowance of judicial officers) charged upon the Consolidated Revenue Fund; and

(*b*) the recurrent expenditure authorised for the judiciary by any Appropriation Law or Supplementary Appropriation Law as the case may be.

2. Withdrawal from Consolidated Revenue Fund

(1) At the end of each month, the Accountant-General shall immediately submit to the Chief Registrar a statement of the balance of the Consolidated Revenue Fund available for disbursement during the next ensuing month to meet the overall expenditure of the Government.

(2) Upon the said statement, both the Accountant-General and the Chief Registrar shall decide on an agreed amount due to be paid from that balance to the Account, to meet the recurrent expenditure of the Judiciary for the said next ensuing month.

(3) The amount so agreed shall depend on—

(*a*) the balance of the Consolidated Revenue Fund available for disbursement;

(*b*) the needs of the judiciary in relation to the overall needs of the Government; and

(*c*) the need for the prudent management of the financial resources of the State.

(4) The amount so agreed shall be included in a warrant to be issued by the Governor to enable the said amount to be withdrawn from the Consolidated Revenue Fund and the Accountant-General shall immediately pay to the Account the said amount so withdrawn.

3. Bank account

(1) The Chief Registrar shall be the accounting officer of the Account and shall maintain and operate the Account in any reputable bank approved by the Governor.

(2) No withdrawal shall be made from the Account unless the cheque for such withdrawal has been authenticated by the signature of the Chief Registrar, or any person authorised in that behalf by the Chief Registrar.

4. Books of accounts

The Chief Registrar shall keep proper books, records, returns and other documents relating to the Account and at the end of each financial year, submit to the State Executive Council, a statement of account with respect to the Account together with the report of the Director of Audit thereon.

5. Audit of account

The accounts of the Chief Registrar in respect of the Account shall be audited by the Auditor-General of the State in accordance with Audit Law and for that purpose the Auditor-General of the State shall have access to all books, records, returns and other documents relating to the Account.

[Cap. A20.]

6. Government financial regulation

(1) In operating the Account, the Chief Registrar shall be subject to all Government financial regulations relating to public accountability.

(2) Subject to the provisions of this Law, the judiciary shall be self-accounting.

7. Interpretation

In this Law unless the expression otherwise requires—

"Account" means Cross River State Judiciary Account established by section 1 of this Law;

"Accountant-General" means State Accountant-General;

"Chief Registrar" means Chief Registrar of the State High Court;

"Government" means Government of Cross River State;

"judiciary" means Branch of the State Government relating to the law courts established under the Constitution of the Federal Republic of Nigeria 1999;

"Governor" means Governor of the State;

"State" means Cross River State.

8. Short title

This Law may be cited as the Judiciary Account Law.

CHAPTER J3

JUDICIARY ACCOUNT LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER L1

LAND DEVELOPMENT (PROVISION FOR ROADS) LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Procedure where owner intends to divide up land for sale.
2. Provisions to be compiled with before land is sold off in lots.
3. Offences.
4. Nullity of sale of reserved land.
5. Deposit of plan.
6. Deposit of plan conclusive evidence of parts of land reserved.
7. Compensation.
8. Refund of compensation.
9. Vesting of reserved land.
10. Proceedings under Law not to affect title to land.
11. Power to demolish buildings or fill in excavation on land reserved.
12. Interpretation.
13. Short title and application.

CHAPTER L1

LAND DEVELOPMENT (PROVISION FOR ROADS) LAW

A Law to make provision for any necessary Reservation of Land for Roads where land is sold off in Lots.

(9*th November*, 1933)

[Commencement.]

1. Procedure where owner intends to divide up land for sale

(1) Where an owner intends to divide up any land into lots with a view to sale, he may, if he so desires, before he proceeds to survey the land for the purposes of the next section, inform the prescribed authority of such intended division and transmit to such authority two identical plans (which may be sketch plans) showing approximately the position of the land and how he proposes to effect such division and the parts of the land, if any, which he proposes to reserve for roads.

(2) If the plans do not indicate that any part of the land is to be reserved for roads the prescribed authority shall return to the owner one of the plans with an indorsement thereon stating that it does not require that any part of the land shall be reserved or with an indication thereon of the parts of the land which it requires to be reserved.

(3) If the plans indicate that any part of the land is to be reserved for roads, the prescribed authority shall return to the owner one of the plans with an indorsement thereon stating that it approves of the proposed reservation, or with an indication thereon of any variation it may require in the proposed reservation or of any other parts which it may require to be reserved.

2. Provisions to be complied with before land is sold off in lots

(1) Except where an owner is exempted from complying with the provisions of this section by writing under the hand of the prescribed authority he shall, before he begins to sell off any land in lots, cause a survey of the land to be made and shall deliver to the prescribed authority four identical plans of such survey, showing the division of the land into lots and the parts, if any, of the land which he proposes to reserve for roads.

(2) If the plans do not indicate that any part of the land is to be reserved for roads the prescribed authority shall either record on the plans that it does not require any part of the land to be reserved for roads or delineate thereon the parts which it considers should be so reserved.

(3) If the plans indicate that any parts of the land are to be reserved for roads the prescribed authority shall either record on the plans its approval of the proposed reservation or delineate thereon the parts of the land which it considers should be so reserved.

(4) The prescribed authority shall return one of the plans to the owner, and shall in any case where its requirements under subsection (2) or subsection (3) are at variance with the proposals of the owner, notify the owner that if he objects to such requirements he may within one month of such notification deliver to the prescribed authority in writing his objections thereto.

(5) On the expiration of the said period and after considering any objections which it may have received from the owner, the prescribed authority shall decide which parts of the land are to be reserved and shall notify the owner of its decision.

(6) Where an owner has, before submitting plans under this section, submitted plans under section 3, the parts of the land which the prescribed authority may require to be reserved under this section shall not differ substantially in position or extent from the parts of the land which it required should be reserved under section 3.

(7) After receiving a notification from the prescribed authority under subsection (5) the owner shall demarcate *in situ* to the satisfaction of the prescribed authority the parts of the land which are to be reserved.

(8) After receiving such notification the owner shall also prepare four identical plans showing the parts of the land demarcated under subsection (7) as reserved for roads and shall transmit the plans to the prescribed authority which shall, if it finds them to be correct, record its approval on each plan and return one of them to the owner.

(9) The provisions of this section shall *mutatis mutandis* apply where an owner desires to change the manner of dividing up the land into lots or the parts of the land to be reserved.

3. Offences

Any person not exempted from compliance with the provisions of section 2 who—

(*a*) begins to sell off such land in lots without demarcating *in situ* to the satisfaction of the prescribed authority the parts of the land which are to be reserved; or

(*b*) begins to sell off such land in lots without obtaining an approved plan from the prescribed authority; or

(*c*) purports to sell any parts of such land which the prescribed authority has directed to be reserved,

shall be guilty of an offence and shall be liable to a fine of one thousand naira.

4. Nullity of sale of reserved land

The sale of any land which the prescribed authority directed is to be reserved shall be null and void.

5. Deposit of plan

(1) As soon as conveniently, may be after the prescribed authority has approved a plan in accordance with subsection (8) of section 2 showing the parts of the land which have been reserved for roads it shall cause one certified copy to be forwarded to the Adviser on Lands or to such other officer or authority as the Governor may direct and another certified copy to be deposited in the office of the Secretary to the Local Government in whose area of jurisdiction the land is situate.

(2) Notice of the approval of the plan and the deposit of a copy thereof in accordance with the requirements of subsection (1) shall be published in the State *Gazette* with a sufficient description of the situation of the land to which it relates and such copy shall be open to public inspection:

Provided that where the plan forms part of a planning scheme approved under section 18 of the Town and Country Planning Law, this subsection shall not apply.

[Cap. T3.]

6. Deposit of plan conclusive evidence of parts of land reserved

The deposit of the certified copy of the approved plan in the office of the Secretary to the Local Government shall be conclusive evidence that the parts of the land indicated as having been reserved for roads have been so reserved under this Law.

7. Compensation

Where under section 2 the prescribed authority directs that parts of any land are to be reserved for roads the following provisions shall have effect—

(*a*) where the total area of the land directed to be reserved does not exceed one-fifth of the land which the owner proposes to sell off in lots (including the area so reserved) no compensation shall be payable;

(*b*) in so far as the area of the land so reserved exceeds that fraction compensation shall be payable by the prescribed authority in respect of the excess to the extent to which, if at all, the value of such excess is greater than any increase in value of the land (excluding the area so reserved) to the owner by reason of the reservation of such excess;

(*c*) where the area of the land so reserved exceeds that fraction compensation shall, subject to the provisions of the preceding paragraphs of this section, be paid by the prescribed authority to the owner and to any other persons having an interest in the area so reserved as in the case of private lands acquired for public purposes;

(*d*) if the amount of compensation to be paid to the owner or any other person cannot be agreed, or if any person claiming compensation has not given satisfactory evidence of his alleged interest, or if separate and conflicting claims are made in respect of any parts of the land so reserved, the amount of compensation due (if any) and every such disputed interest or title shall be settled in accordance with the provisions of the Public Lands Acquisition Law, and the provisions of section 19 of that Law with regard to costs shall apply to proceedings under this section:

Provided, however, that no claims for compensation for any parts of the land so reserved shall be entertained, except with the consent of the prescribed authority, unless the claim is made within six months of the date of the State *Gazette* in which the notice of the deposit of the copy of the approved plan of the land is published.

8. Refund of compensation

Where the reserved land is situate within the area of authority of a local government, that local government shall refund to the prescribed authority any sum, paid by the prescribed authority by way of compensation under the provisions of section 7.

9. Vesting of reserved land

Where any land is reserved under the provisions of this Law, such land shall vest in the local government or in such authority as the Governor may from time to time by order vest it.

10. Proceedings under Law not to affect title to land

Subject to the provision of section 6, nothing done by the prescribed authority under this Law shall be deemed to affect the title to any land or interest therein or to constitute any representation as to the title to any land or interest therein.

11. Power to demolish building or fill in excavation on land reserved

(1) Where any building or structure is erected or any excavation is made on any land after such land has been reserved for roads under the provisions of this Law, the authority in which the land is vested under the provisions of section 8 may pull down such building or structure or fill in such excavation, and may recover any expenses incurred from the person who erected the building or structure or who made the excavation or who caused the same to be erected or made.

(2) The materials of any building or structure so pulled down may be sold by such authority, and the proceeds of any such sale may be used by the authority to defray any expenses incurred as aforesaid.

12. Interpretation

(1) In this Law—

"approved plan" means a plan approved by the prescribed authority under subsection (8) of section 4;

"land" includes any estate or interest in land;

"owner" with reference to land means any person receiving rents or profits from any tenant or occupier thereof or who would receive such rents or profits if the land were let, whether on his own account or as agent for any other person;

"prescribed authority" means, in relation to any area for which a planning authority has been appointed under the provisions of the Town and Country Planning Law, that authority; and in relation to any other area to which this law is applied by order made under section 1, the person appointed by that order to be the prescribed authority for that area;

"reserved" means reserved for roads and **"reservation"** has a corresponding meaning;

"sale" includes leasing;

"to divide up land into lots with a view to sale" includes the delineation on a plan or the demarcation *in situ* of any portion or portions of any land with a view to the sale of such portion or portions.

(2) A person shall be deemed to begin to sell off land in lots as soon as he sells any portion of any land at any time after the coming into force of an order made under section 1 applying the provisions of this Law to an area which includes such land.

13. Short title and application

This Law may be cited as the Land Development (Provision for Roads) Law.

CHAPTER L1

LAND DEVELOPMENT (PROVISION FOR ROADS) LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER L2

LAND INSTRUMENTS PREPARATION LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Persons drawing instruments to indorse name and address thereon.
2. Unqualified persons not to draw instruments.
3. (1) Certain agreements void.
   (2) Fee or reward paid under void agreement may be recovered.
4. Saving for instruments drawn by public officers.
5. Power to except any class of instrument.
6. Interpretation.
7. Short title.

CHAPTER L2

LAND INSTRUMENTS PREPARATION LAW

A Law to prohibit unqualified persons from drawing instruments affecting land for reward.

(30*th August*, 1917)

[Commencement.]

1. Persons drawing instruments to indorse name and address thereon

Every person who shall draw or prepare any instrument shall indorse or cause to be indorsed thereon his name and address and any person contravening the provisions of this section shall be liable to a fine of ten naira.

2. Unqualified persons not to draw instruments

No person other than a legal practitioner shall either directly or indirectly for or in expectation of any fee, gain or reward draw or prepare any instrument and any person contravening the provisions of this section shall be liable to a fine of one hundred naira.

3. Certain agreements void

(1) An agreement entered into after the commencement of this Law to pay a fee or reward to any person, other than a legal practitioner, in consideration of such person drawing or preparing any instrument is void.

Fee or reward paid under void agreement may be recovered

(2) Any person who shall after the commencement of this Law pay to any person, other than a legal practitioner, any fee or reward for having after the commencement of this Law drawn or prepared or agreed to draw or prepare an instrument may sue for and recover the amount of such fee or reward from the person to whom the same was paid.

4. Saving for instruments drawn by public officers

Nothing in this Law shall apply to any public officer drawing or preparing an instrument in the course of his duty as such.

5. Power to except any class of instrument

The Attorney-General may by order except from the provisions of this Law any class of instrument specified in such order.

6. Interpretation

In this Law—

"instrument" means any document conferring, transferring, limiting, charging or extinguishing, or purporting to confer, transfer, limit, charge or extinguish any right, title or interest in land but does not include a will.

7. Short title

This Law may be cited as the Land Instruments Preparation Law.

CHAPTER L2

LAND INSTRUMENTS PREPARATION LAW

SUBSIDIARY LEGISLATION

Lists of Subsidiary Legislation

1. Exception of certain leases.

EXCEPTION OF CERTAIN LEASES FROM THE PROVISIONS OF THE LAW

[Order in Council No. 30 of 1917. Section 7.]

This Law shall not apply to leases of lands, houses or buildings for a term not exceeding three years (without a right of renewal) at a rent not exceeding one hundred naira a year.

CHAPTER L3

LAND INSTRUMENTS REGISTRATION LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Land registry.
2. Appointment of registrars.
3. Registers and documents to be kept.

Instruments the Registration of which is Compulsory

4. Instrument executed after the commencement of the Law.
5. Instruments executed before the commencement of the Law.

Requisites of Registration

6. (1) Proof of instruments executed by illiterates in Nigeria.
   (2) Proof of instruments executed out of Nigeria.
7. (1) Description and plan of land affected.
   (2) Plans attached to State or former Crown grants to be signed by a Surveyor.
   (3) Plans attached to other instruments to be signed by a Surveyor.
   (4) Definition of term.
8. Indorsement of Governor's consent in certain cases.
9. Void instrument not to be registered.
10. Effect of non-compliance with requirements of Law.
11. Registration of instrument indorsed on another instrument.

Sanctions

12. Documents void for non-registration.
13. Inadmissibility in evidence.
14. Loss of priority.

Method of Registration

15. (1) Method of registration.
    (2) Validation of registration of certain instruments.
16. (1) When registration to be refused.
    (2) Return of rejected instrument.
    (3) Re-delivery for registration.
    (4) Fee not returnable.

Filing of Judgments

17. Copy of local judgments to be transmitted with plan.
18. Registrar to file copy of judgment.
19. Non-compliance not to affect validity of judgment.
20. Power to make rules of court.

Miscellaneous

SECTION

21. Effect of registration.
22. Instrument to include indorsement thereon.
23. Registers to be deemed in legal custody and to be receivable in evidence.
24. Searches.
25. Copies of entries in registers.
26. Penalty for false statement.
27. Penalty for destroying or falsifying register.
28. Fees.
29. Power to remit fees.
30. Power to make regulations.
31. Interpretation.
32. Short title.

SCHEDULES

FIRST SCHEDULE

Forms

SECOND SCHEDULE

Fees

CHAPTER L3

LAND INSTRUMENTS REGISTRATION LAW

A Law to consolidate and amend the Law relating to the Registration of Instruments and the filing of judgments affecting land.

(1*st January*, 1925)

[Commencement.]

1. Land registry

(1) There shall be in the State a land registry with an office or offices at such place or places as the Commissioner may from time to time direct.

(2) The registry shall be the proper office for the registration of all instruments including powers of attorney affecting land in the State.

2. Appointment of registrars

(1) The Public Service Commission shall appoint such number of registrars, deputy registrars and assistant registrars as it may think fit for the purposes of this Law.

(2) Subject to the directions of the registrar a deputy registrar or an assistant registrar may do anything which by this Law is required or authorised to be done by the Registrar.

3. Registers and documents to be kept

(1) There shall be kept at each office such registers, books and files as may be prescribed and a registrar shall, subject to the provisions of this Law, register therein in the prescribed manner all instruments required to be registered and delivered to him for registration and shall file all local judgments required to be filed and delivered to him for filing.

(2) All registers kept in the offices of the land registry immediately before the commencement of this Law shall form part of the register under this Law.

Instruments the Registration of which is Compulsory

4. Instrument executed after the commencement of the Law

Subject to the provisions of this Law, every instrument executed after the commencement of this Law shall be registered.

5. Instruments executed before the commencement of the Law

Subject to the provisions of this Law, every instrument executed before the commencement of this Law, and not already registered, shall be registered.

Requisites of Registration

6. Proof of instruments executed by illiterates in Nigeria

(1) No instrument executed in Nigeria after the commencement of this Law, the grantor, or one or more of the grantors, whereof is illiterate, shall be registered unless it has been executed by such illiterate grantor or grantors in the presence of a magistrate or justice of the peace, and is subscribed by such magistrate or justice of the peace as a witness thereto.

Proof of instruments executed out of Nigeria

(2) No instrument executed out of Nigeria shall be registered unless it has indorsed thereon or attached thereto a certificate of proof (as in Form A in the First Schedule or to the like effect) by one of the persons mentioned in (*a*) or (*b*) of subsection (3), as the case may be; or unless one of the subscribing witnesses thereto be one of such persons, or unless the due execution thereof is otherwise certified, to the satisfaction of the registrar, by one of such persons:

Provided that an instrument executed out of Nigeria by a person serving in the armed forces of the State on actual naval or military service may be registered if it has been executed in the presence of—

(*a*) the officer commanding the ship or other unit in which the person executing the instrument is serving; or

(*b*) any other officer not below the rank of Lieutenant-Commander in the Navy, or Major in the Army, or of the equivalent rank in the Air Force, and bears a statement that it has been executed on actual naval or military service.

(3) The persons referred to in subsection (2) shall be every person having authority to administer an oath in any place out of Nigeria.

7. Description and plan of land affected

(1) No instrument executed after the commencement of this Law, other than a power of attorney, shall be registered unless it contains a proper and sufficient description, and, subject to the regulations, a plan, of the land affected by such instrument. The decision of the registrar as to the adequacy of the description and plan of any land in any instrument for the purpose of identification shall be final, subject to any other of the High Court.

Plans attached to State or former Crown grants to be signed by a surveyor

(2) No State or former Crown grant executed after the 1st June, 1918, and no instrument executed after the said date affecting land the subject of such a grant executed after the said date shall be registered unless the plan of the land affected by such a grant or instrument is signed by a surveyor or is a copy of a plan so signed.

Plans attached to other instruments to be signed by a surveyor

(3) No instrument executed after the 1st June, 1918, having thereon or attached thereto a plan of the land affected shall be registered unless the plan is signed by a surveyor or is a copy of a plan which has been signed by a surveyor.

Definition of term

(4) In this section the term **"surveyor"** has the meaning assigned to it by the Survey Law.
[Cap. S18.]

8. Indorsement of Governor's consent in certain cases

No instrument requiring the consent of the Governor or of any public officer for the validity thereof shall be registered unless such consent be indorsed thereon or the registrar is otherwise satisfied that such consent has been given.

9. Void instrument not to be registered

No instrument declared by any enactment repealed by this Law to be void shall be registered.

10. Effect of non-compliance with requirements of Law

No instrument executed before the commencement of this Law shall be registered if it does not comply with the requirements of this Law or of the enactment in force at the date of execution thereof.

11. Registration of instrument indorsed on another instrument

No instrument indorsed on another instrument shall be registered unless the instrument on which it is indorsed is registered.

Sanctions

12. Documents void for non-registration

Every State grant executed after the commencement of this Law, and every instrument affecting land the subject of a State grant or whereby land is granted by a citizen of Nigeria to a non-Nigerian executed after the commencement of this Law shall, so far as it affects any land,

be void unless the same is registered within six months from its date (or, in the case of an instrument whereby land is granted by a citizen of Nigeria to a non-Nigerian, from the date on which it receives the Governor's consent) if executed in Nigeria, or twelve months from its date (or, in the case of an instrument whereby land is granted by a citizen of Nigeria to a non-Nigerian, from the date on which it receives the Governor's consent) if executed elsewhere:

Provided that the registrar may extend such periods whenever he shall be satisfied that registration has been delayed without default or neglect on the part of the person acquiring the right or interest in the lands in question.

13. Inadmissibility in evidence

No instrument shall be pleaded or given in evidence in any court as affecting any land unless the same shall have been registered in the proper office as specified in section 1:

Provided that a memorandum given in respect of an equitable mortgage affecting land in the State executed before the 1st day of July, 1944, and not registered under this Law may be pleaded and shall not be inadmissible in evidence by reason only of not being so registered.

14. Loss of priority

Subject to the provisions of this Law every instrument registered under this Law shall, so far as it affects any land, take effect, as against other instruments affecting the same land, from the date of its registration as hereinafter defined in the proper office as specified in section 1 and every instrument registered before the commencement of this Law shall be deemed to have taken effect from the date provided by the law in force at the time of its registration.

Method of Registration

15. Method of registration

(1) Any person desiring that any instrument shall be registered shall deliver the same together with a true copy thereof and the prescribed fee to the registrar at the office.

(2) The registrar shall, immediately after such delivery, place upon the instrument and upon the copy thereof a certificate, as in Form B in the First Schedule.

(3) Unless the instrument is one which is declared by this Law to be void or the registration of which is prohibited by this Law, the registrar shall compare the copy of the instrument with the original and if he shall find such copy to be a true copy and to comply with any regulations made under this Law and for the time being in force he shall certify the same by writing thereon the words "certified true copy" and appending his signature thereto.

(4) The registrar shall thereupon register the instrument by causing the copy so certified to be pasted or bound in one of the register books and by indorsing upon the original instrument a certificate as in Form C in the First Schedule; and upon such registration the year, month, day and hour specified in the certificate indorsed on the instrument in pursuance of subsection (2) shall be taken to be the year, month, day and hour at which the instrument was registered.

(5) The original instrument shall thereafter, upon application, be returned to the person who shall have delivered it for registration:

Provided that if application for the return of the instrument is not made within twelve months after the date of registration the registrar may destroy the instrument.

Validation of registration of certain instruments

(6) Every instrument duly certified as having been registered at the Enugu registry or the Ibadan registry between the 30th day of September, 1949, and the date upon which the Land Registration (Amendment) Ordinance, 1948, came into operation shall be deemed for all purposes to have been registered at the hour in the day of the month and year specified in the certificate placed thereon in accordance with the provisions of subsection (2) of this section.

16. When registration to be refused

(1) When, upon examining an instrument and the copy thereof delivered to him for registration, the registrar shall find that such instrument is one which is declared by this Law to be void or the registration of which is prohibited by this Law or that the copy is not a true copy, or does not comply with any regulations made under this Law for the time being in force, he shall refuse to register such instrument and shall write in red ink across the certificates indorsed on the instrument and copy in pursuance of subsection (2) of the last preceding section the words "registration refused" and shall append his signature thereto and the title of the registry office concerned.

Return of rejected instrument

(2) Subject instrument and copy thereafter, upon application, shall be returned to the person who shall have delivered it for registration:

Provided that if application for the return of the instrument and copy is not made within twelve months from the date on which they were delivered for registration the registrar may destroy them.

Re-delivery for registration

(3) (*a*) Nothing herein contained shall prevent an instrument the registration of which has been refused from being delivered again for registration provided that the provisions of section 15 are complied with, and that the instrument, if it was void by virtue of the provisions of section 15 when previously delivered for registration, has ceased to be void owing to the time for registration having been extended by the registrar.

(*b*) In the event of such subsequent delivery the procedure prescribed by section 15 shall be followed and the year, month, day and hour of registration shall be taken to be the year, month, day and hour of such subsequent delivery.

Fee not returnable

(4) When registration of an instrument is refused, the fee paid upon delivery for registration shall not be returnable, and in the event of the instrument being delivered again for registration the fee upon delivery shall be payable again.

Filing of Judgments

17. Copy of local judgments to be transmitted with plan

(1) Within two calendar months from the date of every local judgment the registrar of the court by which such judgment has been pronounced shall transmit to the registrar, at such registry office as the Commissioner may from time to time direct, a certified true copy of the judgment together with a copy of any map or plan ordered to be filed in that court to which the judgment refers, a copy whereof has not already been transmitted under the provisions of this Law, and any other map or plan ordered by the court to be transmitted.

(2) No map or plan other than those specified in subsection (1) shall accompany or be attached to a copy of a judgment transmitted under the provisions of that subsection.

18. Registrar to file copy of judgment

On receipt of the certified true copy of any local judgment and the map or plan specified in subsection (1) of section 18 the registrar shall file the same.

19. Non-compliance not to affect validity of judgment

The failure to transmit or file any local judgment and any error in transmitting or filing any local judgment shall not affect the validity or effect of such judgment.

20. Power to make rules of court

The Chief Judge with the approval of the Governor may make rules of court for giving effect to sections 17, 18 and 19 in the High Court and Magistrates' Courts and in particular for requiring and regulating the filing in courts of maps and plans in matters wherein the title to land in the State or the validity of any instrument registered under this Law is or may be in issue.

Miscellaneous

21. Effect of registration

Registration shall not cure any defect in any instrument or, subject to the provisions of this Law, confer upon it any effect or validity which it would not otherwise have had.

22. Instrument to include indorsement thereon

For the purposes of registration an instrument shall be deemed to include all certificates and other matter indorsed thereon or attached thereto at the time it was delivered for registration.

23. Registers to be deemed in legal custody and to be receivable in evidence

All register books, registers and files of registered documents at the registry office shall be deemed to be in legal custody, and shall be receivable in evidence in any court and every registrar shall produce or cause to be produced any register book, register or file of registered documents in his office, on subpoena or order of any court without payment for so doing unless the court shall direct otherwise.

24. Searches

The registrar shall allow searches to be made at all reasonable times in any register book, register or file of registered or filed documents in his custody.

25. Copies of entries in registers

(1) The registrar shall upon request give a certified copy of any entry in any such register book or register, or of any field document.

(2) Every such certified copy shall be received in evidence, without any further or other proof in all civil case.

26. Penalty for false statement

Any person who shall wilfully make or cause to be made for the purpose of being inserted in any register under this Law any false statement touching any of the particulars herein required to be known and registered shall be liable to a fine of one hundred naira or to imprisonment for two years.

27. Penalty for destroying or falsifying register

Any person who shall wilfully destroy or injure or cause to be destroyed or injured any register books, register or filed document or any part thereof, or shall counterfeit or cause to be counterfeited any part of any such book, register or document or any certified copy thereof, or extract therefrom, or shall wilfully insert or cause to be inserted in any such book, register, file, certified copy or extract any false entry, or shall certify any writing to be a copy or extract of any such book, register or file, knowing the same to be false in any part thereof, or shall forge and counterfeit the seal of any registry office, shall be liable to imprisonment for seven years.

28. Fees

The fees prescribed in the Second Schedule or such other fees as the Commissioner may by regulation prescribe shall be taken by the officers by or before whom the acts for which the fees are payable are done.

29. Power to remit fees

The Commissioner may, whenever he may think fit, remit or reduce the amount of any fee payable under this Law.

30. Power to make regulations

The Commissioner may make regulations—

(*a*) for the governance and guidance of registrars and of all persons acting under them;

(*b*) prescribing the nature, size and shape of the paper or other substance to be used for copies of instruments delivered for registration and generally the manner in which such copies are to be prepared;

(*c*) excepting from the provisions of section 7 in so far as the said section relates to a plan, any class of instrument;

(*d*) excepting from the provisions of this Law any class of instrument;

(*e*) adding to or altering any of the forms given in the First Schedule;

(*f*) generally for the purposes of this Law.

31. Interpretation

In this Law—

"certificate of purchase" means a certificate granted by a court certifying that the right, title and interest of a judgment debtor in certain immovable property has been sold to the person named in the certificate;

"Commissioner" means the State Commissioner charged with the responsibility for Lands;

"instrument" means a document affecting land in the State whereby one party (hereinafter called the grantor) confers, transfers, limits, charges or extinguishes in favour of another party (hereinafter called the grantee) any right or title to or interest in land in the State and a certificate of purchase and a power of attorney under which any instrument may be executed, but not a will;

"local judgment" means a judgment or decree of the Supreme Court, the High Court or a Magistrate's Court whereby the title to land in the State is or shall be affected or whereby the validity of any instrument registered under this Law is affected;

"office" means the proper office of the land registry established under this Law;

"State grant" includes a mining lease, mining right, water right or exclusive prospecting licence granted under the Minerals Act, and a timer licence granted under the Forest Law, and every other grant, conveyance, lease or mortgage by or on behalf of the Government.

32. Short title

This Law may be cited as the Land Instruments Registration Law.

SCHEDULES

FIRST SCHEDULE
[Section 8.]

FORM A

Certificate of proof

This instrument was proved before me by the oath (or statutory declaration) of the within named (grantor, grantee or subscribing witness) to have been duly executed by the within named (grantor).

GIVEN under my hand

And seal this ..... day of ....., 20 .....

(Signed) .....
Officer

FORM B
[Section 17.]

Certificate of Delivery to Registrar of Instrument

This instrument was delivered to me for registration by A.B ..... of (state his residence and profession) at ..... o'clock in the ..... noon, this ..... day of ....., 20 .....

And seal this ..... day of ....., 20 .....

.....
(*Registrar*)

FORM C
[Section 17.]

This instrument is registered as No ..... at page ..... in Volume ..... of the Lands Registry in the office at .....

.....
(*Registrar*)

SECOND SCHEDULE

Fees

		₦ k
1.	Upon delivery of an instrument for registration	
	(*a*) within sixty days of the date of execution if executed in Nigeria or within twelve months of the date of execution if executed elsewhere	3.00
	(*b*) after sixty days have elapsed since the date of execution if executed in Nigeria or after twelve months have elapsed since the date of execution if executed elsewhere	20.00
2.	For every attestation of an instrument under section 6	0.50
3.	For every search in the records, for every half an hour	0.50
4.	For a certified copy of any registered instrument (not including any plan thereon) for every 100 words	0.50
5.	For a copy of every plan as determined by the registrar according to the amount of work involved but not less than	1.00
6.	For comparing, if required any instrument with the register thereof, for every 100 words	0.25

CHAPTER L3

LAND INSTRUMENTS REGISTRATION LAW

SUBSIDIARY LEGISLATION

Lists of Subsidiary Legislation

1. Establishment of a Land Registry Direction Notice.
2. Land Instruments Registration Regulations.
3. Land Instruments Registration (Remission of Fees) Order.

ESTABLISHMENT OF A LAND REGISTRY DIRECTION NOTICE

The Governor has directed that a Land Registry be established at Calabar, the State Capital.

LAND INSTRUMENTS REGISTRATION REGULATIONS

[Regulations 29 of 1924. 16 of 1927. 22 of 1934. 17 of 1937. 55 of 1939. L.N. 48 of 1954. Section 32.]

1. These Regulations may be cited as the Land Instruments Registration Regulations.

2. Copies of instruments delivered for registration under the Law shall be prepared on parchment or on stout paper of good and substantial quality, rectangular in shape, and the dimensions of such parchment or paper shall not exceed fifteen inches in length by nine and a half inches width (being the size known as "post") and shall not be less than thirteen inches in length by eight and a quarter inches in width (being the size known as "foolscap") and such copies shall be so written or printed that a margin two inches wide be left blank on the left side of the parchment or paper.

3. Section 9 of the Law, in so far as that section directs that an instrument shall not be registered unless it contains a plan of the land affected, shall not apply to the following instruments:

(*a*) Leases of lands, houses or buildings for a term not exceeding three years (without a right of renewal).

(*b*) Instruments affecting land the boundaries of which are defined in a plan attached to an instrument registered after the 1st June, 1918, and referred to in the instrument presented for registration.

(*c*) Mining rights, water rights or assignments of mining rights or of water rights.

(*d*) Timber licences granted under Part 4 of the Forestry Regulations.

(*e*) Any instrument affecting land which the Governor by indorsement thereon may exempt from the provisions of the said section.

(*f*) Leases of plots of lands forming part of a general lay-out recognised by the Commissioner of Lands, a plan of which showing the plots and lay-out has been deposited at the office of the Ministry of Lands.

(*g*) Exclusive prospecting licences which the chief Inspector of Mines by indorsement thereon may exempt from the provisions of the said section.

4. A memorandum entered in a book kept by a customary court for recording therein the terms and conditions on which a stranger is allowed to occupy communal land shall be exempt from the provisions of the Law.

5. Licences issued under the State Lands (Temporary Occupation) Regulations shall be exempt from the provisions of the Law.

6. All instruments recorded or filed under the provisions of any by-laws made by a local government in exercise of the powers conferred upon a local government by the Law are hereby excepted from the provisions of the Law.

LAND INSTRUMENTS REGISTRATION (REMISSION OF FEES) ORDER

1. Citation

This Order may be cited as the Land Instruments Registration (Remission of Fees) Order.

2. Date of execution of instrument made within remission period

For the purposes of assessment of registration fees under the Land Instruments Registration Law, every instrument made within the period from the 27th day of May, 1967, to the 3rd day of April, 1969, (both dates inclusive) (hereinafter referred to as "the remission period") shall be deemed to have been executed on the date of commencement of this Order.

3. Remission of late registration fee

The late registration fee of twenty naira prescribed in subparagraph (*b*) of paragraph 1 of the Second Schedule to the Land Instruments Registration Law shall accordingly not apply to the remission period.

4. Registrar's Certificate of exemption

Subject to the provisions of the Land Instruments Registration Law and of this Order, the registrar shall, immediately after the delivery of an instrument and the copy thereof for registration, place upon the instrument and upon the copy thereof a certificate, as in the form in the Schedule hereto.

SCHEDULE

By virtue of the Land Instruments Registration (Remission of Fees) Order, this instrument is exempt from the late registration fee of twenty naira.

.....

(*Registrar*)

Date .....

CHAPTER L4

LAND USE ACT

ARRANGEMENT OF SECTIONS

PART I

General

SECTION

1. Vesting of all land in the State.
2. Control and management of land; advisory bodies.
3. Designation of urban areas.
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CHAPTER L4

LAND USE ACT

WHEREAS it is the public interest that the rights of all Nigerians to the land of Nigeria be asserted and preserved by law:

AND WHEREAS it is also in the public interest that the rights of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families should be assured, protected and preserved:

NOW THEREFORE, THE FEDERAL GOVERNMENT hereby Acts as follows—

(29*th March*, 1978)

[Commencement.]

PART I

General

1. Vesting of all land in the State

Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation is hereby vested in the Governor of that State, and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.

2. Control and management of land; advisory bodies

(1) As from the commencement of this Act—

(*a*) all land in urban areas shall be under the control and management of the Governor of each State; and

(*b*) all other land shall, subject to this Act, be under the control and management of the local government within the area of jurisdiction of which the land is situated.

(2) There shall be established in each State a body to be known as "the Land Use and Allocation Committee" which shall have responsibility for—

(*a*) advising the Governor on any matter connected with the management of land to which paragraph (*a*) of subsection (1) of this section relates;

(*b*) advising the Governor on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest under this Act; and

(*c*) determining disputes as to the amount of compensation payable under this Act for improvements on land.

(3) The Land Use and Allocation Committee shall consist of such number of persons as the Governor may determine and shall include in its membership—

(*a*) not less than two persons possessing qualifications approved for appointment to the civil service as estate surveyors or land officers and who have had such qualification for not less than five years; and

(*b*) a legal practitioner.

(4) The Land Use and Allocation Committee shall be presided over by such one of its members as may be designated by the Governor and, subject to such directions as may be given in that regard by the Governor, shall have power to regulate its proceedings.

(5) There shall also be established for each Local Government a body to be known as "the Land Allocation Advisory Committee" which shall consist of such persons as may be determined by the Governor acting after consultation with the local government and shall have responsibility for advising the local government on any matter connected with the management of land to which paragraph (*b*) of subsection (1) of this section relates.

3. Designation of urban areas

Subject to such general conditions as may be specified in that behalf by the National Council of States, the Governor may for the purposes of this Act by order published in the State *Gazette* designate the parts of the area of the territory of the State constituting land in an urban area.

4. Applicable law for the interim management of land

Until other provisions are made in that behalf and, subject to the provisions of this Act, land under the control and management of the Governor under this Act shall be administered—

(*a*) in the case of any State where the Land Tenure Law of the former Northern Nigeria applies, in accordance with the provisions of that law; and

(*b*) in every other case, in accordance with the provisions of the State Land Law applicable in respect of State land in the State,

and the provisions of the Land Tenure Law or the State Land Law, as the case may be, shall have effect with such modifications as would bring those Laws into conformity with this Act or its general intendment.

PART II

Principles of land tenure, powers of Governor and local governments, and rights of occupiers

5. Powers of the Governor in relation to land

(1) It shall be lawful for the Governor in respect of land, whether or not in an urban area to—

(*a*) grant statutory rights of occupancy to any person for all purposes;

(*b*) grant easements appurtenant to statutory rights of occupancy;

(*c*) demand rental for any such land granted to any person;

(*d*) revise the said rental—

(i) at such intervals as may be specified in the certificate of occupancy; or

(ii) where no intervals are specified in the certificate of occupancy at any time during the term of the statutory right of occupancy;

(*e*) impose a penal rent for a breach of any covenant in a certificate of occupancy requiring the holder to develop or effect improvements on the land, the subject of the certificate of occupancy, and to revise such penal rent as provided in section 19 of this Act;

(*f*) impose a penal rent for a breach of any condition, express or implied, which precludes the holder of a statutory right of occupancy from alienating the right of occupancy or any part thereof by sale, mortgage, transfer of possession, sublease or bequest or otherwise howsoever without the prior consent of the Governor;

(*g*) waive, wholly or partially, except as otherwise prescribed, all or any of the covenants or conditions to which a statutory right of occupancy is subject where, owing to special circumstances, compliance therewith would be impossible or great hardship would be imposed upon the holder;

(*h*) extend except as otherwise prescribed, the time to the holder of a statutory right of occupancy for performing any of the conditions of the right of occupancy upon such terms and conditions as he may think fit.

(2) Upon the grant of a statutory right of occupancy under the provisions of subsection (1) of this section, all existing rights to the use and occupation of the land, which is the subject of the statutory right of occupancy, shall be extinguished.

6. Powers of local government in relation to land not in urban areas

(1) It shall be lawful for a local government in respect of land not in an urban area to—

(*a*) grant customary rights of occupancy to any person or organisation for the use of land in the local government area for agricultural, residential and other purposes;

(*b*) grant customary rights of occupancy to any person or organisation for the use of land for grazing purposes and such other purposes ancillary to agricultural purposes as may be customary in the local government area concerned.

(2) No single customary right of occupancy shall be granted in respect of an area of land in excess of 500 hectares if granted for agricultural purposes, or 5,000 hectares if granted for grazing purposes, except with the consent of the Governor.

(3) It shall be lawful for a local government to enter upon, use and occupy for public purposes any land within the area of its jurisdiction which is not—

(*a*) land within an area declared to be an urban area pursuant to section 3 of this Act;

(*b*) the subject of a statutory right of occupancy;

(*c*) within any area compulsorily acquired by the Government of the Federation or of the State concerned;

(*d*) the subject of any laws relating to minerals or mineral oils,

and for the purpose, to revoke any customary right of occupancy on any such land.

(4) The local government shall have exclusive rights to the lands so occupied against all persons except the Governor.

(5) The holder and the occupier according to their respective interests of any customary right of occupancy revoked under subsection (3) of this section shall be entitled to compensation, for the value at the date of revocation, of their unexhausted improvements.

(6) Where land in respect of which a customary right of occupancy is revoked under this Act was used for agricultural purposes by the holder, the local government shall allocate to such holder alternative land for use for the same purpose.

(7) If a local government refuses or neglects within a reasonable time to pay compensation to a holder and an occupier according to their respective interests under the provisions of subsection (5) of this section, the Governor may proceed to the assessment of compensation under section 29 of this Act and direct the local government to pay the amount of such compensation to the holder and occupier according to their respective interests.

7. Restriction on rights of persons under the age of 21

It shall not be lawful for the Governor to grant a statutory right of occupancy or consent to the assignment or subletting of a statutory right of occupancy to a person under the age of 21 years:

Provided that—

(*a*) where a guardian or trustee of a person under the age of 21 years has been duly appointed for such purpose, the Governor may grant or consent to the assignment or subletting of a statutory right of occupancy to such guardian or trustee on behalf of such person under age;

(*b*) a person under the age of 21 years upon whom a statutory right of occupancy devolves on the death of the holder, shall have the same liabilities and obligations under and in respect of his right of occupancy as if he were of full age, notwithstanding the fact that no guardian or trustee has been appointed for him.

8. Special contracts

Statutory right of occupancy granted under the provisions of section 5 (1) (*a*) of this Act shall be for a definite term and may be granted subject to the terms of any contract which may be made by the Governor and the holder not being inconsistent with the provisions of this Act.

9. Certificates of occupancy

(1) It shall be lawful for the Governor—

(*a*) when granting a statutory right of occupancy to any person; or

(*b*) when any person is in occupation of land under a customary right of occupancy and applies in the prescribed manner; or

(*c*) when any person is entitled to a statutory right of occupancy,

to issue a certificate under his hand in evidence of such right of occupancy.

(2) Such certificate shall be termed a certificate of occupancy and there shall be paid therefor, by the person in whose name it is issued, such fee (if any) as may be prescribed.

(3) If the person in whose name a certificate of occupancy is issued, without lawful excuse, refuses or neglects to accept and pay for the certificate, the Governor may cancel the certificate and recover from such person any expenses incidental thereto, and in the case of a certificate evidencing a statutory right of occupancy to be granted under paragraph (*a*) of subsection (1) of this section, the Governor may revoke the statutory right of occupancy.

(4) The terms and conditions of a certificate of occupancy granted under this Act and which has been accepted by the holder shall be enforceable against the holder and his successors in title, notwithstanding that the acceptance of such terms and conditions is not evidenced by the signature of the holder or is evidenced by the signature only or, in the case of a corporation, is evidenced by the signature only of some person purporting to accept on behalf of the corporation.

10. Conditions and provisions implied in certificate of occupancy

Every certificate of occupancy shall be deemed to contain provisions to the following effect—

(*a*) that the holder binds himself to pay to the Governor the amount found to be payable in respect of any unexhausted improvements existing on the land at the date of his entering into occupation;

(*b*) that the holder binds himself to pay to the Governor the rent fixed by the Governor and any rent which may be agreed or fixed on revision in accordance with the provisions of section 16 of this Act.

11. Power of Governor or public officer to enter and inspect land and improvements

The Governor or any public officer duly authorised by the Governor in that behalf, shall have the power to enter upon and inspect the land comprised in any statutory right of occupancy or any improvements effected thereon, at any reasonable hour in the day time, and the occupier shall permit and give free access to the Governor or any such officer to enter and inspect.

12. Power of Governor to grant licences to take building materials

(1) It shall be lawful for the Governor to grant a licence to any person to enter upon any land which is not the subject of a statutory right of occupancy or of a mining lease, mining right or exclusive prospecting licence granted under the Minerals and Mining Act or any other enactment, and remove or extract therefrom any stone, gravel, clay, sand or other similar substance (not being a mineral within the meaning assigned to that term in the Minerals and Mining Act) that may be required for building or for the manufacture of building materials.

(2) Any such licence may be granted for such period and subject to such conditions as the Governor may think proper or as may be prescribed.

(3) No such licence shall be granted in respect of an area exceeding 400 hectares.

(4) It shall not be lawful for any licensee to transfer his licence in any manner whatsoever without the consent of the Governor first had and obtained, and such transfer effected without the consent of the Governor shall be null and void.

(5) The Governor may cancel any such licence if the licensee fails to comply with any of the conditions of the licence.

13. Duty of occupier of statutory right of occupancy to maintain beacons

(1) The occupier of a statutory right of occupancy shall at all times maintain in good and substantial repair to the satisfaction of the Governor, or of such public officer as the Governor may appoint in that behalf, all beacons or other land marks by which the boundaries of the land comprised in the statutory right of occupancy are defined and in default of his so doing the Governor or such public officer as aforesaid may by notice in writing require the occupier to define the boundaries in the manner and within the time specified in such notice.

(2) If the occupier of a statutory right of occupancy fails to comply with a notice served under subsection (1) of this section he shall be liable to pay the expenses (if any) incurred by the Governor in defining the boundaries which the occupier has neglected to define.

14. Exclusive rights of occupiers

Subject to the other provisions of this Act and of any laws relating to wayleaves, to prospecting for minerals or mineral oils or to mining or to oil pipelines and subject to the terms

and conditions of any contract made under section 8 of this Act, the occupier shall have exclusive rights to the land the subject of the statutory right of occupancy against all persons other than the Governor.

15. The right to improvements

During the term of a statutory right of occupancy the holder—

(*a*) shall have the sole right to and absolute possession of all the improvements on the land;

(*b*) may, subject to the prior consent of the Governor, transfer, assign or mortgage any improvements on the land which have been effected pursuant to the terms and conditions of the certificate of occupancy relating to the land.

PART III

Rents

16. Principles to be observed in fixing and revising rents

In determining the amount of the original rent to be fixed for any particular land and the amount of the revised rent to be fixed on any subsequent revision of rent, the Governor—

(*a*) shall take into consideration the rent previously fixed in respect of any other land in the immediate neighbourhood and shall have regard to all the circumstances of the case;

(*b*) shall not take into consideration any value due to capital expended upon the land by the same or any previous occupier during his term or terms of occupancy, or any increase in the value of the land the rental of which is under consideration, due to the employment of such capital.

17. Power of Governor to grant rights of occupancy free of rent or at reduced rent

(1) The Governor may grant a statutory right of occupancy free of rent or at a reduced rent in any case in which he is satisfied that it would be in the public interest to do so.

(2) Where a statutory right of occupancy has been granted free of rent, the Governor may, subject to the express provisions of the certificate of occupancy, nevertheless impose a rent in respect of the land the subject of the right of occupancy if and when he may think fit.

18. Acceptance of rent not to operate as a waiver of forfeiture

Subject to the provisions of sections 20 and 21 of this Act, the acceptance by or on behalf of the Governor of any rent shall not operate as a waiver by the Governor of any forfeiture accruing by reason of the breach of any covenant or condition, express or implied, in any certificate of occupancy granted under this Act.

19. Penal rent

(1) When in any certificate of occupancy the holder has covenanted to develop or effect improvements on the land, the subject of the certificate of occupancy, and has committed a breach of such covenant the Governor may—

(*a*) at the time of such breach or at any time thereafter, so long as the breach remains unremedied, fix a penal rent which shall be payable for twelve months from the date of such breach; and

(*b*) on the expiration of twelve months from the date of such breach and on the expiration of every subsequent twelve months so long as the breach continues, revise the penal rent to be paid.

(2) Such penal rent or any revision thereof shall be in addition to the rent reserved by the certificate of occupancy and shall be recoverable as rent:

Provided that the first penal rent fixed shall not exceed the rent so reserved and any revised penal rent shall not exceed double the penal rent payable in respect of the twelve months preceding the date of revision.

(3) If the Governor fixes or revises a penal rent, he shall cause a notice in writing to be sent to the holder informing him of the amount thereof and the rent so fixed or revised shall commence to be payable one calendar month from the date of the receipt of such notice.

(4) If the breach for which a penal rent has been imposed is remedied before the expiration of the period for which such rent has been paid, the Governor may in his discretion refund such portion of the penal rent paid for such period as he may think fit.

(5) The fact that a penal rent or a revised penal rent has been imposed shall not preclude the Governor, in lieu of fixing a subsequent penal rent, from revoking the statutory right of occupancy:

Provided that the statutory right of occupancy shall not be revoked during the period for which a penal rent has been paid.

20. Additional penal rent for unlawful alienation

(1) If there has been any breach of any of the provisions of section 22 or 23 of this Act, the Governor may in lieu of revoking the statutory right of occupancy concerned, demand that the holder shall pay an additional and penal rent for and in respect of each day during which the land the subject of the statutory right of occupancy or any portion thereof or any buildings or other works erected thereon shall be or remain in the possession, control or occupation of any person whomsoever other than the holder.

(2) Such additional and penal rent shall be payable upon demand and shall be recoverable as rent.

(3) The acceptance by or on behalf of the Governor of any such additional and penal rent shall not operate as a waiver by the Governor of any breach of section 22 or 23 of this Act which may continue after the date up to and in respect of which such additional and penal rent has been paid or is due and owing and the Governor shall accordingly be entitled to exercise in respect of any such continuing breach all or any of the powers conferred upon him by this Act.

PART IV

Alienation and surrender of rights of occupancy

21. Prohibition of alienation of customary right of occupancy except with requisite consent or approval

It shall not be lawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sublease or otherwise howsoever—

(*a*) without the consent of the Governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable Sheriffs and Civil Process Law; or

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(*b*) in other cases without the approval of the appropriate local government.

22. Prohibition of alienation of statutory right of occupancy without consent of Governor

(1) It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor first had and obtained:

Provided that the consent of the Governor—

(*a*) shall not be required to the creation of a legal mortgage over a statutory right of occupancy in favour of a person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the Governor;

(*b*) shall not be required to the reconveyance or release by a mortgagee to a holder or occupier of a statutory right of occupancy which that holder or occupier has mortgaged to that mortgagee with the consent of the Governor;

(*c*) to the renewal of a sublease shall not be presumed by reason only of his having consented to the grant of a sublease containing an option to renew the same.

(2) The Governor when giving his consent to an assignment, mortgage or sublease may require the holder of a statutory right of occupancy to submit an instrument executed in evidence of the assignment, mortgage or sublease and the holder shall when so required deliver the said instrument to the Governor in order that the consent given by the Governor under subsection (1) of this section may be signified by endorsement thereon.

23. Sub-underleases

(1) A sublessee of a statutory right of occupancy may, with the prior consent of the Governor and with the approval of the holder of the statutory right of occupancy, demise by way of sub-underlease to another person the land comprised in the sublease held by him or any portion of the land.

(2) The provisions of subsection (2) of section 22 of this Act shall apply *mutatis mutandis* to any transaction effected under subsection (1) of this section as if it were a sublease granted under section 22 of this Act.

24. Devolution of rights of occupancy on death

The devolution of the rights of an occupier upon death shall—

(*a*) in the case of a customary right of occupancy, unless non-customary law or any other customary law applies, be regulated by the customary law existing in the locality in which the land is situated; and

(*b*) in the case of a statutory right of occupancy (unless any non-customary law or other customary law applies) be regulated by the customary law of the deceased occupier at the time of his death relating to the distribution of property of like nature to a right of occupancy:

Provided that—

(i) no customary law prohibiting, restricting or regulating the devolution on death to any particular class of persons or the right to occupy any land shall operate to deprive any person of any beneficial interest in such land (other than the right to occupy the same) or in the proceeds of sale thereof to which he may be entitled under the rules of inheritance of any other customary law;

(ii) a statutory right of occupancy shall not be divided into two or more parts on devolution by the death of the occupier, except with the consent of the Governor.

25. Effect of deed or will where non-customary law applies

In the case of the devolution or transfer of rights to which any non-customary law applies, no deed or will shall operate to create any proprietary right over land except that of a plain transfer of the whole of the rights of occupation over the whole of the land.

26. Null and void transactions and instruments

Any transaction or any instrument which purports to confer on or vest in any person any interest or right over land other than in accordance with the provisions of this Act shall be null and void.

27. Surrender of statutory rights of occupancy

The Governor may accept on such terms and conditions as he may think proper the surrender of any statutory right of occupancy granted under this Act.

PART V

Revocation of rights of occupancy and compensation therefor

28. Power of Governor to revoke rights of occupancy

(1) It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.

(2) Overriding public interest in the case of a statutory right of occupancy means—

(*a*) the alienation by the occupier by assignment, mortgage, transfer of possession, sublease, or otherwise of any right of occupancy or part thereof contrary to the provisions of this Act or of any regulations made thereunder;

(*b*) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation;

(*c*) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.

(3) Overriding public interest in the case of a customary right of occupancy means—

(*a*) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation;

(*b*) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith;

(*c*) the requirement of the land for the extraction of building materials;

(*d*) the alienation by the occupier by sale, assignment, mortgage, transfer of possession, sublease, bequest or otherwise of the right of occupancy without the requisite consent or approval.

(4) The Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the President if such notice declares such land to be required by the Government for public purposes.

(5) The Governor may revoke a statutory right of occupancy on the ground of—

(*a*) a breach of any of the provisions which a certificate of occupancy is by section 10 of this Act deemed to contain;

(*b*) a breach of any term contained in the certificate which was issued in evidence of a right of occupancy,

but has been cancelled by the Governor under subsection (3) of section 10 of this Act.

(6) The revocation of the right of occupancy shall be signified under the hand of a public officer duly authorised in that behalf by the Governor and notice thereof shall be given to the holder.

(7) The title of the holder of a right of occupancy shall be extinguished on receipt by him of a notice given under subsection (6) of this section or on such later date as may be stated in the notice.

29. Compensation payable on revocation of right of occupancy by Governor in certain cases

(1) If a right of occupancy is revoked for the cause set out in paragraph (*b*) of subsection (2) of section 28 of this Act or in paragraph (*a*) or (*c*) of subsection (3) of the same section, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements.

(2) If a right of occupancy is revoked for the cause set out in paragraph (*c*) of subsection (2) of section 28 of this Act or in paragraph (*a*) or (*c*) of subsection (3) of the same section the holder and the occupier shall be entitled to compensation under the appropriate provisions of the Minerals and Mining Act or the Petroleum Act or any legislation replacing the same.

(3) If the holder or the occupier entitled to compensation under this section is a community the Governor may direct that any compensation payable to it shall be paid—

(*a*) to the community; or

(*b*) to the chief or leader of the community to be disposed of by him for the benefit of the community in accordance with the applicable customary law; or

(*c*) into some fund specified by the Governor for the purpose of being utilised or applied for the benefit of the community.

(4) Compensation under subsection (1) of this section shall be, as respects—

(*a*) the land, for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked;

(*b*) buildings, installation or improvements thereon, for the amount of the replacement cost of the building, installation or improvement, that is to say, such cost as may be assessed on the basis of the prescribed method of assessment as determined by the appropriate officer less any depreciation, together with interest at the bank rate for delayed payment of compensation and in respect of any improvement in the nature of reclamation works, being such cost thereof as may be substantiated by documentary evidence and proof to the satisfaction of the appropriate officer;

(*c*) crops on land apart from any building, installation or improvement thereon, for an amount equal to the value as prescribed and determined by the appropriate officer.

(5) Where the land in respect of which a right of occupancy has been revoked forms part of a larger area, the compensation payable shall be computed as in subsection (4) (*a*) of this section less a proportionate amount calculated in relation to that part of the area not affected by the revocation, but of which the portion revoked forms a part and any interest payable shall be assessed and computed in the like manner.

(6) Where there is any building, installation or improvement or crops on the land to which subsection (5) of this section applies, then compensation shall be computed as specified hereunder, that is as respects—

(*a*) such land, on the basis specified in that subsection;

(*b*) any building, installation or improvement or crops thereon (or any combination of two or all of those things) on the basis specified in that subsection and subsection (4) of this section, or so much of those provisions as are applicable,

and any interest payable under those provisions shall be computed in the like manner.

(7) For the purposes of this section, **"installation"** means any mechanical apparatus set up or put in position for use or materials set up in or on land or other equipment, but excludes any fixture in or on any building.

30. Reference of dispute as to compensation

Where there arises any dispute as to the amount of compensation calculated in accordance with the provisions of section 29 of this Act, such dispute shall be referred to the appropriate Land Use and Allocation Committee.

31. Exclusion of the application of the Public Lands Acquisition (Miscellaneous Provisions) Act

The provisions of the Public Lands Acquisition (Miscellaneous Provisions) Act shall not apply in respect of any land vested in, or taken over by, the Governor or any local government pursuant to this Act or the right of occupancy to which is revoked under the provisions of this Act but shall continue to apply in respect of land compulsorily acquired before the commencement of this Act.

32. Debt due to Government not extinguished by revocation

The revocation of a statutory right of occupancy shall not operate to extinguish any debt due to the Government under or in respect of such right of occupancy.

33. Option to accept resettlement in case of revocation of right of occupancy

(1) Where a right of occupancy in respect of any developed land on which a residential building has been erected is revoked under this Act, the Governor or the local government, as the case may be, may in his or its discretion offer in lieu of compensation payable in accordance with the provisions of this Act, resettlement in any other place or area by way of a reasonable alternative accommodation (if appropriate in the circumstances).

(2) Where the value of any alternative accommodation as determined by the appropriate officer or the Land Use and Allocation Committee is higher than the compensation payable under this Act, the parties concerned may by agreement require that the excess in value in relation to the property concerned shall be treated as a loan which the person affected shall refund or repay to the Government in the prescribed manner.

(3) Where a person accepts a resettlement pursuant to subsection (1) of this section, his right to compensation shall be deemed to have been duly satisfied and no further compensation shall be payable to such person.

PART VI

Transitional and other related provisions

34. Transitional provisions on land in urban areas

(1) The following provisions of this section shall have effect in respect of land in an urban area vested in any person immediately before the commencement of this Act.

(2) Where the land is developed the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Act as if the holder of the land was the holder of a statutory right of occupancy issued by the Governor under this Act.

(3) In respect of land to which subsection (2) of this section applies there shall be issued by the Governor on application to him in the prescribed form a certificate of occupancy if the Governor is satisfied that the land was, immediately before the commencement of this Act, vested in that person.

(4) Where the land to which subsection (2) of this section applies was subject to any mortgage, legal or equitable, or any encumbrance or interest valid in law such land shall continue to be so subject and the certificate of occupancy issued, shall indicate that the land is so subject, unless the continued operation of the encumbrance or interest would in the opinion of the Governor be inconsistent with the provisions, or general intendment of this Act.

(5) Where on the commencement of this Act the land is undeveloped, then—

(*a*) one plot or portion of the land not exceeding half of one hectare in area shall, subject to subsection (6) of this section, continue to be held by the person in whom the land was so vested as if the holder of the land was the holder of a statutory right of occupancy granted by the Governor in respect of the plot or portion as aforesaid under this Act; and

(*b*) all the rights formerly vested in the holder in respect of the excess of the land shall on the commencement of this Act be extinguished and the excess of the land shall be taken over by the Governor and administered as provided in this Act.

(6) Paragraph (*a*) of subsection (5) of this section shall not apply in the case of any person who was on the commencement of this Act also the holder of any undeveloped land elsewhere in any urban area in the State and in respect of such a person all his holdings of undeveloped land in any urban area in the State shall be considered together and out of the undeveloped land so considered together—

(*a*) one plot or portion not exceeding half of one hectare in area shall continue to be held by such a person as if a right of occupancy had been granted to him by the Governor in respect of that plot or portion; and

(*b*) the remainder of the land (so considered together) in excess of half of one hectare shall be taken over by the Governor and administered in accordance with this Act and the rights formerly vested in the holder in respect of such land shall be extinguished.

(7) No land to which subsection (5) (*a*) or (6) of this section applies held by any person shall be further subdivided or laid out in plots and no such land shall be transferred to any person except with the prior consent in writing of the Governor.

(8) Any instrument purporting to transfer any undeveloped land in contravention of subsection (7) of this section shall be void and of no effect whatsoever in law and any party to any such instrument shall be guilty of an offence and liable on conviction to imprisonment for one year or a fine of ₦5,000.

(9) In relation to land to which subsection (5) (*a*) or (6) (*a*) of this section applies there shall be issued by the Governor on application therefor in the prescribed form a certificate of occupancy if the Governor is satisfied that the land was immediately before the commencement of this Act vested in that person.

35. Compensation for improvements in certain cases

(1) Section 34 of this Act shall have effect notwithstanding that the land in question was held under a leasehold, whether customary or otherwise, and formed part of an estate laid out by any person, group or family in whom the leasehold interest or reversion in respect of the land was vested immediately before the commencement of this Act, so however that if there has been any improvements on the land effected by the person, group or family in whom the leasehold interest or reversion was vested as aforesaid the Governor shall, in respect of the improvements, pay to that person, group or family, compensation computed as specified in section 29 of this Act.

(2) There shall be deducted from the compensation payable under subsection (1) of this section, any levy by way of development or similar charges paid in respect of the improvements on the land by the lessee to the person, group or family in whom the leasehold interest or reversion was vested and the amount to be deducted shall be determined by the Governor taking into consideration all the circumstances of the case.

36. Transitional provisions on land not in urban areas

(1) The following provisions of this section shall have effect in respect of land not in an urban area which was immediately before the commencement of this Act held or occupied by any person.

(2) Any occupier or holder of such land, whether under customary rights or otherwise howsoever, shall if that land was on the commencement of this Act being used for agricultural purposes, continue to be entitled to possession of the land for use for agricultural purposes as if a customary right of occupancy had been granted to the occupier or holder thereof by the appropriate local government and the reference in this subsection to land being used for agricultural purposes includes land which is, in accordance with the customary law of the locality concerned, allowed to lie fallow for purposes of recuperation of the soil.

(3) On the production to the local government by the occupier of such land, at his discretion, of a sketch or diagram or other sufficient description of the land in question and on application therefor in the prescribed form the Local Government shall, if satisfied that the occupier or holder was entitled to the possession of such land whether under customary rights or otherwise howsoever, and that the land was being used for agricultural purposes at the commencement of this Act, register the holder or occupier as one to whom a customary right of occupancy had been issued in respect of the land in question.

(4) Where the land is developed, the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Act as if the holder of the land was the holder of a customary right of occupancy issued by the Local Government, and if the holder or occupier of such developed land, at his discretion, produces a sketch or diagram showing the area of the land so developed, the Local Government shall, if satisfied that that person immediately before the commencement of this Act has the land vested in him, register

the holder or occupier as one in respect of whom a customary right of occupancy has been granted by the Local Government.

(5) No land to which this section applies shall be subdivided or laid out in plots and no such land shall be transferred to any person by the person in whom the land was vested as aforesaid.

(6) Any instrument purporting to transfer any land to which this section relates shall be void and of no effect whatsoever in law and every party to any such instrument shall be guilty of an offence and liable on conviction to a fine of ₦5,000 or to imprisonment for one year.

37. Penalty for false claims, etc., in respect of land

If any person other than one in whom any land was lawfully vested immediately before the commencement of this Act enters any land in purported exercise of any right in relation to possession of the land or makes any false claim in respect of the land to the Governor or any Local Government for any purpose under this section he shall be guilty of an offence and liable on conviction to imprisonment for one year or to a fine of ₦5,000.

38. Preservation of power of Governor to revoke rights of occupancy

Nothing in this Part shall be construed as precluding the exercise by the Governor or as the case may be the Local Government concerned of the powers to revoke, in accordance with the applicable provisions of this Act, rights of occupancy, whether statutory or customary, in respect to any land to which this Part of this Act relates.

PART VII

Jurisdiction of High Courts and other courts

39. Jurisdiction of High Courts

(1) The High Court shall have exclusive original jurisdiction in respect of the following proceedings—

(*a*) proceedings in respect of any land the subject of a statutory right of occupancy granted by the Governor or deemed to be granted by him under this Act; and for the purposes of this paragraph, proceedings includes proceedings for a declaration of title to a statutory right of occupancy;

(*b*) proceedings to determine any question as to the persons entitled to compensation payable for improvements on land under this Act.

(2) All laws, including rules of court, regulating the practice and procedure of the High Court shall apply in respect of proceedings to which this section relates and the laws shall have effect with such modifications as would enable effect to be given to the provisions of this section.

40. Special provisions in respect of pending proceedings

Where on the commencement of this Act proceedings had been commenced or were pending in any court or tribunal (whether at first instance or on appeal) in respect of any question concerning or pertaining to title to any land or interest therein, such proceedings may be continued and be finally disposed of by the court concerned but any order or decision of the court shall only be as respects the entitlement of either of the parties to the proceedings to a right of occupancy, whether statutory or customary, in respect of such land as provided in this Act.

41. Jurisdiction of area courts or customary courts, etc.

An area court or customary court or other court of equivalent jurisdiction in a State shall have jurisdiction in respect of proceedings in respect of a customary right of occupancy granted by a Local Government under this Act; and for the purposes of this paragraph **"proceedings"** includes proceedings for a declaration of title to a customary right of occupancy and all laws including rules of court regulating practice and procedure of such courts shall have effect with such modifications as would enable effect to be given to this section.

42. Proceedings for recovery of rent in respect of certificate of occupancy, etc.

(1) Proceedings for the recovery of rent payable in respect of any certificate of occupancy may be taken before a magistrate's court of competent jurisdiction by and in the name of the Chief Lands Officer or by and in the name of any other officer appointed by the Governor in that behalf.

(2) Proceedings for the recovery of rent payable in respect of any customary right of occupancy may be taken by and in the name of the local government concerned in the area court or customary court or any court of equivalent jurisdiction.

PART VIII

Supplemental

43. Prohibition of and penalties for unauthorised use of land

(1) Save as permitted under section 34 of this Act, as from the commencement of this Act no person shall in an urban area—

(*a*) erect any building, wall, fence or other structure upon; or

(*b*) enclose, obstruct, cultivate or do any act on or in relation to,

any land which is not the subject of a right of occupancy or licence lawfully held by him or in respect of which he has not received the permission of the Governor to enter and erect improvements prior to the grant to him of a right of occupancy.

(2) Any person who contravenes any of the provisions of subsection (1) of this section shall on being required by the Governor so to do and within the period of time fixed by the Governor, remove any building, wall, fence, obstruction, structure or thing which he may have caused to be placed on the land and he shall put the land in the same condition as nearly as may be in which it was before such contravention.

(3) Any person who contravenes any of the provisions of subsection (1) of this section shall be guilty of an offence and liable on conviction to imprisonment for one year or to a fine of ₦5,000.

(4) Any person who fails or refuses to comply with a requirement made by the Governor under subsection (2) of this section shall be guilty of an offence and liable on conviction to a fine of ₦100 for each day during which he makes default in complying with the requirement of the Governor.

44. Service of notices

Any notice required by this Act to be served on any person shall be effectively served on him—

(*a*) by delivering it to the person on whom it is to be served; or

(*b*) by leaving it at the usual or last known place of abode of that person; or

(*c*) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or

(*d*) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office; or

(*e*) if it is not practicable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served, by addressing it to him by the description of "holder" or "occupier" of the premises (naming them) to which it relates, and by delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

45. Delegation of powers

(1) The Governor may delegate to the State Commissioner all or any of the powers conferred on the Governor by this Act, subject to such restrictions, conditions and qualifications, not being inconsistent with the provisions, or general intendment, of this Act as the Governor may specify.

(2) Where the power to grant certificates has been delegated to the State Commissioner, such certificates shall be expressed to be granted on behalf of the Governor.

46. Power to make regulations

(1) The National Council of States may make regulations for the purpose of carrying this Act into effect and particularly with regard to the following matters—

(*a*) the transfer by assignment or otherwise howsoever of any rights of occupancy, whether statutory or customary, including the conditions applicable to the transfer of such rights to persons who are not Nigerians;

(*b*) the terms and conditions upon which special contracts may be made under section 8 of this Act;

(*c*) the grant of certificates of occupancy under section 9 of this Act;

(*d*) the grant of temporary rights of occupancy;

(*e*) the method of assessment of compensation for the purposes of section 29 of this Act.

(2) The Governor may, subject to subsection (1) of this section, make regulations with regard to the following matters—

(*a*) the method of application for any licence or permit and the terms and conditions under which licences may be granted;

(*b*) the procedure to be observed in revising rents;

(*c*) the fees to be paid for any matter or thing done under this Act;

(*d*) the forms to be used for any document or purpose.

47. Exclusion of certain proceedings

(1) This Act shall have effect notwithstanding anything to the contrary in any law or rule of law including the Constitution of the Federal Republic of Nigeria 1999 and, without prejudice to the generality of the foregoing, no court shall have jurisdiction to inquire into—

[Cap. C12.]

(*a*) any question concerning or pertaining to the vesting of all land in the Governor in accordance with the provisions of this Act; or

(*b*) any question concerning or pertaining to the right of the Governor to grant a statutory right of occupancy in accordance with the provisions of this Act; or

(*c*) any question concerning or pertaining to the right of a local government to grant a customary right of occupancy under this Act.

(2) No court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act.

48. Modification of existing laws

All existing laws relating to the registration of title to, or interest in, land or the transfer of title to or any interest in land shall have effect subject to such modifications (whether by way of addition, alteration or omission) as will bring those laws into conformity with this Act or its general intendment.

49. Exemption with respect to Federal Government lands, etc.

(1) Nothing in this Act shall affect any title to land, whether developed or undeveloped, held by the Federal Government or any agency of the Federal Government at the commencement of this Act and, accordingly, any such land shall continue to vest in the Federal Government or the agency concerned.

(2) In this section, **"agency"** includes any statutory corporation or any other statutory body (whether corporate or unincorporate) or any company wholly owned by the Federal Government.

50. Interpretation

(1) In this Act, unless the context otherwise requires—

"agricultural purposes" includes the planting of any crops of economic value;

"appropriate officer" means the Chief Lands Officer of a State and in the case of the Federal Capital Territory, means the Chief Federal Lands Officer;

"customary right of occupancy" means the right of a person or community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by a local government under this Act;

"developed land" means land where there exists any physical improvement in the nature of road development services, water, electricity, drainage, building, structure or such improvement that may enhance the value of the land for industrial, agricultural or residential purposes;

"easement" means a right annexed to land to utilise other land in different holding in a particular manner (not involving the taking of any part of the natural produce of that land or of any part of its soil) or to prevent the holder of the other land from utilising his land in a particular manner;

"Government" means the Government of the Federation or the Government of a State;

"Governor" means the Governor of the State concerned;

"grazing purposes" includes only such agricultural operations as are required for growing fodder for livestock on the grazing area;

"High Court" means the High Court of the State concerned;

"holder" in relation to a right of occupancy, means a person entitled to a right of occupancy and includes any person to whom a right of occupancy has been validly assigned or has validly passed on the death of a holder but does not include any person to whom a right of occupancy has been sold or transferred without a valid assignment, nor a mortgagee, sublessee or sub-underlessee;

"improvements" or **"unexhausted improvements"** means anything of any quality permanently attached to the land, directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf, and increasing the productive capacity, the utility or the amenity thereof and includes buildings, plantations of long-lived crops or trees, fencing, a well, roads and irrigation or reclamation works, but does not include the result of ordinary cultivation other than growing produce;

"interest at the bank rate" means a simple interest payable at the rate percent per annum at which the Central Bank of Nigeria will rediscount bills of exchange;

"local government" means the appropriate local government or any other body having or exercising the powers of a local government as provided by law in respect of the area where the land in question is situated;

"mortgage" includes a second and subsequent mortgage and equitable mortgage;

"occupier" means any person lawfully occupying land under customary law and a person using or occupying land in accordance with customary law and includes the sublessee or sub-underlessee of a holder;

"public purposes" includes—

(*a*) for exclusive Government use or for general public use;

(*b*) for use by any body corporate directly established by law or by any body corporate registered under the Companies and Allied Matters Act as respects which the Government owns shares, stocks or debentures;

(*c*) for or in connection with sanitary improvements of any kind;

(*d*) for obtaining control over land contiguous to any part or over land the value of which will be enhanced by the construction of any railway, road or other public work or convenience about to be undertaken or provided by the Government;

(*e*) for obtaining control over land required for or in connection with development of telecommunications or provision of electricity;

(*f*) for obtaining control over land required for or in connection with mining purposes;

(*g*) for obtaining control over land required for or in connection with planned urban or rural development or settlement;

(*h*) for obtaining control over land required for or in connection with economic, industrial or agricultural development;

(*i*) for educational and other social services;

"statutory right of occupancy" means a right of occupancy granted by the Governor under this Act;

"sublease" includes a sub-underlease;

"urban area" means such area of the State as may be designated as such by the Governor pursuant to section 3 of this Act.

(2) The powers of a Governor under this Act shall, in respect of land comprised in the Federal Capital Territory, or any land held or vested in the Federal Government in any State, be exercisable by the Head of the Federal Government or any Federal Commissioner designated by him in that behalf and references in this Act to Governor shall be construed accordingly.

51. Citation

This Act may be cited as the Land Use Act.

CHAPTER L4

LAND USE ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

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1. Urban Areas (Designation) Order.
2. Land Use Regulations.

URBAN AREAS (DESIGNATION) ORDER

1. Designation of urban areas

For the purposes of the Act, the towns mentioned in the Schedule hereto as defined in their respective Master Plans are hereby designated urban areas.

[Schedule.]

2. Rural areas

All towns, villages or areas not included in the said Schedule are hereby designated rural areas.

3. Citation

This Order may be cited as the Urban Areas (Designation) Order.

SCHEDULE

[Paragraph 1.]

Abak

Akamkpa

Calabar Municipality

Calabar South

Obubra

Obudu

Odukpani

Ogoja

Ikom

Ikot Ekpene

Ugep

LAND USE REGULATIONS

1. Fees to accompany application

(1) An application for a plot in an urban area shall be accompanied by a non-refundable fee of ten naira.

(2) In respect of a plot in a rural area the application shall be accompanied by a non-refundable fee of five naira.

(3) The fee payable under sub-regulations (1) and (2) of this regulation shall be made to the Permanent Secretary of the Ministry charged with responsibility for lands.

(4) The fee payable for the approval of a transaction and preparation of any of the following documents, that is to say—

(*a*) a certificate of occupancy;

(*b*) a deed of assignment;

(*c*) a deed of variation;

(*d*) a memorandum of agreement or other document of a like nature,

shall be ten naira and twenty naira respectively.

(5) The Governor or any person authorised by him may, in respect of any transaction, remit any or all of the fees prescribed in this regulation.

2. Ground rent

There shall be payable in respect of rights of occupancy ground rent at the rate stipulated in Schedule 2 to these Regulations.

[Schedule 2.]

3. Revision of rent

Rent payable in accordance with the rate stipulated in Schedule 2 to these Regulations shall be subject to revision every ten years.

4. Forms

The forms to be used for any document or purposes in relation to the Act are as set out in Schedule 1 to these Regulations.

[Schedule 1.]

5. Temporary occupation licence

(*a*) Licences for temporary rights of occupancy of urban lands in the State may be issued by the Chief Lands Officer for a period not exceeding twelve months. For rural lands such right may be issued by the Chairman of the Local Government Area concerned on the advice of the Land Use Advisory Committee.

(*b*) All such licences shall expire on the date mentioned therein, unless surrendered or sooner determined under regulation 5 (*e*) below.

(*c*) The use to which the land is to be put or the persons to whom licences are issued shall be determined by the Chief Lands Officer or the Chairman of the Local Government Area concerned, as the case may be, and the sum payable for the issue of any temporary right of occupancy in both urban and rural lands shall be fixed by the Chief Lands Officer.

(*d*) An application for a Temporary Occupation Licence shall be addressed in respect of an urban area to the Chief Lands Officer and in respect of a rural area to the Chairman of the Local Government Area concerned.

(*e*) Every such licence shall be subject to the following conditions—

(i) neither the licence nor any of the rights conferred by it shall be transferred or assigned to any other person; nor shall the land the subject of the licence or any part of it be sublet;

(ii) the building or structure standing in the said area shall be kept in repair to the satisfaction of the Chief Lands Officer or the Chairman of the Local Government Area concerned or other officer duly authorised in that behalf and the provisions of section 21 of the Act shall apply to such buildings or structures as though such licence were a right of occupancy under the Act;

(iii) the Chief Lands Officer or the Chairman of the Local Government Area may at any time post on the said area a notice to the occupier to quit the whole or part of the said area on or before such date as may be specified in such notice and the occupier shall quit the said area or part thereof, as the case may be, on or before the date, and no refund or compensation shall be payable to the occupier by the Government in respect of the unexpired period of the licence unless such notice shall have been served owing to the land being required for Government use (as to which the certificate of the Chief Lands Officer or the Chairman of the Local Government Area concerned shall be final) in which case a refund shall be made in respect of any complete month of such unexpired period; and in the event of the notice to quit applying to a part only of a said area, such refund shall bear a like proportion to the whole sum paid in respect of the months for which it is made, as the area of the said part bears to the whole area.

(*f*) A licence for the temporary occupation of urban or rural land shall be in the form prescribed in Schedule 3 of these Regulations.

6. Interpretation

In these Regulations, unless the context otherwise requires—

"the Act" means the Land Use Act;

"Governor" means the Governor of the State;

"Ministry" means the ministry charged with the responsibility for land matters;

"State" means the Cross River State of Nigeria.

7. Citation

These Regulations may be cited as the Land Use Regulations.

SCHEDULES

SCHEDULE 1

GOVERNMENT OF CROSS RIVER STATE OF NIGERIA
(LAND USE ACT)

Application for Grant of Statutory/Customary Right of Occupancy

1. Applicant's Name in full (Mr/Miss/Mrs) .....
2. Age .....
3. Postal Address .....
4. Occupation and Status .....
5. Nationality .....
6. If a Company or other Organisation, state whether incorporated or registered in Nigeria as a Limited Liability Company or partnership or under the Land (Perpetual Succession) Act .....

   .....

   (*a*) Registration No. ..... Year .....

   (*b*) The full names and addresses of all the Partners/Directors in the business .....

   .....
7. Type of Occupation applied for (Statutory/Customary) .....
8. Specific purpose for which the land is required (e.g. residential, commercial, industrial), trading, agricultural, business such as sale of petrol, educational, religious, etc.)
9. Particulars of plot applied for—

   (*a*) Town and Layout;

   (*b*) If in a layout, give particulars of *Gazette* Notice or Newspaper publication by which the advertisement was made;

SCHEDULE 1—*continued*

(*c*) if not in a layout—

(i) state the Local Government Area or Urban Area in which the plot is located;

(ii) state town or village;

(iii) give full description of plot for ease of identification supported with a sketch plan showing the dimensions.

10. Length of term applied for;

11. (*a*) Estimated cost of development .....

(*b*) Time to start building .....

12. Particulars of plots held by applicant or his wife:

Location	*Area*	*Developed or Undeveloped*	*Mode of Acquisition*	*Registration Particulars*
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

13. Tax paid on individual income during the last three years .....

(*a*) Tax Receipt No. ..... (*b*) Date .....

(*c*) Station of Issue .....

14. I enclose herewith ₦10.00/₦5.00 non-refundable application fee (state mode of payment, e.g. Postal Order, Money Order, etc., but cheques are not accepted) .....

15. I hereby declare that this form contains a true and complete statement in answer to questions listed above; and I further declare that the particulars given by me in the form are true and complete.

....

Signature of Applicant *Date*

GOVERNMENT OF CROSS RIVER STATE OF NIGERIA
(LAND USE ACT)

Our Ref: Lands Form 2

.....

.....

....., 20 .....

Sir/Madam,

Letter of Offer of Allocation of Land

With reference to your application for a plot at .....

I am directed to inform you that ..... has been allocated to you in principle, for the purpose stated below and subject to the following terms and conditions—

(*a*) Term ..... years from 1st January, 20 .....

(*b*) Rent ..... per hectare per annum subject to revision upwards every ..... years.

SCHEDULE 1—*continued*

(*c*) Description and value of permanent buildings to the value buildings to be erected .....

of not less than ₦ ..... to the satisfaction of and in accordance with plans approved by prescribed authorities.

(*d*) Time within which such ..... within

..... building are to be erected

..... year from 1st January, 20 ..... and completed fit for occupation and use

(*e*) Purpose for which the land demised may be used .....

.....

(*f*) Not to erect or build or permit to be erected or built on the land hereby demised any buildings other than those covenanted to be erected or built or permitted to be erected or built by virtue of this Letter of Offer and the regulations under the Land Use Act nor to make or permit to be made any addition or alteration to the said building to be erected except in accordance with plans and specifications approved by the prescribed authorities.

(*g*) To keep the exterior and interior of the building to be erected or built and all outbuildings and erections which may at any time during the term hereby created be erected or built on the land hereby demised and all additions to such buildings and outbuildings and the walls, fences and appurtenances thereof in good and tenantable repair and condition.

(*h*) Not to use the buildings of the said land whether now erected or to be erected hereafter thereon for any purpose not being the purpose for which it is demised.

(*i*) Not to permit anything to be used or done upon any part of the demised premises which shall be noxious, noisy or offensive or be of any inconvenience or annoyance to tenants of occupiers of premises adjoining or near thereto.

(*j*) Not to assign, mortgage, sublet or otherwise part with the possession of the land hereby demised or any part thereof without the previous consent in writing of the .....

or any officer to whom the power of the ..... under section 54 of the said Act may be delegated.

(*k*) To pay an improvement premium of .....

(*l*) To pay on demand such planning rate as may be imposed by the ..... Planning Authority.

2. If you wish to accept the plot on these terms and conditions, please sign and return the attached letter to this office. The following fees and charges are immediately payable to the Chief Lands Officer, Ministry of lands, Surveys and Urban Development, Calabar.

	₦ k
Preparation	
Registration	
Stamping (Certificate)	
Stamping (Premium)	
Survey	
Premium	
Fee for T.O.L. for period	
Annual Rent for 200	_____
Total ₦	_____

SCHEDULE 1—*continued*

3. You should enter into occupation of your plot as from the ..... and a Temporary Right of Occupation will be issued to cover the period from this date to the 31st day of December, 20 ..... as the occupancy will run from the 1st January, 20 .....

4. When returning the attached letter please be sure to enter in paragraph 3 your full names (not initials) in BLOCK LETTERS.

5. Should you not confirm acceptance and pay the fees specified above within one month of the date of this letter, it will be assumed that you do not wish to take up the plot and it may be allocated to another applicant.

I have the honour to be,

Sir/Madam

Your obedient servant

.....

Chief lands Officer/Chairman of .....
Local Government

To:

.....

.....

No. .....

Calabar .....

Copy to:

The Lands Officer/Estate Officer

.....

For information and necessary action.

.....

Chief lands Officer/Chairman of .....
Local Government

GOVERNMENT OF CROSS RIVER STATE
(LAND USE ACT)

Lands Form 2A

To: CHIEF LANDS OFFICER

MINISTRY OF LANDS, SURVEYS AND
URBAN DEVELOPMENT LANDS DIVISION

CALABAR.

CHAIRMAN ..... LOCAL GOVERNMENT

Dear sir/Madam,

Acceptance of Offer

I hereby accept the terms of right of occupancy to be granted to me in respect of .....

as stated in your letter reference No. ..... of .....

SCHEDULE 1—*continued*

2. I forward herewith Money Order*/Postal order/Treasury Miscellaneous Receipt(s) for the fee payable as follows—

	₦ k
Preparation	
Registration	
Stamping (Certificate)	
Stamping (Premium)	
Survey	
Premium	
Fee for T.O.L. for period	
Annual Rent for 200	
Total ₦	

3. My full name and address for insertion in the Certificate of Occupancy are as follows—

.....

(Please write all your names in full and in block letters)

4. In the case of a company or firm, please state under which law the company/firm is registered. If registered under the Business Names Act 1961 please state name (in full) of the proprietors and the number and date of the Certificate of Registration. Enclose a photocopy of the registration particulars of your company or firm.

.....

.....

Yours faithfully

.....

Signature

*Delete whichever is inapplicable.

GOVERNMENT OF CROSS RIVER STATE OF NIGERIA
(LAND USE ACT)

Lands Form 3

Certificate of Occupancy No. .....

THIS IS TO CERTIFY THAT .....

of ..... hereinafter called the holder(s)/occupier(s), which term shall include any person(s) defined as such in section 50 (1) of the Land use Act is/are issued/granted a statutory right of occupancy in and over the land described in the Schedule hereof and more particularly delineated in the Survey Plan No. ..... annexed hereto and thereon verged pink for a term of ..... years commencing from the ..... day of ..... 20 ..... according to the true intent and meaning of the Land Use Act and any other relevant laws, and subject to the provisions of the aforementioned laws and to the covenants and conditions implied by virtue of the said laws and of the regulations for the time being in force under the said laws and to the special covenants and conditions hereinafter contained:

(*a*) Nature of previous interest, where applicable .....

SCHEDULE 1—*continued*

(*b*) Description and value of existing* building(s)/building(s) to be erected .....

.....

(*c*) Purpose for which the land demised may be used/is being used .....

(*d*) Nature of existing encumbrances .....

(*e*) Time within which building works are to be completed fit for habitation and use (where applicable) .....

(*f*) Ground rent ..... per annum

(*g*) Revision period .....

2. The holder covenants with the Governor as follows—

(*a*) That the holder binds himself to pay to the Governor the amount found payable in respect of any unexhausted improvements existing on the land at the date of his entering into occupation.

(*b*) That the land held or demised shall, where applicable, continue to be so subject to any mortgage, legal or equitable or any encumbrance or interest valid in law subsisting thereon prior to the issue of this Certificate of Occupancy.

(*c*) Not to use the said parcel of land for any purpose other than that for which it is demised without the prior consent of the Governor.

(*d*) Where applicable, not to erect or permit the erection of any buildings or other structures on the said land or any part thereof without the approval of the Governor or any officer appointed by the Governor in that behalf as to the type and design thereof and as to the portion or portions of the said land on which the building(s) or other structure(s) may be erected first being had and obtained.

(*e*) Not to alienate the statutory right of occupancy hereby issued or any part thereof by sale, assignment, mortgage, transfer or possession, sublease or bequest or otherwise howsoever without the prior consent in writing of the Governor or of any officer to whom the power of the Governor under the relevant law may be delegated.

(*f*) To maintain in good and substantial repair to the satisfaction of the Governor or his agent during the continuance of this demise all buildings and other erections on the said land whether now erected or to be erected hereafter thereon.

(*g*) Upon the expiration of the said demise, the holder may apply to the Governor for a renewal of the same and the Governor may not unreasonably withhold his consent to renew the same.

(*h*) To maintain in good and substantial repair to the satisfaction of the Governor or of such public officer as the Governor may appoint in that behalf all beacons or other boundary marks by which the boundaries of the land comprised in the statutory right of occupancy are defined and in default of his so doing, the Governor or such other public officer as aforesaid may by notice in writing require the occupier to define the boundaries in the matter and within the time specified in such notice.

(*i*) To clear and keep clear the said land of stagnant water, long grass, rank weeds and bush and accumulations and deposits of rubbish and other unwholesome matter and to keep the same in all respects in a clean and sanitary condition, and for such purposes to do and execute all such acts and works as the Governor or any officer authorised by him may reasonably require.

*Delete or insert N.A. where appropriate.

SCHEDULE 1—*continued*

(*j*) To pay in advance, without demand, to the Chief Lands Officer or to such other officer as the Governor may appoint, the rent reserved where applicable at the rates specified herein above commencing from the ..... day of ..... 20 ..... if the rent be revised or a penal rent be imposed such revised or penal rent as the case may be for the time being payable.

(*k*) To pay and discharge all rates, taxes, assessments, and impositions whatsoever which shall at any time be charged, assessed, or imposed on the said land or any part thereof or any building(s) thereof.

(*l*) If the yearly rent (where applicable) for the time being payable in respect of the said land or any part thereof shall be arrears for the space of three months whether the same shall or shall not have been legally demanded, it shall be lawful for the Chief Lands Officer to institute proceedings for the recovery of same.

(*m*) If the holder(s) become bankrupt or make a composition with creditors or enter into liquidation, whether compulsory or voluntary or if there shall be any breach or non-observance of any of the holder's/holders' covenants or agreements herein contained, it shall be lawful for the Governor at any time thereafter to re-enter upon the said land or any part thereof in the name of the whole and henceforth hold and enjoy the same as if the statutory right of occupancy had not been granted but without prejudice to any right of action or remedy of the Governor for any antecedent breach of covenant by the holder(s).

Dated this ..... day of ..... 20 .....

Given under my hand the day and year above written.

.....

Governor

Cross River State of Nigeria

GOVERNMENT OF CROSS RIVER STATE OF NIGERIA
LAND USE ACT

Lands Form 3A

Customary Right of Occupancy No. .....

This is to certify that ..... hereinafter called the holder(s)/occupier(s) which term shall include any person(s) defined as such in the relevant section of the Land Use Act, as may be amended from time to time is/are hereby issued/granted a customary right of occupancy in and over land situated at .....

which is described in the Schedule, and more particularly delineated in the Survey Plan No. .....

annexed hereto, for a term of ..... years commencing from the .....

day of ..... 20 ..... according to the true intent and meaning of the Land Use Act as may be amended from time to time subject to the provisions thereof and to the following and special covenants and conditions herein contained.

(i) Nature of previous interest, where applicable .....

(ii) Description of existing development .....

(iii) Nature of existing encumbrance .....

(iv) Purpose for which the land demised may be used/is being used .....

(v) Time for completion of development .....

SCHEDULE 1—*continued*

(vi) Ground Rent ..... per annum.

(vii) Revision period .....

(viii) Fees .....

2. The holder covenants with the Chairman as follows—

(i) That the holder binds himself to pay to the Chairman or to such officer as he may appoint the amount found to be payable in respect of any unexhausted improvements existing on the land at the date of his entering into occupation.

(ii) That the land held or demised shall, where applicable, continue to be so subject to any mortgage, legal or equitable or any encumbrance or interest valid in law subsisting thereon prior to the issue of this Certificate of Occupancy.

(iii) Not to use the said parcel of land for any purpose not being a purpose for which it is demised without the prior consent of the Chairman.

(iv) To pay and discharge all rates, taxes, assessments and impositions whatsoever which shall at any time be charged, assessed or imposed on the said land or any part thereof or any building thereon, or upon the occupier or occupiers thereof.

(v) To maintain in good sanitary condition and substantial repair to the satisfaction of the Chairman during the continuance of demise the premises and all buildings and other erections on the said land.

(vi) Not to alienate the customary right of occupancy hereby granted or any part thereof by sale, assignment, mortgage, transfer of possession, sublease or bequest or otherwise without the prior consent in writing of the Chairman.

(vii) To pay such rents, and fees as herein or may hereinafter be specified subject to any revision hereinafter specified and, if they be rents, without demand on the 1st day of January of each year.

(viii) If the yearly rent for the rime being payable in respect of the said land or any part thereof shall be in arrears for the period of three months whether the same shall or shall not have been legally demanded, or if the holder(s) become(s) bankrupt or make(s) composition with creditors or enter into liquidation, whether compulsory of voluntarily, or if there shall be any breach or non-observance of any of the occupier's/occupiers' covenants or agreements herein contained, then and in any of the said cases it shall be lawful for the Chairman at any time thereafter to re-enter upon the said land or any part thereof in the name of the whole and thenceforth hold and enjoy the same as if the right of occupancy had not been granted, but without prejudice to any right of action or remedy of the Chairman for any antecedent breach of covenant by the holder(s).

Dated this ..... day of ..... 20 .....

Given under my hand the day and year above written.

.....

Chairman

Local Government

SCHEDULE 1—*continued*

GOVERNMENT OF CROSS RIVER STATE OF NIGERIA
(LAND USE ACT)

Lands Form 4

Rent Revision Certificate

Name of Holder/Occupier .....

Address of Holder/Occupier .....

Location of land .....

Registration Particulars of Statutory/Customary Certificate of Occupancy.

No. ..... at page ..... in volume .....

IN ACCORDANCE with the provision of this Statutory/Customary Certificate of Occupancy and in exercise of powers under section 16 of the Land Use Act as may be amended from time to time, the Governor hereby revises and fixes the rent herein reserved at .....

per annum in lieu thereof with effect from the 1st day of January, 20 ..... as follows—

(*a*) Rent Reserved under Certificate of Occupancy .....

(*b*) Previous Rent .....

(*c*) Revised Rent .....

Dated at Calabar this ..... day of ..... 20 .....

.....

Governor

GOVERNMENT OF CROSS RIVER STATE OF NIGERIA
(LAND USE ACT)

Lands Form 5

EXCHANGE OF LETTERS

BETWEEN

CROSS RIVER STATE GOVERNMENT

AND

FEDERAL GOVERNMENT

No. .....

Ministry of Lands, Surveys and Urban Development

Lands Division

P.M.B. 1072

Calabar

....., 20 .....

To: The Honourable Commissioner
Federal Ministry of Works and Housing
Headquarters
Lagos.

SCHEDULE 1—*continued*

In consideration of the decision by the Federal Government to ..... at .....

Local Government Area Calabar Municipality of the Cross River State of Nigeria, the Governor places all that parcel of land situated at ..... in the .....

Local Government Area/Calabar Municipality of the Cross River State of the Federal Republic of Nigeria, containing an area of approximately ..... which is more particularly

marked and delineated on Survey Plan No. ..... attached to these presents, thereon bordered pink and further described in the Schedule hereto annexed, fully under the control of the Head of the Federal Government of Nigeria for the purpose hereinbefore mentioned and or for any other public purposes of the Federal Government.

Term: ..... year as from the ..... day of ..... , 20 .....

Rent: .....

2. Grateful sign on the space provided below if the above is acceptable.

.....

Commissioner

Cross River State of Nigeria

To: The Governor

Cross River State of Nigeria

Calabar.

I hereby accept the above offer and terms.

.....

Honourable Federal Commissioner

For and on Behalf of the Federal Government

GOVERNMENT OF CROSS RIVER STATE OF NIGERIA
(LAND USE ACT)

Lands Form 6

Deed of Surrender

THIS DEED OF SURRENDER made the ..... day of ..... 20 .....

BETWEEN .....

(who and whose successors in title and assigns are hereinafter designated and included in the term "the Surrenderor") of the one part and .....
the Governor of the Cross River State of Nigeria, for and on behalf of the Government of the said Cross River State of Nigeria (who and whose successor-in-office are hereinafter designated and included in the term "the Governor") of the other part.

WHEREAS by Statutory Certificate of Occupancy dated the ..... day of ..... 20 .....
(hereinafter referred to and the Principal Document) and made between the Governor of the one part and the Surrenderor of the other part which said Statutory Certificate of Occupancy is registered as No. .....

at page ..... in volume ..... of the Lands Registry Office at Calabar.

SCHEDULE 1—*continued*

ALL THAT parcel of land situated at ..... which is described in the Schedule annexed thereto and more particularly marked and delineated in the plan attached hereto and thereon bordered pink was demised in accordance with the provisions of the State Lands Law as modified by the Land Use Act, as may be amended from time to time, UNTO THE Surrenderor for the term of ..... years subject to the covenants and conditions in the Principal document reserved and contained:

AND WHEREAS the Surrenderor is desirous of surrendering the said Plot and the Governor has accepted the surrender:

NOW THIS DEED WITNESS that in pursuance of the said Agreement the Surrenderor does hereby GRANT, YIELD UP and SURRENDER to the Governor as from the ..... day of ....., 20 ..... ALL THAT the said parcel of land TO HOLD the same unto the Governor TO THE INTENT that the residue now unexpired of the said term of ..... years created by the hereinbefore recited Principal Document and all other the estate, right, title and interest of the Surrenderor in and over the said land may be merged and extinguished in the reversion and inheritance thereof.

IN WITNESS WHEREOF the Surrenderor has hereunto set his/her hand and seal and the Governor in exercise of his powers to accept surrenders of Statutory Right of Occupancy under the relevant section of the Land Use Act, has hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered

By the above-named

Surrenderor L.S.

In the presence of .....

Occupation .....

Address .....

Signed, Sealed and Delivered

By the above-named

Governor L.S.

In the presence of .....

Occupation .....

Address .....

GOVERNMENT OF CROSS RIVER STATE OF NIGERIA
(LAND USE ACT)

Lands Form 7

Assignment of Right of Occupancy

THIS ASSIGNMENT is made the ..... day of ....., 20 .....

BETWEEN .....

of ..... (hereinafter called the Assignor)

of the one part and .....

of ..... (hereinafter called the Assignee) of the other part:

WHEREAS by a Statutory/Customary Certificate of Occupancy dated the ..... day of ....., 20 .....

and made between the Governor of Cross River State of Nigeria/Chairman .....

SCHEDULE 1—*continued*

Local Government of the one part and .....

of ..... of the other part which said Statutory/Customary Certificate of Occupancy is registered as No. ..... at page ..... in volume ..... of the Register of Deed kept in the Lands Registry at Calabar.

All that piece or parcel of land situated at .....

in ..... Local Government/Urban Area/Municipality of the Cross River State of Nigeria was demised in accordance with the provisions of the State Lands Law as modified by the Land Use Act as amended from time to time by the Governor for and on behalf of the Government of the Cross River State of Nigeria/Chairman .....

Local Government unto the Assignor from ..... day of ..... 20 .....

for the term of ..... years subject to the payment of the yearly rent of ₦ ..... and the covenants and conditions therein contained:

AND WHEREAS the Assignor has agreed (the previous consent of the Governor/Chairman ..... Local Government in writing having been obtained) with the Assignee for the sale to him/her for the sum of ₦ ..... of the premises comprised in the hereinbefore recited Statutory/Customary Certificate of Occupancy (together with the building thereon) for all the residue now unexpired of the term thereby granted as aforesaid.

NOW THIS DEED WITNESS that in pursuance of the said recited agreement and in consideration of the sum of ₦ ..... now paid by the Assignee to the Assignor (the receipt whereof the Assignor hereby acknowledges) the Assignee as beneficial owner hereby assigns unto the Assignee ALL that piece or parcel of land situate at .....

in ..... Local Government/Urban Area/Municipality,

aforesaid for all the residue now unexpired of the said term of ..... years granted by the Statutory/Customary Certificate of occupancy subject henceforth to the payment of the rent and the performance and observance of the covenants on the part of the Holder and conditions by and in the same Statutory/Customary Certificate of Occupancy reserved and contained.

2. The said Assignee for himself and his successors and assigns hereby covenants with the said Assignor—

   (*a*) that he will from henceforth during the continuance of the said term pay the rent reserved by and perform and observe the covenants on the part of the Holder and conditions contained in the said Statutory/Customary Certificate of Occupancy and will at all time keep the said Assignor and his estate and personal effects indemnified against all actions and proceedings, costs, damages expenses, claims and demands whatsoever by reason or on account of the non-payment of the said rent, or any part thereof, or the breach, non-performance, or non-observance of the said covenants and conditions or any of them;

   (*b*) not to mortgage, assign, sublet or otherwise part with the possession of the premises hereby assigned or any part thereof without the prior consent of the Governor/Chairman .... Local Government first had and obtained.

IN WITNESS WHEREOF the parties hereto have set their hands and seals the day and year first above written.

Signed, Sealed and Delivered L.S.

By the above named Assignor

.....

In the presence of .....

Occupation .....

SCHEDULE 1—*continued*

Address .....

Signed, Sealed and Delivered

By the above named Assignee

L.S.

.....

In the presence of .....

Occupation .....

Address .....

Approved this ..... day of ....., 20 .....

.....

Governor

Cross River State of Nigeria

Chairman ..... Local Government

GOVERNMENT OF CROSS RIVER STATE OF NIGERIA
(LAND USE ACT)

Lands Form 8

Deed of Variation

THIS DEED OF VARIATION is made the ..... day of ....., 20 .....

BETWEEN ..... (state name of Governor or Chairman of Local Government),

the Governor of the Cross River State of Nigeria/Chairman ..... Local Government Area (hereinafter referred to as the "the Governor/Chairman" which expression includes his successors-in-office) of the one part and .....

of .....
(hereinafter called "the Holder" which expression shall, where the context so admits, include the successors-in-title of the lessor and assigns) of the other part:

WHEREAS by a Statutory/Customary Certificate of Occupancy (hereinafter referred to as the Principal Deed) dated the ..... day of ..... , 20 ..... and made between the

Governor /the Chairman of the one part and the Holder of the other part which said Principal Deed is registered as No. ..... at page ..... in volume ..... of the Lands

Registry Office at Calabar ALL THAT piece or parcel of land situated at ..... Local Government Area/Municipality of the Cross River State of Nigeria containing an area of approximately ..... shown on Cross River State Survey Plan No. .....

(Tracing No. .....) and which is described in the Schedule annexed thereto and more particularly marked, delineated and shown surrounded by a border verged pink on the said Survey Plan attached thereto, was demised by the Governor/the Chairman into the Holder for a term of .....

years as from the 1st day of January, 20 ..... at an annual rent of ₦ ..... subject to the provisions of the State Lands Law as modified by the Land Use Act as amended from time to time and to the covenants and conditions implied by virtue of the said laws and of the regulations for the time being in force under the said laws and to the special covenants and conditions therein contained:

SCHEDULE 1—*continued*

AND WHEREAS the Governor/the Chairman is desirous of rectifying and varying the Principal Deed in the manner thereinafter provided and the Holder has agreed to the rectification and variation of the same:

Now in pursuance of the said agreement this Deed of Variation witnesses as follows:

(*a*) That the description and area of the land which is approximately ..... as demised under the Principal Deed on Survey Plan No. ..... (Tracing No. .....) shall be and is hereby varied and substituted with all that piece or parcel of land containing an area of approximately ..... and more particularly marked and delineated on the Survey Plan No. ..... (Tracing No. .....) hereto attached and thereon verged pink and further described in the schedule annexed hereto.

(*b*) That the annual rent of ₦ ..... reserved in the Principal Deed shall be and is hereby varied and substituted with the rent of ₦ ..... payable yearly.

AS VARIED OR SUBSTITUTED as aforesaid the Principal Deed shall continue in full force and shall henceforth operate and be binding on the Governor/the Chairman and the Holder and shall be read and construed as though the variations and substitutions hereby made were contained in the Principal Deed.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered L.S.

by .....

In the presence of—

Signature .....

Name .....

Occupation .....

Address .....

Signed, Sealed and Delivered L.S.

by .....

In the presence of—

Signature .....

Name .....

Occupation .....

Address .....

GOVERNMENT OF CROSS RIVER STATE OF NIGERIA
(LAND USE ACT)

Lands Form 9

Revocation of Rights if Occupancy for Overriding Public Interest

[Made under section 28 (2)]

1. Notice is hereby given that all rights of occupancy existing or deemed to have existed on the following lands (describe lands giving measurements and showing boundaries whenever applicable) are hereby revoked by the Governor for public purposes.

SCHEDULE 1—*continued*

2. Any person claiming any interest on his unexhausted improvements on the said land is required within six weeks from the date of this Notice to send to the Chief Lands Officer, Ministry of Lands, Surveys and Urban Development, Calabar, a statement of such unexhausted improvement on the land and the evidence thereof.

3. Government is willing to treat for the residue of unexhausted improvements on the said land; improvements in respect of which no statement is received are liable to be treated as non-existent.

4. And Notice is also hereby given that Government intends to enter and use the said land at the expiration of ..... weeks from the date of this Notice.

5. Any person who shall wilfully hinder or obstruct the Governor or any person employed by him from using the said land is liable on conviction to a fine of ₦50.00 or to imprisonment for three months.

.....

Governor

GOVERNMENT OF CROSS RIVER STATE OF NIGERIA
[LAND USE ACT]

Lands Form 10

Revocation of Right of Occupancy in Default or Breach of Covenant(s)

[Made under section 28 (5)]

WHEREAS by a certificate of Occupancy/Customary Right of Occupancy issued under the hand of the Governor of the Cross River State of Nigeria/Chairman of .....

Local Government dated the ..... day of ..... 20 .....

and serially numbered as ..... (which said Certificate of Occupancy) of the

Lands Registry Office at Calabar, it was certified that .....

was/were entitled to a right of occupancy over the land at .....

on the plan numbered ..... and more particularly described in the schedule attached to the certificate of occupancy:

AND THEREFORE, in exercise of the power conferred upon me by section 28 (5) of the Land Use Act, I hereby revoke with effect from the ..... day of ....., 20 .....

the said right of occupancy of the said .....

over that piece or parcel of land at .....

on the survey plan numbered ..... and more particularly described in the Schedule

to the said Certificate/Customary Right of Occupancy numbered .....

Given under my hand this ..... day of ..... , 20 .....

.....

Governor

Cross River State of Nigeria

Chairman ..... Local Government

SCHEDULE 2

(*a*) **URBAN LANDS:**

		ZONES				
No.	User	A	B	C	D	E
1.	Residential:	Calabar	Uyo Ikot Ekpene, Ogoja Ikom.	Oron, Eket, Abak, Etinan, Ugep.	Obudu, Itu Obubra, Ikot Abasi, Akamkpa	
		₦430.00 per annum per hectare	₦230.00 per annum per hectare	₦270.00 per annum per hectare	N215.00 per annum per hectare	
2.	Commercial:	Calabar	Uyo	Ikot Ekpene.	Oron, Eket, Ogoja, Ikom, Ugep	Obudu, Itu, Abak, Einan, Obubra, Ikot, Abasi, Akpamkpa
		₦1,480.00 per annum Per hectare	₦1,190.00 per annum Per hectare	₦500.00 per annum Per hectare	₦400.00 per annum Per hectare	₦300.00 per annum Per hectare
3.	Industrial:					
	(*a*) Light	₦1,480.00 per annum Per hectare	₦1,190.00 per annum Per hectare	₦500.00 per annum Per hectare	₦400.00 per annum Per hectare	₦300.00 per annum Per hectare
	(*b*) Heavy	₦1,500.00 per annum Per hectare	₦1,200.00 per annum Per hectare	₦750.00 per annum Per hectare	₦600.00 per annum Per hectare	₦500.00 per annum Per hectare
4.	Social Recreational	₦10.00 per hectare Per annum	₦10.00 per hectare Per annum	₦10.00 per hectare Per annum	₦10.00 per hectare Per annum	₦10.00 per hectare Per annum
	Flat	Flat	Flat	Flat	Flat	Flat

(*b*) **RURAL LANDS:**

No.	USER	FEES	RENT	PREMIUM
1.	Communal/Social/Stool holding	Nil	Nil	Nil
2.	(*a*) Residential	₦10.000	–	–
	(*b*) Residential (in a formal Layout)	–	₦50.00 per annum	Where necessary to cover costs per hectare
3.	Grazing Land	–	₦50.00 per annum per hectare	–
4.	Commercial Agriculture	–	₦100.00 per annum per hectare	–
5.	Commercial	–	₦100.00 per annum per hectare	Where necessary to cover costs per hectare

SCHEDULE 2—*continued*

(*b*) **RURAL LANDS:**—*continued*

No.	USER	FEES	RENT	PREMIUM
6.	Industrial			
	(*a*) Light	–	₦200.00 per annum per hectare	Where necessary to cover costs per hectare
	(*b*) Heavy	–	₦200.00 per annum per hectare	Where necessary to cover costs per hectare
7.	Concessions for Timber/Licence to Quarry	To be determined by the Ministries charged with responsibilities for Agriculture and Natural Resources and Lands respectively.		

SCHEDULE 3

GOVERNMENT OF CROSS RIVER STATE OF NIGERIA
[LAND USE ACT]

Licence for temporary right of occupancy

No. ..... office In consideration of the payment of .....

Mr/Miss/Mrs/Madam ..... is permitted to occupy the land at .....

containing an area of ..... square metres or thereabout, and (here insert description by referring to plan, if such exists, or if no plan, by giving an identifying description):

Provided that the Chief Lands Officer or the Chairman of the Local Government or other authorised officers in their behalf may post on the said area a notice to the occupier to quit the whole or any part of the said area from any date specified in the notice and thereupon this licence shall expire upon the date so specified in respect of the whole area or such part, as the case may be.

In such case no refund nor any right conferred by it shall be transferred to any other person; nor shall the land hereinabove described or any part thereof be sublet.

Dated this ..... day of ..... , 20 .....

.....

Issuing Officer

CHAPTER L5

LANDLORD AND TENANT LAW

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Application

SECTION

1. Relationship of landlord and tenant.
2. Nature of tenancy.
3. Subject matter of tenancy.
4. How tenancy may be created.

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Who may Create a Tenancy

5. Holder of right of occupancy.
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7. Yearly tenants.
8. A tenant at will.
9. Tenant at sufferance.
10. Holders of power of attorney.
11. Vesting and assignment of powers.
12. Power to create tenancy in possession or in reversion.
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15. Property owners before mortgage.
16. Rights of parties to create tenancies of mortgage property.
17. Agents.

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Who may be Granted a Tenancy

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29. Remedies for breach of contract for a sublease.
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64. Rent defined.
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CHAPTER L5

LANDLORD AND TENANT LAW

BE IT ENACTED by the Cross River State House of Assembly as follows—

(20*th December*, 1991)

[Commencement.]

PART I

Application

1. Relationship of landlord and tenant

(1) This part of this Law shall apply to all tenancies, other than tenancies created under customary law, in respect of property situated in the State.

(2) For the purpose of this section, a tenancy is created under customary law where the right or other interest of the landlord in the property concerned is founded upon customary law and there is no intention, express or implied, on the part of the parties that the tenancy shall be governed otherwise than by customary law.

(3) In deciding whether or not the parties to a tenancy intend that such tenancy shall be governed otherwise than by customary law, regard shall be had to all the circumstances of the transaction including the parties to it, the nature of the property which is the subject matter of the tenancy, the manner in which the tenancy is created, and, where it is created in writing, the form of words used.

(4) For avoidance of doubt, this Law shall apply to every tenancy by which a building or part thereof is let to any person for dwelling purposes, whether or not any part of such building is also used for other purposes than dwelling.

(5) This Law shall, subject to the Land Use Act and any other written law in force in the State, apply to the State.

(6) This Law shall, except where otherwise expressly provided, apply to tenancies created after the commencement of this Law.

2. Nature of tenancy

(1) Subject to this Law or any other written law in force in the State, there shall exist a relationship of landlord and tenant where an interest in property is created in favour of a person out of an interest vested in another person in the same property.

(2) An interest created under subsection (1) of this section is called "tenancy"; the person out of whose interest a tenancy is created is called "landlord"; the person in whose favour a tenancy is created is called "tenant"; and the duration of a tenancy is called "term".

(3) Where a tenancy is created by deed out of a right of occupancy for a determinate term, with or without an option for renewal, it is called "sublease" or "demise"; the person who creates

it is called a "sublessor" and the person in whose favour it is created is called a "sublessee" or "under-lessee"; also the document creating it is called a "sublease" or an "underlease".

(4) Where a tenancy is created by deed out of an existing sublease and is for a determinate term with or without an option for renewal, it is called a "sub-underlease" or "sub-demise"; and the person in whose favour it is created is called the "sub-underlessee"; also the document creating it is called a "sub-underlease".

3. Subject matter of tenancy

(1) Subject to any written law in force in the State—

(*a*) a tenancy may be created of any land or building thereof, and such tenancy shall carry with it a right of exclusive possession of the thing let;

(*b*) a tenancy may be created of an interest in land or building so that the tenant thereby acquires a right to some specified use of or benefit from or privilege incident to such land or building without acquiring a right of exclusive possession of the land or building concerned.

(2) For the purpose of this section—

"land" means the surface of the earth and all successive strata below it but does not include minerals;

"building" means any structure, attached to land or any part of such structure, whether the division is vertical, horizontal or in any other way and **"tenancy"** includes a subtenancy.

4. How tenancy may be created

(1) A tenancy may be created by act of parties or may arise by operation of law.

(2) Subject to this Law and any other written law now or hereafter in force in the State, a tenancy may be created orally, or in writing under hand, or by deed.

PART II

Who may Create a Tenancy

5. Holder of right of occupancy

The holder of a right of occupancy may, subject to this Law and any other law in force in the State, create a tenancy thereof for any term and subject to any conditions and covenants he thinks fit.

6. Tenants in general

(1) In the absence of an agreement to the contrary, and subject to the landlord's consent being first obtained, a tenant other than a tenant at will or at sufferance may, out of his tenancy and as an incident thereto create a tenancy of lesser duration in favour of a third party. A tenancy so created is called a subtenancy.

(2) Where a tenant purports to create in favour of a third party a subtenancy which is of the same duration as the residue of his own tenancy, he shall be deemed to assign his tenancy to such third party who shall thereafter be a tenant of the assignor's landlord.

7. Yearly tenants

(1) Notwithstanding subsection (2) of the last foregoing section but subject to any contrary agreement in his tenancy and the landlord's consent being first obtained, a tenant who holds a yearly tenancy may create in the same property the subject matter of his own tenancy—

(*a*) by deed, a tenancy of one or more years certain; or

(*b*) by deed or otherwise, a yearly tenancy.

(2) A tenancy created under subsection (1) of this section shall be deemed to be a subtenancy and shall co-exist with the yearly tenancy of the person creating it.

8. (1) A person occupying property as a tenant at will cannot create any subtenancy out of such tenancy and any subtenancy purported to be created by him shall be void as regards his landlord.

(2) Where a person occupying property as a tenant at will purports to create a subtenancy out of such tenancy and gives actual possession to the purported subtenant, he shall thereafter be estopped from denying the existence of that subtenancy which shall be deemed to exist as between him and the purported subtenant; but this shall be without prejudice to the right of the original landlord to recover the property.

9. Tenant at sufferance

The provisions of the last foregoing section shall apply *mutatis mutandis* to a tenant at sufferance.

10. Holders of power of attorney

A beneficiary owner of property or interest therein may by a power of attorney, will or otherwise confer upon another person the right to create a tenancy of such property or interest in favour of another person—

(*a*) a holder of a power given under the last foregoing subsection may, within the limits authorised and subject to the conditions or other stipulations imposed by such power create a tenancy of property the subject matter of such power:

Provided that where a person holding a power creates a tenancy in excess of the term authorised by the power, such tenancy shall if it would otherwise be valid, be valid for the authorised period and void as to the excess period;

(*b*) a holder of a power may create a tenancy for a term which is less than that authorised by the power, and may create a term for the full authorised period determinable by notice or otherwise;

(*c*) where under a power a tenancy is created with a covenant to renew at the end of the term so created such covenant shall, in the absence of a contrary provision in the power itself, be enforceable against the person creating the tenancy or the reversioner if it stipulates that renewal shall be at the best rent obtained at the time of renewal.

11. Vesting and assignment of powers

Where power to create tenancies is given to a donee and he assigns such power in the absence of a contrary intention in the document creating it, it—

(*a*) may be exercised by the donee as often as it shall be necessary to do so; and

(*b*) shall run with the property the subject matter of such power; and

(*c*) shall vest in the donee's personal representative or assignee and every successive personal representative or assignee of the latter.

12. Power to create tenancy in possession or in reversion

(1) A general power given to a donee to create tenancies without saying whether tenancies in reversion as well as those in possession may be created authorises the donee to create tenancies in possession only.

(2) Where a donee is given power expressly to create tenancies in possession and part of the property the subject matter of the power is in possession while part is in reversion, the donee may immediately create a tenancy in possession both of the part in possession and of the part in reversion.

13. Joint owners

(1) Where a property or interest therein is owned by two or more persons jointly, a tenancy of such property or interest may be created if, but only if, it is created or concurred to by all the joint owners:

Provided however that where one of several joint owners is an infant or is otherwise incapable of acting for himself, his parent, guardian or, failing these, the High Court may act in his behalf in creating or concurring to the creation of a tenancy.

(2) Nothing in the foregoing subsection shall affect the provisions of any written law now or hereafter in force in the State regarding trusts for sale and powers of trustees for sale.

14. Infants

An infant cannot create a tenancy but his parent or guardian or failing these the High Court may do so on his behalf.

15. Property owners before mortgage

Where the owner of property or interest therein creates a tenancy of such property or interest in favour of one person and thereafter mortgages the same to another person then in absence of agreement to the contrary in the mortgage instrument—

(*a*) such a tenancy shall be and remain valid against the mortgage;

(*b*) the mortgagor shall have a right to demand and receive rents from the tenant and a receipt issued by him shall be effective discharge of the tenant's duty to pay rent in respect of the period covered by such receipt;

(*c*) the mortgagee may at any time during the continuance of the mortgage terminate the mortgagor's right to receive such rents by giving notice of the mortgage to the tenant and demanding that rents to be thereafter paid to him;

(*d*) on giving such notice the mortgagee becomes entitled to all subsequent rents as well as all arrears of rent due and unpaid in respect of the tenancy since the commencement of the mortgage and may recover the same from the tenant in an action for use and occupation of the property;

(*e*) where the tenancy commenced before the mortgagor acquired the property concerned at the same time as the execution of the mortgage deed, then the title or other interest of the mortgagor shall be deemed for all purposes to commence prior to the commencement of the mortgage term;

(*f*) if by the terms of the mortgage deed the mortgagor is prohibited from creating tenancies of the property concerned, any tenancy he created previously shall if at the time the mortgage is executed the tenant has not gone into possession, become void as against the mortgage.

16. Rights of parties to create tenancies of mortgage property.

(1) The rights of parties to a mortgage to create tenancies of the mortgage property after the execution of such mortgage shall be governed by any written law now or hereafter in force in the State concerning mortgages or where such law is validly excluded by the parties by the express intentions of such parties.

(2) Where a mortgagor lawfully creates or agrees to create a tenancy of the mortgage property after the mortgage has been executed the person in whose favour such a tenancy is or is about to be created has a right to redeem the mortgage.

(3) Subject to any law in force in the State and in the absence of an agreement to the contrary—

(*a*) where a mortgagor in possession creates a tenancy of the mortgage property after the mortgage has been executed, the tenant shall be entitled to pay rents to the mortgagor and otherwise regard him as landlord whether or not he has notice of the existing mortgage and shall be estopped from denying the mortgagor's right to create such tenancy;

(*b*) where a tenancy is created as in paragraph (*a*) of this subsection the mortgagee may on the mortgage debt becoming due and unpaid give notice of the mortgage to the tenant and demand that thereafter all rents and profits shall be paid to him or at his discretion;

(*c*) on a mortgagee giving notice to the tenant under the last foregoing paragraph, and not before, he shall become for all purposes the landlord of such tenant and shall therefore be entitled to all rights and remedies and subject to all duties and liabilities of a landlord in law and equity *vis-a-vis* such tenant;

(*d*) for the purpose of ascertaining the appropriate period of notice to quit when a mortgagee has become a landlord under the last foregoing paragraph, the tenancy concerned shall be deemed to have commenced at the same time as the tenancy granted by the mortgagor;

(*e*) where a mortgagor, before or after the execution of a mortgage lets a house or other premises with furniture he shall after the mortgagee has given notice to the tenants under paragraph (*b*) be entitled to a reasonable rent for such furniture and may recover it by action out of any rents due to be paid by the tenant;

(*f*) who foreloses shall have no right to create a tenancy of the mortgage property unless and until he shall have foreclosed the mortgage.

17. Agents

(1) An agent may, if and to the extent he is duly authorised by his principal, make an agreement to create a tenancy or himself create a tenancy in the name and on behalf of his principal. An agreement so made or tenancy so created shall bind the principal. Whether or not a person is an agent or an agent who is duly authorised are questions of fact to be determined by evidence having regard to all relevant circumstances.

(2) For the purposes of this section, an agent has no power to create a tenancy by deed unless he was appointed agent by deed.

(3) A principal may adopt and ratify a tenancy or an agreement to create a tenancy made by his agent without any or sufficient authority or made in the name of the agent alone.

(4) A tenancy or agreement adopted and ratified under subsection (3) shall bind both the principal and the tenant or intended tenant; also, where an agent without sufficient authority creates a tenancy by deed, adoption and ratification may be done by the principal delivering the deed to the tenant or doing any act which is tantamount to redelivery; and in other cases, adoption and ratification may be done by the principal giving a clear indication by word or action that he approves of the tenancy or agreement so made.

(5) The law from time to time in force in the State regarding warranties and representations by agents shall apply to transactions carried out by an agent under this section.

PART III

Who may be Granted a Tenancy

18. Any person may be a tenant

Subject to this Law and any other written law in force in the State any person may be granted a tenancy of any property situated in the State.

19. Infants

(1) An infant shall be incapable of holding a legal interest under a deed of sublease or sub-underlease.

(2) Where a deed of sublease or sub-underlease is executed by a sublessor in favour of an infant for his own benefit, such instrument shall not operate to transfer any legal interest to the infant but shall operate as an agreement for valuable consideration to execute a sublease or sub-underlease as the case may be in the name of one or more adults or trust for the infant, and the sub-lessor or sub-underlessor as the case may be shall meanwhile hold the legal interest intended to be created in trust for the infant:

Provided that nothing in the foregoing subsections of this section shall affect any beneficial interest in the property the subject matter of the sublease or sub-underlease intended to be thereby created for the infant.

(3) Where a sublease or sub-underlease is executed in favour of an infant jointly with another person of full age such instrument shall operate to vest any legal interest intended to be transferred thereby to that other person on trust for himself and the infant but not so as to sever the joint tenancy in any beneficial interest arising from such transaction.

(4) Where a sublease or sub-underlease is executed in favour of an infant jointly with another person of full age on any trust, such instrument shall be read as if the name of the infant were omitted but without prejudice to any beneficial interest in the property the subject matter of sublease or sub-underlease intended to be thereby provided for the infant.

20. Joint tenant

(1) Property may be left to two or more persons as joint tenants.

(2) Where one joint tenant dies the survivor shall become entitled to the residue of such tenancy to the exclusion of the personal representatives of the deceased joint tenant.

(3) Where under the terms of a joint tenancy, the liability of the tenants is both joint and several, the personal representatives of the deceased joint tenant shall not be liable at the suit of any person for any breach of covenant or other claim arising after the death of that joint tenant.

(4) Where under the terms of a joint tenancy, the liability of the tenants is merely joint but not also several, liability of a deceased joint tenant shall continue for the duration of such tenancy and shall pass to his personal representatives,

(5) Subject to this section, one joint tenant is entitled to contribution from the other in respect of claims or liability with regard to their joint tenancy.

21. Partnership

Where property is let to a partnership all those partners who are parties to the tenancy transaction shall hold the property as joint tenants in trust for the partnership, and the beneficial interest in the property shall belong to all the partners jointly.

22. Lunatics

A person of unsound mind may be granted a tenancy, but he shall not be sued directly or indirectly upon a tenancy or agreement for a tenancy unless the same is necessary for him.

23. Enemy

An enemy alien shall not be capable of taking a tenancy:

Provided that nothing in this section shall affect the validity of or liability for rents arising under a tenancy which was created before a tenant became an enemy alien.

PART IV

Contract to Create a Tenancy

24. Definitions

(1) A contract to create a tenancy is a legally enforceable agreement whereby one party agrees to create a tenancy in favour of the other and that other agrees to accept such tenancy.

(2) Where a contract is to create a sublease, it is called a contract for a sublease.

25. Essential requirements

(1) No contract for a sublease may be enforceable in any court of law unless such contract or some memorandum or note thereof is in writing and signed by the party to be charged or his agent and contains all essential particulars.

(2) A contract for a sublease shall be deemed to contain all essential particulars where such contract or a memorandum or note of it contains—

(*a*) the name of the sublessor or his agent;

(*b*) the name of the sublessee or his agent;

(*c*) the name or other sufficient description of the property to be sublet;

(*d*) the term to be created; and

(*e*) the time when the sublease is to commence, or sufficient information from which such time can be determined; and

(*f*) the rent to be paid or the manner in which such rent is to be determined.

(3) A contract for a sublease or a memorandum or note of it may be contained in one document, or in any number of documents provided these have sufficient reference to the other and, when read together, show a clear intention by the parties to make such a contract.

(4) Nothing in this section shall prevent parties to a contract for a sublease from including other lawful terms and covenants in such contract.

26. Part performance

Notwithstanding the provisions of subsection (1) of the last foregoing section, where a contract for a sublease or a memorandum or note of it is in writing and is duly signed but does not contain all the essential particulars required by subsection (2) of the said section, such contract may nevertheless be enforced if by virtue of it the intended sublessee has made payment to the intended sublessor by way of rent or premium or has taken possession of all or part of the property to be sublet.

27. Oral rescission

A contract for a sublease may be wholly, but not partially, rescinded by a subsequent contract which is not in writing, and when so rescinded shall cease to be enforceable in any court of law.

28. Registration of contract for a sublease

(1) A contract for a sublease may be registered under any written law in force in the State requiring or permitting registration of instruments affecting land or prescribed by the law under which it is done.

(2) This section shall apply to any contract for assignment or for renewal of a sublease or sub-underlease.

29. Remedies for breach of contract for a sublease

(1) Where a party to a contract for a sublease or sub-underlease fails to perform his obligations under it, he shall, provided he signed the contract or a memorandum or note of it, be or for what may be compelled to perform such obligations.

(2) Subject to any law in force in the State regarding damages and specific performance, a party may be ordered both to perform his obligations under a contract for a sublease and to pay damages for loss caused by his delay in performing such obligations.

(3) Where a party is ordered to perform his obligations under a contract for a sublease and he fails to do so within a reasonable time, the other party may ask for and obtain an order rescinding the contract; and in such a case the party who thus obtains rescission shall not be awarded damages as well.

(4) An intending tenant who has made advance payment of rent or premium by virtue of a contract for a sublease shall have a right to recover such payment if the contract is broken; but this shall not affect the right of the other party to make any claim, counterclaim or set-off to which he may be otherwise entitled.

30. Conditions implied in a contract for a sublease

(1) Where parties make a contract for a sublease, the intended landlord shall be deemed to agree to create a valid sublease, and the intended tenant shall be deemed to agree to accept such sublease.

(2) A party who makes a contract to create a sublease shall be deemed to warrant that he has title to create of that warranty if in fact he does not have such title.

(3) Subject to any express agreement to the contrary, a contract for a sublease shall be deemed to contain an agreement by the intending landlord to create and by the intending tenant to accept a sublease with vacant possession of the property concerned.

31. Possession by virtue of contract for a sublease

Where an intending tenant under a contract for a sublease by virtue of such contract goes into possession of the property concerned, he shall if specific performance of such contract would lawfully be ordered, be deemed to be a tenant under the same terms as if the sublease had been duly created.

32. Possession by virtue of void sublease

A document which is duly executed as a sublease and which would be valid if made by deed but is made indeed and shall nevertheless be deemed to contain a legally enforceable contract to create a sublease on the terms contained in it, and specific performance of such contract may be ordered.

33. Contract for sublease implies usual covenants

(1) Where parties make a contract for a sublease they shall be deemed to agree, subject to express provisions to the contrary, that the sublease to be created shall contain covenants and that these shall be covenants which are usual for the type of sublease contemplated and in the area where the property concerned is situated, and that such sublease shall not be subject to any existing covenants which are not usual as aforesaid.

(2) The question of what covenants are usual and whether a particular covenant is usual shall be questions of fact to be determined with regard to all the circumstances of the case including the practice of legal practitioners, the nature of the sublease to be created, the character of the property concerned and the place in which it is situated, the term to be created and any express provisions made in the contract for the sublease.

34. Usual covenants

(1) Subject to this law and any express agreement to the contrary, the following covenants shall be usual covenants—

(*a*) a covenant by the tenant to pay rent, and a proviso for re-entry for non-payment of rent;

(*b*) a covenant by the tenant to keep and deliver up the property in good repair but this shall not apply to a monthly tenancy;

(*c*) a covenant by the tenant to pay taxes except such as are usually payable by landlords but this shall not apply to monthly tenancies;

(*d*) a covenant by the tenant to use the property only for the purpose for which the sublease is created; and

(*e*) a covenant by the landlord that the tenant paying his rents and performing and observing conditions and covenants to be performed or observed by him under the sublease, shall enjoy quiet possession of the property.

(2) A tenant holding for life or lives or for years, or from year to the year or for any other period, by deed or otherwise, shall be liable for natural waste unless a contrary intention shall appear from the dead or other instrument in writing which creates the tenancy.

35. Essential requirement of a sublease

(1) A sublease shall satisfy the following requirements, otherwise it shall be void—

(*a*) it shall contain the name of the sublessor who shall be a person capable of creating such sublease;

(*b*) it shall contain the name of the sublessee who shall be a person capable of taking such sublease;

(*c*) it shall contain the name of or other description sufficient to identify the property sublet which shall be property capable of being thus sublet;

(*d*) it shall contain an express intention on the part of the sublessor to sublet, and on the part of the sublessee to take a sublease of the property concerned;

(*e*) the term granted shall be sufficiently defined to be certain or ascertainable as regards its commencement and duration; and

(*f*) where any law in force in the State at the time of its creation requires that a sublease of that type shall be by deed or executed in a particular manner, it shall be by deed or executed in that particular manner, as the case may be.

(2) A sublease may be created to commence on the occurrence of a contingent event.

(3) A thing shall not be regarded as omitted or uncertain in a sublease if the sublease contains sufficient facts or materials from which it can reasonably be supplied or ascertained.

36. Tenancy for three years or less

Tenancy for a term of three years or less at the best rent that can reasonably be obtained without taking a premium may, at the option of the parties, be created in writing or orally, whether or not it contains an agreement for renewal.

37. Tenancy for more than three years

A tenancy for a term of more than three years from the date of its creation shall be created by deed, and if not so created shall be void; and it is immaterial whether or not such tenancy may, under its provision, terminate within three years of its creation.

38. Anything of the essence of property sublet passes with it

(1) Where a tenancy is created, all things which are of the essence, being essential to the reasonable use and enjoyment of the property the subject matter of the tenancy shall be deemed to form part of such property and to be sublet with it, even if it is not actually attached to it at the time the tenancy is created.

(2) Notwithstanding the generality of the foregoing subsection if the property the subject matter of the tenancy is a building or part of a building—

(*a*) all doors and windows with their respective components shall be deemed to be in their proper places and to pass with the property demised to the tenant even if at the time the tenancy is created they are not actually in place; and

(*b*) all passages, staircases, conveniences, forecourts, grounds and other things which such property shall be deemed to form part of it and to pass with it to the tenant even if at the time the tenancy is created such things or some of them are not actually being used with it.

(3) Where two or more tenants occupy different parts of a building and it is not expressed or is otherwise not possible to determine which of the things mentioned in paragraph (*b*) of subsection (2) attach to what parts of the building, the various tenants shall have equal right to the use and enjoyment of such things.

39. Execution of sublease

(1) Where a sublease is created by deed it shall be executed, sealed and delivered by the respective parties to it:

Provided that where a party is illiterate or otherwise cannot sign his name, such party may execute by placing his mark or thumb impression on the sublease:

Provided also that a corporation shall be deemed to execute a sublease if its common seal is affixed thereto in the presence of, and is attested by, an officer having authority so to do.

(2) A sublease created by deed may be executed, sealed and delivered on behalf of a party by an agent by deed to do so provided there is a clear indication on the instrument that the agent is acting on behalf of a named principal.

(3) Subject to this Law and to any other law in force in the State regarding part performance, no person shall be liable under a sublease unless it is signed by him or on his behalf by a duly appointed agent.

PART V

Void and Voidable Tenancies

40. Tenancy agreement obtained by fraud

(1) An agreement to create a tenancy shall be void if the tenant—

(*a*) procures it by fraud; or

(*b*) intends to use the property concerned for a purpose which is unlawful or against public policy.

(2) Where a party makes an agreement for a tenancy with another by representing that the property concerned will be used for a lawful purpose and eventually uses it for a purpose which is unlawful or against public policy, he shall be deemed to procure the agreement by fraud, and the other party shall be entitled to have the tenancy set aside.

(3) The provisions of this section shall apply to any agreement to assign a sublease.

41. Tenancy for unlawful purpose

(1) Where property the subject matter of a tenancy is, to the knowledge of the parties to such tenancy, to be used for a purpose that is unlawful or against public policy, such tenancy, whether it is created orally or in writing, shall be void.

(2) Where property is let to a tenant who, unknown to the landlord, intends to use it for a purpose that is unlawful or against public policy, the tenancy so created, whether it is oral or in writing, shall be void *ab initio*:

Provided that where a tenant uses property for such purpose from the time he enters into possession, this shall be conclusive evidence that at the time the tenancy is created he intends to use the property concerned for such purpose.

(3) Where property is let for a lawful purpose but is subsequently put to a use that is unlawful or against public policy, the tenancy so created, whether it is oral or in writing, shall be void from the moment the property is put into such other use but without prejudice to any right of action existing against the tenant at the time the contract was valid.

(4) The provisions of this section shall apply to any assignment of a tenancy:

Provided that in the case of subsection (3) the right to recover possession of the property concerned shall vest in the landlord, that is, the party who let the property to the assignor, and not in the assignor himself.

42. Money paid under void tenancy

Money or other payments made in connection with a tenancy which is void under the two foregoing sections shall not be recoverable in any court of law.

43. Where purpose may be carried out in legal or illegal manner

Where property is let for a purpose which may be carried out in either a legal or illegal manner, the landlord shall be entitled in the absence of any information to the contrary, to assume that the purpose shall be carried out in a legal manner and the tenancy shall be valid:

Provided that if the purpose of the tenancy is in fact carried out in an illegal manner and the landlord knows or ought reasonably to know that it is being so carried out, the provisions of the last three foregoing sections shall apply.

44. Mistake as to tenant's identity

Where a tenancy is created and the landlord is mistaken as to the identity of the tenant and the circumstances are such that the person of such tenant is an important factor, such tenancy shall be voidable at the instance of the landlord.

45. Sublease may be void if altered

Where a tenancy is in writing, whether or not under seal, any alteration of it in material particular after it has been executed shall make it void if such alteration is not agreed upon by the parties to the tenancy or their authorised agents.

46. Rescission for fraud, etc.

(1) Where the terms of a tenancy as written down and executed or signed materially differ from the terms which the parties intended, and such difference is due to a mistake of fact by both parties to the tenancy, the tenancy may be altered so as to give effect to the true intention of the parties and oral evidence of such intention shall be admissible.

(2) A clerical error occurring in a written tenancy may be corrected and effect given to the true intentions of the parties.

47. Rescission for fraud, etc.

A tenancy which is procured by fraud or by concealment or misrepresentation (not being innocent misrepresentation) of a material fact by one of the parties may, subject to any law now or hereafter in force in the State, be set aside at the instance of the other party.

48. Rescission for innocent representation

(1) Where a party to an agreement for a sublease is induced to make such agreement by a misrepresentation made innocently by the other party, the party so induced may rescind such agreement.

(2) A sublease shall not, after execution, be rescinded merely on the ground that it is induced by innocent misrepresentation.

49. Rescission for mistake

A tenancy may be set aside if both parties to it are induced to create it by a mistake as to a fact, but this section shall not apply where the mistake in question is one as to law.

PART VI

Types of Tenancy

50. Tenancy for a term of years

(1) A tenancy for a term of years may be created for any period of time short of perpetuity.

(2) No tenancy for a term of years shall be valid unless it is certain, that is, unless it has a certain beginning and a certain ending.

(3) A tenancy for a term of years may be created to take effect immediately, from a past or a future date or on the occurrence of a future event.

(4) No tenancy which is created to take effect at a future date or on the occurrence of a future event shall be valid unless created by deed.

(5) A tenancy for a term of years may be created to subsist and run concurrently with an existing tenancy of the same property, in which case it shall operate as an assignment of the reversion during such time as the two tenancies run concurrently.

51. Tenancy from year to year

(1) A tenancy from year to year is a tenancy created for a term of one year with an agreement, express or implied, that unless it is determined by notice at the end of that year it will subsist for another year, and if not determined by notice at the end of that other year, it will subsist for another year and so on.

(2) A tenancy from year to year may be created by express grant or may arise by implication or by operation of law.

(3) Subject to an express agreement to the contrary a tenancy from year to year may commence on any day of the year, whether or not such a day corresponds to the beginning of any of the usual four quarters of the year.

(4) A tenancy from year to year shall not be affected by the death of either the landlord or the tenant.

52. Yearly tenancy by operation of law

(1) Subject to this Law or any other law now or hereafter in force in the State, and in the absence of any agreement to the contrary—

(*a*) where a tenancy is created in writing and the term for which it is to run is not expressed but the rent payable is expressed as an annual rent, such tenancy shall be deemed to be a tenancy from year to year; and it shall be immaterial whether the rent is also expressed to be payable monthly or at any other intervals;

(*b*) where a tenancy is created orally and the term for which it is to run is not stated but the rent payable is stated as annual rent or is actually paid as an annual rent such tenancy shall be deemed to be a yearly tenancy;

(*c*) where a tenant for a term of one year or more holds over and pays rent at the rate reserved under the expired tenancy he shall be deemed to be a tenant from year to year on the same terms as the expired tenancy in so far as such terms are applicable to an are not inconsistent with a tenancy from year to year;

(*d*) where a person is let into possession of a property under an agreement for a sublease and pays rent for a year at a time, or if the sublease agreed to be created reserved an annual rent and that person pays any part of it, a tenancy from year to year shall be deemed to be created between the parties; and such tenancy shall be on the terms of the intended lease so far as such terms are applicable to and are not inconsistent with a tenancy from year to year.

(2) The provisions of the last foregoing paragraph shall apply where a person is let into possession of a void sublease and pays rent for a year at a time.

(3) Where a tenant at will or a tenant at sufferance pays rent for one year at a time, he shall be deemed to be a tenant from year to year at that rent; and this provision shall also apply where such a tenant agrees expressly with the landlord to pay a rent expressed as annual rent whether or not such rent is also expressed to be payable by monthly or other periodic instalments.

53. Tenancy for less than a year

(1) Subject to this Law or any other law for the time being in force in the State, where a tenancy of a building or part of a building is created and the terms for which it is to run are not stated but the rent to be paid is stated as quarterly, monthly or weekly rent and is actually paid as a quarterly, monthly or weekly rent, the tenancy so created shall be deemed to be a quarterly, monthly or weekly tenancy, as the case may be.

(2) Where a person is let into possession of a building or part of a building by the owner and it is agreed between them that the person given possession will pay a quarterly, monthly or weekly tenancy, as the case may be, a tenancy shall be presumed to be thereby created; and this provision shall also apply where a tenant at will or at sufferance agrees with the landlord to pay a quarterly, monthly or weekly rent as the case may be:

Provided that nothing in this subsection shall prevent a party from showing that there was no intention to create any tenancy at all but to grant a licence or lodging accommodation.

(3) Where a tenant for any term holds over after the expiration of his tenancy and agrees with the landlord to pay or actually pays, rent for a quarter, month or week he shall be deemed to be a quarterly, monthly or weekly tenant as the case may be on the same terms and conditions as the expired tenancy in so far as these are applicable to and are not inconsistent with a quarterly, monthly or weekly tenancy as the case may be.

54. Tenancy at will defined

A tenant at will is a person who is in lawful possession of another person's property and whose possession of such property is determinable at the pleasure of either party. The interest which such a possessor has in that property is called tenancy at will.

55. How tenancy at will arises

A tenancy at will may be crated by the express agreement or stipulation of the parties to it or may arise by operation of law.

56. Express creation of tenancy at will

A tenancy at will shall be deemed to be created where the owner of property gives possession of it to another person and such possession is expressed to be determinable at the pleasure of either or both of the parties whether or not any rent is agreed to be payable.

57. Tenancy at will by operation of law

A tenancy at will shall, subject to this Law and any other law now or hereafter in force in the State and in the absence of circumstances which clearly negative an intention to create a tenancy, arise by operation of law in any of the following circumstances—

(*a*) where one person is in possession of the property of another person with his consent but there are no agreed terms or condition under which such possession is held;

(*b*) where one person let property to another and no certain or determinate interest is expressly limited;

(*c*) where a person lets a building or flat to another person and reserves the right to use a specific room in such house or flat when he pleases, in which case, the person to whom the house or flat is so let shall be a tenant at will in respect of the room with regard to which such reservation is made;

(*d*) where a person is in possession of a right of occupying by virtue of a transaction which is not in writing, or being in writing is not under seal, he shall be a tenant at will with regard to such right;

(*e*) where a person is in possession of property by virtue of an agreement or a sub-lease, he shall, until he has made his first payment of rent under the agreement, be a tenant at will of such property;

(*f*) where a tenant for any term continues in possession with the consent of the landlord after the expiration of his term he shall, in the absence of payment of any rent, be a tenant at will of the property concerned, holding under such of the terms of the expired tenancy as are not inconsistent with a tenancy at will;

(*g*) where a person is given possession of property pending a treaty to purchaser it he shall be a tenant at will of such property;

(*h*) where one person holds property as a tenant from year to year and another person holds the same property or part of it as his subtenant, then if the yearly tenancy is merged with the right of occupancy of such property, the subtenant shall become a tenant at will in respect of the property or that part of it in respect of which he was a subtenant;

(*i*) where a person takes possession of property by virtue of a void sublease, he shall, until he pays rent, be a tenant at will under the terms of the expired sublease in all respects except the duration of the tenancy;

(*j*) where an official of a body corporate which is in possession of property by virtue of his being such official and is later removed from or otherwise ceases to hold such office he shall become a tenant at will of that property.

58. Consent of landlord essential

Nothing in the foregoing section shall be construed to give rise to a tenancy at will unless the landlord consented or can reasonably be presumed to have consented to the tenant occupying the property concerned as a tenant.

59. Determination of tenancy at will

A tenancy at will shall terminate in any of the following circumstances—

(*a*) when the landlord or the tenant dies:

Provided that where a tenancy at will is created by joint owners or in favour of joint tenants, the death of any of the joint owners or of the tenants shall not affect the tenancy as long as there are survivors on both sides;

(*b*) on demand for possession made by the landlord;

(*c*) on notice of intention to quit given by the tenant;

(*d*) by any act of ownership or possession exercised by the landlord which is inconsistent with the tenant's continued possession of the property concerned;

(*e*) by alienation by the landlord of the reversion or of the property itself, by mortgage or otherwise, with notice thereof to the tenant;

(*f*) by the tenant transferring or attempting to transfer his interest in the property concerned to another person, or otherwise doing an act inconsistent with a tenancy at will:

Provided that the landlord shall not be prejudicially affected by any alienation or attempted alienation unless he is given notice of it;

(*g*) by the tenant committing waste of the property concerned;

(*h*) by the tenant going out of possession, with or without notice to the landlord;

(*i*) by the landlord creating a tenancy of the property concerned in favour of another person.

60. Demand by landlord

(1) Where the landlord stipulates in his demand the time when a tenancy at will is to cease such tenancy shall cease at the time stipulated, but where no time is stipulated such tenancy shall terminate on demand.

(2) A tenant at will shall not be entitled to reasonable or any period of notice to quit, nor shall be obliged to give a reasonable or any period of notice of his intention to quit.

61. Rights of parties at end of tenancy at will

(1) Where a tenant at will has crops on land the subject matter of the tenancy or on land used in connection with such land, he shall be entitled to a reasonable time after the determination of his tenancy within which he may enter and reap his crops.

(2) Where a tenancy at will is determined by the landlord, the tenant shall be entitled to a reasonable time within which he may enter and remove his property.

(3) Where a tenant at will pays rent on a monthly, quarterly, half-yearly or yearly basis and determines the tenancy after a new month, quarter, half-year or year, as the case may be, has commenced, he shall nevertheless be liable to pay rent for such month, quarter, half-year or year:

Provided that nothing in this subsection shall be construed to make a tenant at will liable to pay any rent where the tenancy is determined by the landlord.

62. Tenancy at sufferance defined

A tenant at sufferance is a person who enters into possession of property by virtue of a lawful title and wrongfully continues in possession without the assent or dissent of the person next entitled to such property or reversion, as the case may be, and the interest which such possessor has in that property is called tenancy at sufferance.

63. Position of tenant at sufferance

(1) A tenant at sufferance shall be liable for ejectment at the suit of the landlord whether or not the landlord has made any demand for possession:

Provided that nothing in this subsection shall be construed to prevent such a tenant from maintaining an action for assault and battery if he is forcibly ejected.

(2) A tenant at sufferance has no transferable interest in the property the subject matter of his tenancy.

64. Rent defined

Rent is a certain profit issuing at regular periods and paid for the use or occupation of property in money or money's worth reserved or issuing out of or charged upon property, but does not include mortgage interest.

65. Premium

(1) A premium is a sum paid by a tenant to a landlord for the granting or renewal of a sublease and independently of any rent payable, such payment being made as one lump sum or by instalments; and a fine has the same meaning.

(2) Where a premium is payable by instalments, the obligation to complete payment of it is not affected by the determination of the tenancy itself while the instalments are still running.

66. Rent payable as due

Subject to any written law now or hereafter in force in the State, rent shall be recoverable by court action as soon as it becomes due according to the terms of the tenancy.

67. Reservation of rent

(1) Rent may be reserved as part of a transaction creating a tenancy, but no rent shall be validly reserved unless it is certain, or ascertainable, as to its amount and the time when it is payable.

(2) Rent may be reserved as to commence at any time before or after the tenant goes or is due to go into possession.

68. Whole tenancy void if any part unlawful

Where several properties, whether situated in the same or in different places, are let at a single rent but any of such properties cannot lawfully be let by the person who purports to let it, the whole tenancy shall be void:

Provided that this section shall not apply where separate rents are also stated as aggregate rent payable.

69. Commencement of rent

Where rent is stated to be payable per year or per month or at any other periodic intervals but no date is given as the date when such rent is to commence running, the rent shall commence to run from the day on which the tenancy is created, or where the tenancy is expressed to commence.

70. "Net rent"

Where "net rent" is reserved, the sum payable shall be such as is left to the landlord after all dues regarding the property shall have been paid.

71. Rent must be reserved to the landlord

(1) Rent shall be reserved to the owner of the property the subject matter of a tenancy, and a tenancy shall be void if the rent therein reserved is in favour of anyone else:

Provided that a periodic payment may validly be reserved in a tenancy in favour of a person other than the landlord if it is clear that such reservation is not by way of rent.

(2) Where rent is reserved but the person in whose favour it is reserved is not expressed, it shall be deemed to be reserved in favour of the owner of the property the subject matter of the tenancy.

72. Rent, etc., run despite death of landlord or tenant

(1) Rent payable to a landlord shall be deemed to be payable to him and, after his death, the owner of the reversion on the property concerned, and rent payable by a tenant shall be deemed to be payable by him and, after his death, his successor in title to such tenancy; and therefore in absence of an express agreement to the contrary, any rent reserved or otherwise shall continue to be due and payable so long as the tenancy subsists, the death of the landlord or the tenant or both notwithstanding.

(2) Where performance of any covenants or conditions in a tenancy or agreement for a tenancy is secured with a bond or penalty, with or without sureties, such security shall attach—

(*a*) to the reversion as an incident to it, and may be enforced by the reversioner or assignee of the reversion; and

(*b*) to the tenancy, and may be enforced against the assignee or successor in title of the tenant to such tenancy.

73. Power to grant at any rent

Power given to any person to create a tenancy at any rent he thinks proper shall be deemed to include power to create such tenancy without charging any rent at all.

74. Liquidated damages

(1) Parties to a tenancy may agree on a sum that shall be paid by the tenant as increased or additional rent for breach of any particular covenant or condition of the tenancy, a sum so fixed is called liquidated damages and payment of it may be enforced by the landlord when the breach provided for occurs, provided it is a reasonable pre-estimate of damage expected to arise from such breach.

(2) Nothing in the foregoing subsection shall apply to any sum stipulated in a tenancy where that sum, by whatever name called, is in the nature of a penalty for a breach of a covenant or condition; a sum shall be construed as a penalty where it is disproportionately large having regard to the greatest loss that could in the normal course of events flow directly from a breach of the covenant concerned, or where a large sum is made payable for non-payment of a small rent or other dues.

75. When rent becomes due

(1) Rent becomes due in the morning of the day appointed by the parties to a tenancy for payment thereof; if no specific day is appointed, rent becomes due on the last day of the period for which it is payable, so that rent payable annually becomes due on the last day of the year in respect of which it is payable; rent payable monthly becomes due on the last day of the month, and so on.

(2) Rent is in arrears immediately after midnight of the day on which it is due under the foregoing subsection.

76. When rent may be demanded or recovered

Rent may be demanded or recovered at any time after it is in arrears but not until then, and subject to any written law now or hereafter in force in the State regarding payment of rent due to the State or the Federal Government, no steps or proceedings in court or otherwise may be taken to enforce payment of rent until it is in arrears and a demand has thereafter been made for payment.

77. Payment in advance

(1) A tenant may if he so desires, and shall if he is so required under the terms of the tenancy, pay rent at any time before the day when it is due in accordance with this Law and such payment shall when received by the landlord or his agent, be effective satisfaction of the tenant's obligation to pay on the due date.

(2) Where the landlord terminates the tenancy, or the tenant is forced by an act or default of the landlord to give up possession before the expiration of the period for which rent has thus been paid, the landlord shall refund to the tenant such part of the rent as represents the unexpired period.

78. Person to whom rent is payable

(1) Rent shall be payable to the landlord or his agent, provided that a person who usually collects rents for a landlord shall be presumed to be his agent unless the tenant has notice to the contrary.

(2) Where the landlord sells or otherwise transfers his reversion to a third party, such third party shall, in the absence of an express agreement to the contrary, become entitled to rent payable under the tenancy; and the tenant, as soon as he has notice of the sale or transfer is under an obligation to pay all subsequent rents to that third party as the landlord.

(3) Payment to a person other than the landlord (which expression includes a person to whom the reversion has been transferred) shall not be payment of rent and shall not prevent the landlord from claiming rent from the tenant, unless such payment is made with the express consent, direction or authority of the landlord:

Provided that payment to an agent of the landlord shall be payment to the landlord.

79. Effect of payment of rent

(1) Payment of rent is an acknowledgment of tenancy, and so—

(*a*) a person who pays rent to another person as his landlord shall not thereafter be heard to deny such other person's title to the reversion or to the rent; and

(*b*) a person who accepts rent from another as a tenant shall not thereafter deny that other person has rights as a tenant.

(2) Nothing in the foregoing subsection shall preclude a tenant who pays rent by mistake, fraud or misrepresentation to a person who is not entitled to if from denying that other person's title to the reversion, or showing that he is not entitled to the rent.

(3) Rent paid by mistake, fraud or misrepresentation to a person not entitled to it shall be recoverable from such person.

80. Payment by assignee

Where a tenancy has been lawfully assigned, payment of rent by the assignee shall *pro tanto* be a discharge for the tenant-assignor.

81. Payment by a third party

Any person may pay on behalf of a tenant, and such payment shall *pro tanto* be a discharge for the tenant.

82. Deductions and refunds by mistake of law

Where a landlord or his agent by reason of a mistake of law—

(*a*) allows a deduction to be made by the tenant from rent; or

(*b*) refunds rent to the tenant in part or in full,

that amount so deducted or refunded shall not thereafter be recovered from the tenant.

83. Agreement to reduce rent

A landlord who, whether or not for consideration, agrees to accept and, on the basis of such agreement does accept rent at a reduced rate than hitherto shall be estopped from going back on such agreement.

84. Rent to be paid in lawful currency

In the absence of an express agreement to the contrary, rent shall be paid in lawful currency, and payment made by cheque or bill shall be deemed to be so made when the bill or cheque is duly honoured by the bank on which it is drawn.

85. Payment to landlord in person

Rent shall be paid to the landlord or his agent in person, or as otherwise directed by the landlord.

86. Payment of ground rent by tenant

(1) Where a ground rent payable by a landlord to a ground landlord is demanded by the ground landlord from and paid by a tenant of the mesne landlord, the amount of such payment may be deducted by the tenant from any rent payable by him to the mesne landlord.

(2) Where a tenant is induced by threat of legal proceedings or ejectment to pay property tax or any other money due on the property concerned and payable by his landlord he shall be entitled to deduct the amount of such payment from any rent payable by him to such landlord, any stipulations in the tenancy to the contrary notwithstanding.

87. When rent is apportioned

(1) Where property which is let at an entire rent is subsequently divided among two or more persons any rent payable for that letting shall be apportioned among such persons in proportion to their respective interests.

(2) Where a tenant transfers part of his interest to a third party, a portion of the rent payable by that tenant prior to the transfer becomes payable by the third party, such portion being proportionate to the interest transferred to him:

Provided that nothing in this subsection shall be construed as relieving the tenant of his obligation to pay the entire rent payable under the original tenancy and so the landlord may proceed to recover from the tenant the entire rent or from both the tenant and the third party the respective portions due from them.

88. Eviction of tenant and apportionment

(1) Where a tenant is evicted by title paramount from part of the property let to him, rent payable by him thereafter for the part he retains shall be such portion of the original rent as is proportionate to the part he retains.

(2) Where a tenant is unable despite diligent efforts to obtain possession of part of the property let to him by reason that it is held by a person claiming adversely to the landlord no rent shall be payable by the tenant upon any agreement he may have entered into to pay rent.

(3) Where a tenant is, through no fault of his, evicted from part of the property let to him, he shall not thereafter be under obligation to pay any rent in respect of such tenancy unless he is restored to full possession.

(4) Where a land or building or part thereof is let with moveable property to a tenant at an entire rent, and the tenant is evicted from such land or building, he shall not be liable thereafter to make any payment in respect of the movable property.

89. Apportionment of rent in respect of time

(1) All rents, whether payable under an agreement made in writing or otherwise, may in appropriate cases be considered as accruing from day to day, and may be apportioned in respect of time accordingly.

(2) Notwithstanding the generality of the foregoing subsection—

(*a*) where a change in the ownership of the reversion, or in the person entitled to rent payable, on a tenancy occurs at any time before the completion of a current rent period, rent shall accrue and shall be considered as accruing from day to day from the commencement of that uncompleted rent period to the day the said change occurs and the rent that thus accrues shall, in the absence of any agreement to the contrary, be apportionable as between the person entitled to rent before and after such change:

Provided that rent which thus accrues shall not become payable until the rent period is completed;

(*b*) where a tenancy is determined at any time before the completion of a current rent period rent shall accrue and shall be considered as accruing from day to day from the commencement of that uncompleted rent period to the day the tenancy is determined and shall in the absence of any agreement to the contrary be payable:

Provided that rent which thus accrues shall not become payable until the tenancy terminates;

(*c*) where a tenancy is lawfully determined and the tenant thereafter retains possession of the property let, mesne profits which shall be at the same rate as the rent payable under the tenancy, shall accrue and shall be regarded as accruing and payable from day to day and may at the option of the landlord, be claimed from the day the tenancy was determined or the day when court proceedings to recover them are commenced;

(*d*) where rent is made to vary with the amount of benefit or profit which the tenant obtains from the property let, such rent shall be regarded as accruing from day to day and may be apportioned accordingly.

(3) Nothing in this section shall be construed as applying to any rent which has already accrued whether such rent is payable in advance or otherwise.

90. Enforcement of apportioned rent

(1) A person entitled to any part of an apportionable rent shall have the same remedies for recovering that part as he would if he were entitled to the whole rent and such part shall be liable to proportionate deductions, counter-claims or set-off where the whole rent would be so liable:

Provided that no steps by court proceedings or otherwise to recover any part of an apportionable rent shall be taken until such part has become payable under the last foregoing section.

91. Creation of privity of contract

(1) A sublease shall create privity of contract and privity of estate between the sublessor and the sublessee.

(2) Where a sublessee lawfully assigns the sublease to a third party, privity of estate shall cease to exist between him and the sublessor, and shall arise between the third party and the sublessor.

(3) Assignment by a lessee to a third party shall not affect the existence of privity of contract between such sublessee and the sublessor and accordingly, the sublessee shall continue to be liable to pay rent under the sublease notwithstanding that the sublease has been assigned and the privity of estate no longer exists between the sublessee and the sublessor.

(4) Where a sublease is assigned by the sublessee, the sublessor shall have a right to recover the rent payable under that sublease from either the sublessee or the assignee, or partly from the sublessee and partly from the assignee notwithstanding the assignment and notwithstanding that the sublessor may have consented to the assignment:

Provided that nothing in this subsection shall be construed as enabling the sublessor to recover more than the full value of such rent.

92. Liability of tenant for rent after quitting possession

(1) Subject to any agreement to the contrary, where any tenant quits possession of the property concerned without due notice agreed or as by law required, he shall be liable for rent as follows—

(*a*) if he quits possession at the end of a rent period, he shall pay rent for one rent period thereafter;

(*b*) if he quits possession before the end of a rent period, he shall nevertheless pay rent for the whole of that rent period thereafter;

(*c*) if before the expiration of the current rent period or of the next succeeding rent period, as the case may be, the landlord accepts surrender of such tenancy (other than accrued rent), or actually lets the property to another tenant or occupies it himself, the liability of the tenant to pay rent under this subsection shall cease with effect from the day on which the landlord accepts surrender of the tenancy or lets the property to another tenant or occupies it himself, as the case may be, but without prejudice to accrued rents;

(*d*) where he has given notice of his intention to quit the premises held by him and shall not deliver up possession thereof at the time stated in such notice, the tenant, his executors or administrators shall thereafter pay to the landlord rent for the period of notice plus rent for the period held over plus any other damage occasioned by the holding over.

93. Liability after destruction of property

(1) In the absence of an agreement to the contrary, where a sublease is executed for a term certain, with or without an option for renewal, the liability of the sublessee to pay rent under that sublease shall not be affected by the destruction of or damage to the property concerned by fire or otherwise.

(2) In the absence of an agreement to the contrary, where a sublessee for a term holds over after the term granted has expired, he shall be liable, notwithstanding any damage to or destruction of the property concerned, to pay rent as follows—

(*a*) as a tenant from year to year, if he has paid any rent on a yearly basis after the expiration of the term granted;

(*b*) as a monthly or other periodic tenant, if he has paid rent on a monthly or other periodic basis after the expiration of the term granted.

(3) Nothing in this section shall be construed to apply to a tenant other than a tenant under a sublease for a term certain or a tenant holding over on the expiration of a sublease for a term certain.

94. Rent suspended when tenant evicted

(1) Where a landlord or anyone claiming through him enters into possession of any part of the property concerned and such entry is not by virtue of a power of re-entry contained in a sublease for a breach of covenant, liability of the tenant to pay rent shall be suspended forthwith and shall not re-commence unless and until the tenant is restored to full possession of the property concerned.

(2) Notwithstanding anything to the contrary contained in any sublease or tenancy agreement, a right of re-entry shall not include a right to physical entry without an order of court.

(3) Where a tenant is evicted by title paramount his liability to pay rent shall be suspended forthwith and shall not recommence unless and until he is restored to full possession of the property concerned.

(4) Nothing in this section shall apply where a tenant is evicted or possession of the property concerned is taken in part or in whole by any person claiming through the landlord or a title paramount.

(5) Nothing in this section shall apply to allow a landlord to exercise any power of distress for rent except in execution of the judgment of a court and in accordance with the Sheriffs and Civil Process Law.

95. No rent where tenancy for illegal purpose

No rent shall be payable for a tenancy where the landlord knows or ought reasonably to know that the property concerned is to be used or is being used for an illegal purpose or for a purpose which is contrary to morality or public policy.

PART VII

Recovery of Rent by Action

96. Who may be parties

A person may take an immediate or other interest in land or other property or the benefit of any condition, right of entry, covenant or agreement over or respecting land or other property although he may not be named as a party to the transfer or other instrument; and such person may in appropriate cases be a party to an action for rent.

97. Action by or against representatives or assigns

(1) An action for rent, including an action for breach of covenant to pay rent, may be maintained by or against the parties to a tenancy or their personal representatives.

(2) An action for rent may be maintained against an assignee of a tenancy or against the assignor himself and rent may be recovered in full from the assignor:

Provided that not more than the full value of the rent payable in respect of any rent period may be recovered for that period.

98. Joint and several liability for rent

(1) Where rent is payable by two or more persons jointly, any action to recover such rent shall be brought against both or all of such persons.

(2) Where rent is payable by two or more persons severally, action to recover such rent may be brought against any of them or all of them.

(3) Where rent is payable by two or more persons jointly and severally action to recover such rent may be brought against all or any of them.

(4) Where judgement for rent is obtained against two or more persons jointly or jointly and severally, execution may be levied against any or all of them:

Provided that where execution is levied against one or some of such persons he or they shall be entitled to contribution from the others.

(5) The provisions of the foregoing subsections shall apply *mutatis mutandis* to the personal representatives of person entitled to or liable for rent.

(6) Nothing in this section shall be construed as enabling a person to recover in respect of any rent period more than the full value of rent payable for that period.

99. Personal representatives of landlord and tenant

(1) The personal representative of the landlord or other person entitled to rent may recover by action any rent due before or after the death of such landlord or person entitled.

(2) The personal representatives of a tenant may, to the extent of the assets of the estate be liable for any rent due before or after the death of the tenant.

(3) On the death of a joint tenant the whole tenancy shall vest in the survivor who shall thereafter become liable for the rent to the execution of the estate of the deceased joint tenant.

100. Tenant's defences

(1) A tenant shall be entitled to all defences in an action for rent which would be open to him in an action under an ordinary contract.

(2) Without prejudice to the generality of the foregoing subsection, the following defences shall be open to a tenant in an action for rent—

(*a*) that the landlord's title to the property or the rent has ceased since the creation of the tenancy;

(*b*) that the tenant has been evicted by the landlord or a person claiming under him from the property or part of it:

Provided that this defence shall not avail a tenant in an action for arrears of rent;

(*c*) that the landlord or a person claiming under him has taken possession of any part of the property concerned with intent to exclude the tenant from such part;

(*d*) that the tenant has been evicted by a title paramount or has lawfully been evicted by a stranger;

(*e*) that the tenant has paid or tendered the rent due before action is brought;

(*f*) that the claim for rent has been barred under this Law or any written law in force in the State;

(*g*) that the tenancy is illegal being contrary to a written law in force in the State or to public policy or morality; or

(*h*) that the tenancy is otherwise void.

(3) For the purposes of subsection (2) (*e*)—

(*a*) no payment or tender shall be a defence unless it is made in legal currency and brought to the notice of the landlord or his agent;

(*b*) payment into the landlord's bank account with notice to the landlord shall be sufficient tender.

(4) A tenant against whom an action is brought for rent may make a counter-claim or set-off against such claim.

101. Use of occupation implies promise to pay

(1) Subject to this Law and any other written law in force in the State and in the absence of an express subsisting tenancy, where one person uses or occupies property of another person by his permission or sufferance, there shall be implied a promise by the user or occupier to make a reasonable payment for such use or occupation:

Provided that no such promise shall be implied where the circumstances clearly negative it.

(2) Nothing in this section shall apply where a person uses or occupies a property without the knowledge of the owner or as a trespasser, or otherwise against the will of the owner.

102. Persons liable to pay for use and occupation

(1) Notwithstanding the generality of the foregoing section, the following persons shall be liable to pay for use and occupation of property—

(*a*) any person who actually uses or occupies property of another person by his permission or sufferance;

(*b*) any person who enters and takes possession of a property as a tenant of any type and subsequently transfers possession or use of such property to another person and ceases to be in actual use or possession:

Provided that in such a case his liability shall continue only for so long as the transferee continues such possession or use;

(*c*) a tenant who, with intent to continue as a tenant, retains possession of the property concerned after his tenancy has expired or been duly terminated;

(*d*) a tenant whose subtenant continues in possession of the property concerned after his tenancy has expired or has been duly terminated even if such subtenant retains possession against his will;

(*e*) a tenant who is substituted for another tenant with mutual consent of all parties;

(*f*) a person who is in possession of a property—

(i) under an agreement for a lease which was never granted; or

(ii) pending an agreement for occupation which was never effected;

(*g*) a person let into possession of a property which he intends to purchase but who remains in possession after he has become aware that the proposed sale to him will not take place:

Provided that such a person shall not be liable for use and occupation in respect of the period during which he was unaware that the proposed sale will not take place;

(*h*) the personal representative of a person liable to pay for use and occupation under this section.

103. Who is entitled to payment for use and occupation

(1) The person entitled to payment for use or occupation of a property is the owner thereof, who for this purpose shall be the person who, immediately before the person using or occupying the property went into possession, had the right of possession over that property.

(2) Where two or more persons are jointly entitled to payment for use and occupation under the foregoing subsection and one of them dies, the survivor shall be entitled to such payment in respect of use and occupation occurring both before and after the death of the deceased joint owner.

(3) Notwithstanding the provisions of subsection (1) of this section, where a tenant sublets his whole term to a third party at a rent he shall nevertheless be entitled to payment for use and occupation of the property concerned by such third party and in such a case the quantum of payment recoverable shall be the rent agreed upon between the tenant and the third party.

(4) The personal representative of a person entitled to payment for use and occupation of property under this section shall have a right to such payment.

104. Amount payable for use or occupation

(1) Where the owner of a property used or occupied by another person is entitled to payment for such use or occupation, then in the absence of an agreed rent, the owner shall be entitled to an amount equal to what he would obtain as rent for the same property over the same period of time or, where it is not possible to assess such rent, a reasonable amount, as compensation for his loss of use and occupation.

(2) Where rent has been agreed upon by the parties, such rent shall be the property measure or payment due for use and occupation notwithstanding that such rent relates to a void tenancy or is contained in a void agreement for lease.

105. Action for use and occupation

Where an implied promise to pay for use and occupation of property arises under this Law, it shall be enforceable by action to be known as action for use and occupation.

106. Where reversion is surrendered

Where a reversion expectant on a sublease of land is surrendered or merged, the legal interest which as against the sub-lessee for the time being confers the next vested right to the land, shall be deemed the reversion for the purpose of preserving the same incidents and obligations as would have affected the original reversion had there being no surrender or merger transfer.

107. Apportionment on condition on severance

(1) Notwithstanding the severance by transfer, surrender or otherwise of the reversionary interest in any land comprised in a sublease, and notwithstanding the avoidance or cesser in any other manner of the term comprised therein, every condition or right of re-entry and every other condition contained in the sublease shall be apportioned and shall remain annexed to the severed parts of the reversionary interest as severed, and shall be in force with respect to the terms whereon each severed part is reversionary, or the term in the part of the land as to which the term has been surrendered ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the sublease.

(2) In this section "right of re-entry" includes a right to determine the sublease by notice to quit or otherwise; but where the notice is served by a person entitled to a severed part of the reversion so that it extends to part only of the land sublet, the sub-lessee may within one month determine the sublease in regard to the rest of the land by giving to the owner of the reversionary interest therein a counter-notice expiring at the same time as the original notice.

(3) This section applies to subleases made before or after the commencement of this Law and whether the severance of the reversionary interest or partial avoidance or cesser of the term was effected before or after such commencement:

Provided that, where the sublease was made before the first day of January, nineteen hundred, nothing in this section shall affect the operation or a severance of the reversionary estate or partial avoidance or cesser of the term which was affected before the commencement of this Law.

108. Rent and benefit of sublessee's covenants to run with the reversion

(1) Rent reserved by a sublease and the benefit of every covenant or provision therein contained having reference to the subject matter thereof, and on the sublessee's part to be observed and performed and every condition of re-entry and other condition therein contained, shall be annexed and incidental to and shall go with the reversionary interest in the land or in any part thereof, immediately expectant on the term granted by the sublease notwithstanding severance of that reversionary interest, and without prejudice to any liability affecting a covenant or of his interest.

(2) Any such rent, covenant or provision shall be capable of being recovered, received, enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land sublet.

(3) Where that person becomes entitled by transfer or otherwise, such rent, covenant or provision may be recovered, received, enforced or taken advantage of by him notwithstanding that he becomes so entitled after the condition of re-entry or forfeiture has become enforceable, other conditions waived before such person becomes entitled as aforesaid.

(4) This section applies to subleases made before or after the commencement of this Law, but does not affect operation of—

(*a*) any severance of the reversionary interest; or

(*b*) an acquisition by transfer or otherwise of provision affected before the commencement of this Law.

109. Obligation of landlord's covenants to run with reversion

(1) The obligation under a condition or of a covenant entered into by a sublessor with reference to the subject matter of the sublease shall, if, and as far as the sublessor has power to bind the reversionary interest immediately expectant on the term granted by the sublease, be annexed and incidental to and shall go with that reversionary interest, or the several parts thereof notwithstanding severance of that reversionary interest and may be taken advantage of and enforced by the person in whom the term is from time to time vested by transfer, devolution in law or otherwise and if and as far as the sublessor has power to bind the person from time to time entitled to that reversionary interest the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

(2) This section applies to a sublease made before or after the commencement of this Law whether the severance of the reversionary interest was affected before or after such commencement.

(3) This section takes effect without prejudice to any liability affecting a covenantor or his estate.

PART VIII

Licences

110. Effect of licences granted to sublessees

(1) Where a licence is granted to do any act, the licence unless otherwise expressed extends only—

(*a*) to the permission actually given; or

(*b*) to the specific breach of any provision or covenant referred to; or

(*c*) to any other matter thereby specifically authorised to be done, and the licence does not prevent any proceeding for any subsequent breach unless otherwise specified in the licence.

(2) Notwithstanding any such licence—

(*a*) all rights under covenants and powers of re-entry contained in the sublease remain in full force and are available as against any subsequent breach of covenant, condition or other matter not specifically authorised or waived, in the same manner as if no licence had been granted; and

(*b*) the condition or right of entry remains in force in all respects as if the licence had not been granted save in respect of the particular matter authorised to be done.

(3) Where in any sublease there is power or condition of re-entry on the sublessee assigning, subletting or doing any other specified act without a licence and a licence is granted—

(*a*) to any one of two or more sublessees to do any act, or to deal with his equitable share or interest; or

(*b*) to any sublessee or to any one or two or more sublessees to assign or underlet part only of the property or to do any act in respect of part only of the property,

the licence does not operate to extinguish the right of entry in case of any breach of covenant or condition by the sublessee or sublessees of the rest of the property (as the case may be) in respect of such shares or interests or remaining property, but the right of entry remains in force in respect of the shares, interest or property not the subject of the licence.

(4) Subsection (3) does not authorise the grant, after the commencement of this Law, of a licence to create an undivided share in a legal interest.

111. No fine to be exacted for licence

In all subleases containing a covenant, condition or agreement against assigning, underletting or parting with the possession, or disposing of the land or property sublet without licence or consent, such covenant, condition or agreement shall, unless the sublease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent, but this proviso does not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to such licence or consent.

PART IX

Miscellaneous

112. Sublessee to give notice of ejectment to sublessor

Every sublessee to whom there is delivered any writ for the recovery of premises demised to or held by him or to whose knowledge any such writ comes, shall forthwith give notice thereof to his sublessor or his bailiff or receiver and if he fails so to do he shall be liable to forfeit to the person of whom he holds the premises an amount equal to the value of three years rent of the premises, to be recovered by action in any court having jurisdiction in respect of claims for such an amount.

113. Restriction on and relief against forfeiture of subleases and sub-underleases

(1) A right of re-entry or forfeiture under any proviso or stipulation in a sublease for a breach of any covenant or condition in the sublease shall not be enforceable by action or otherwise unless and until the sublessor serves on the sublessee a notice—

(*a*) specifying the particular breach complained of; and

(*b*) if the breach is capable of remedy requiring the sublessee to remedy the breach; and

(*c*) in any case requiring the sublessee to make compensation in money for the breach,

and the sublessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy and to make reasonable compensation in money to the satisfaction of the sublessor for the breach.

(2) Where a sublessor is proceeding by action or otherwise to enforce such right of re-entry or forfeiture, the sublessee may in the sublessor's action if any or in any action brought by himself, apply to the court for relief and the court may grant or refuse relief as the court, having regard to the proceeding and conduct of the parties under the foregoing provisions of this section and to all the other circumstances thinks fit, and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any like breach in the future as the court, in the circumstances of each case, thinks fit.

(3) A sublessor shall be entitled to recover as a debt due to him from a sublessee and in addition to damages (if any), all reasonable costs and expenses properly incurred by the sublessor in the employment of a solicitor and surveyor or valuer or otherwise in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the sub-lessee is waived by the sublessor or from which the sublessee is relieved, under the provisions of this Law.

(4) Where the sublessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a sublease or for non-payment of rent, the court may, on application by any person claiming as sub-underlessee any interest in the property comprised in the sublease or any part thereof either in the sublessor's action (if any) or in any action brought by such person for that purpose, make an order vesting for the whole term of the sublease or any part thereof in any person entitled as sub-underlessee to any execution of any deed or other document, payment of rent, cost, expenses, damages, compensation, giving security or otherwise as the court in the circumstances of each case may think fit; but in no case shall any such sub-underlessee be entitled to require a sublease to be granted to him for any longer term than he had under his original sub-underlease.

(5) For the purpose of this section—

(*a*) **"sublease"** includes an original or derivative sub-underlease, also an agreement for a sublease where the sublessee has become entitled to have the same granted, also a grant of security for rent by condition;

(*b*) **"sublessee"** includes an original or derivative sub-underlessee, and the person deriving title under a sub-underlessee, also a grantee under any such grant as aforesaid and the person deriving title under him;

(*c*) **"sublessor"**, includes an original or derivative sub-underlessor; also a person making such grant as aforesaid and the person deriving title under him;

(*d*) **"underlease"** with its grammatical derivatives has the same meaning as **"sublease"**.

(6) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the sublease in pursuance of the directions of any enactment.

(7) For the purposes of this section a sublease limited to continue as long only as the sublessee abstains from committing a breach of covenant shall be and take effect as a sublease to continue for any longer term for which it could subsist but determinable by a proviso for re-entry on such a breach.

(8) This section does not extend to a covenant or condition against assigning, underletting, parting with the possession or disposing of the land sublet where the breach occurred before the commencement of this Law.

(9) Where a condition of forfeiture or taking in execution of the sublessee's interest is contained in any sublease—

(*a*) if the sublessee's interest is sold within a year after taking in execution, this section applies to the forfeiture conditions aforesaid;

(*b*) if the sublessee's interest is not sold before the expiration of that year this section only applies to the forfeiture condition aforesaid during the first year from the date of the taking in execution.

(10) This section does not, save as otherwise mentioned, affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(11) This section has effect notwithstanding any stipulation to the contrary.

114. Waiver of covenant in a sublease

(1) Where any actual waiver by a sublessor, or the persons deriving title under him, of the benefit of any covenant or condition in any sublease is proved to have taken place in any particular instance, such waiver shall not be deemed to extend to any instance or to any breach of covenant or condition save that to which such waiver specially relates, nor operate as a general waiver of the benefit of any such covenant or condition.

(2) This section applies unless a contrary intention appears, and extends to waivers effected before or after the commencement of this Law.

115. Abolition of *interesse termini*, and as to reversionary subleases and subleases for lives

(1) The doctrine of *interesse termini* is hereby abolished.

(2) As from the commencement of this Law, all terms of years absolute shall, whether the interest is created before or after such commencement, be capable of taking effect at law or in equity according to the interest or powers of the grantor, from the date fixed for commencement of the term, without actual entry.

(3) A term at a rent, limited, after the commencement of this Law, to take effect more than twenty-one years from the date of the instrument purporting to create it, shall be void, and contract made after such commencement to create such a term shall likewise be void; but this subsection does not apply to any term taking in equity under an equitable power of mortgage, indemnity or other like purposes.

(4) Nothing in subsections (1) and (2) of this section shall prejudicially affect the right of the person to recover any rent or to enforce or take advantage of any covenant or conditions or, as respects term or interests created before the commencement of this Law, imposed in respect of such term or interests.

(5) Nothing in this Law affects the rule of law that a legal term, whether or not being a mortgage term, may be created to take effect in reversion expectant on a longer term, which rule is hereby confirmed.

116. Surrender of a sublease without prejudice to sub-underlease with a view to the grant of a new sublease

(1) A sublease may be surrendered pursuant to the acceptance of a new sublease in place thereof a surrender of any sub-underlease derived thereout.

(2) A new sublease may be granted and accepted in place of any sublease so surrendered without surrendering any sub-underlease. The new sublease operates as if all sub-underleases derived out of the surrender sublease had been surrender before the surrender of that sublease was affected.

(3) The sublease under the new sublease and any person deriving title under him is entitled to the same rights and remedies in respect of the rent reserved by and the covenants, agreements and conditions contained in any sub-underlease as if the original sublease had not been surrendered but was or remained vested in him.

(4) Each sublease and any person deriving title under him is entitled to hold and enjoy the land comprised in his sublease (subject to the payment of any rent reserved by and to the observance of the covenants, agreements and conditions contained in the sublease) as if the sublease out of which the sublease was derived had not been surrendered.

(5) The sublessor granting the new sublease and any person deriving title under him is entitled to the same remedies of entry in and upon the land comprised in any such sublease for rent reserved by or for breach of any covenant as the rents reserved by or for covenant, agreement or conditions contained in the new sublease (so far only as the rents reserved by or contained in the covenants, agreements or condition contained in the new sublease do not exceed or impose greater burdens than those reserved by or contained in the original sublease out of which the sublease is derived) as he would have had—

(*a*) if the original sublease had remained in force; or

(*b*) if a new sub-underlease derived out of the new sub-underlease has been granted to the sub-underlessee or a person deriving title under him as the case may require.

(6) This section does not affect the power of the court to give relief against forfeiture.

117. Provision as to attornment by tenants

(1) Where land is subject to a sublease the transfer of a reversion in the land expectant on the determination of the sublease shall be valid without any attornment of the sublessee.

Nothing in this subsection—

(*a*) affect the validity of any payment of rent by the sublessee to the person making the transfer or grant if given to him by the person entitled thereunder;

(*b*) renders the sublessee liable for any breach of covenant to pay rent to the person entitled under the transfer or grant before such notice is given to the sublessee.

(2) An attornment by the sublessee in respect of any land to a person claiming to be entitled to the interest in the land of the sublessor, if made without the consent of the sub-lessor, shall be void.

(3) This subsection does not apply to an attornment—

(*a*) made pursuant to a judgment of a court of competent jurisdiction; or

(*b*) to a mortgagee by a sublessee holding under a sublease from the mortgagor where the right of redemption is barred; or

(*c*) to any other person rightfully deriving title under the sublessor.

118. Sub-lease invalidated by reason of non-compliance with terms of powers under which they are granted

(1) Where in the intended exercise of any power of subletting, whether conferred by any enactment or any other instrument, a sublease (in this section referred to as an invalid sublease) is granted, which by reason of any failure to comply with the terms of the power is invalid, then—

(*a*) as against the person entitled after the determination of the interest of the grantor to the reversion; or

(*b*) as against any other person who subject to any sublease properly granted under the power would have been entitled to the land comprised in the sublease.

(2) The sublease if it was made in good faith, and the sublessee has entered thereunder shall take effect in equity as a contract for the grant at the request of the sublessee of a valid sublease under the power of like effect as the invalid sublease subject to such variations as may be necessary in order to comply with the terms of the power:

Provided that a sublessee under an invalid sublease shall not by virtue of any such implied contract be entitled to obtain a variation of the sublease if the other persons who would have been bound by the contract are willing and able to confirm the sublease without variation.

(3) Where during the continuance of the possession taken under an invalid sublease the person for the time being entitled, subject to such possession to the land comprised therein or to the rents and profits thereof, is able to confirm the sublease without variation by the sublessee or other person who would have been bound by the sublease had it been valid, shall, at the request of the person so able to confirm the sublease, be bound to accept a confirmation thereof and thereupon the sublease shall have effect and be deemed to have had effect as a valid sublease from the grant thereof.

(4) Confirmation under subsection (3) may be by a memorandum in writing signed by or on behalf of the persons respectively confirming or accepting the confirmation of the sublease.

(5) Where a receipt or a memorandum in writing confirming an invalid sublease is upon or before the acceptance of rent thereunder signed by or on behalf of the person accepting the rent, that acceptance shall as against that person be deemed to be a confirmation of the sublease.

(6) The foregoing provisions of this section do not affect prejudicially—

(*a*) any right of action or other right or remedy to which, but for those provisions or by enactment replaced by those provisions, the sublessee named in an invalid sublease would or might have been entitled under any covenant on the part of the grantor to title or quiet enjoyment contained therein or implied thereby; or

(*b*) any right of re-entry or other right or remedy to which, but for those provisions or any enactment replaced thereby the grantor or other person for the time being entitled to the reversion expectant on the termination of the sublease would or might have been entitled by reason of any breach of the covenants, conditions or provisions contained in the sublease and binding on the sublessee.

(7) Where a valid power of subletting is vested in or may be exercised by a person who grants a sublease which by reason of the determination of the interest of the grantor or otherwise cannot have effect and continuance according to the terms thereof independently of the power, the sublease shall for the purposes of this section be deemed to have been granted in the intended exercise of the power although the power is not referred to in the sublease.

(8) This section does not apply to a sublease or land held on charitable ecclesiastical or public trusts.

(9) This section takes effect without prejudice to the provisions in this Law on the grant of subleases in the name and on behalf of the holder of the right of occupancy in the land affected.

PART X

Rights and Liabilities on Determination of Tenancy

119. Duty of tenant

Subject to this Law or any other written law in force in the State, the tenant shall on expiration or sooner determination of his tenancy, deliver up to his landlord the peaceable and quiet possession of the premises sublet and all parts thereof, including any part he may have sublet to a subtenant, together with all the erections, buildings, improvements and fixtures which he is not entitled to remove.

120. Duty of tenant to eject subtenant

(1) Where the tenant has let the whole or any part of the premises to a subtenant who is in possession at the time of the expiration or determination of the term, the tenant shall get such subtenant out so that the landlord shall have complete possession of the premises to which he is entitled.

(2) When the tenant fails to get the subtenant out of the premises or otherwise deliver up complete possession, the landlord may maintain an action against him for failure to quit and deliver up possession at the end of the term.

(3) In any such action, the landlord shall recover against the tenant reasonable damages and costs sustained by him by reason of the tenant's failure to deliver up complete possession of the premises.

(4) Where, however, a tenant of a dwelling-house had during the tenancy lawfully sublet a portion of the premises and he afterwards gives the landlord proper notice to determine the tenancy and also gives the subtenant proper notice to quit so as to determine the sub-tenancy at the same time as the tenancy was terminated, the fact that the subtenant holds over and refuses to quit shall not render the tenant, if he has done everything legally possible to give the landlord vacant possession, liable to the landlord for rent for use and occupation or for damages:

Provided that this subsection shall not apply where the subletting was originally in breach of a covenant unless the breach has been waived by the landlord.

121. Tenant's liability by holding over

(1) Subject to subsection (4) of the last foregoing section, a tenant shall be liable for failure to give up complete possession of the premises at the end of the tenancy; and even where a subtenant wrongfully holds over and refuses to quit, the tenant is liable for the period of such holding over:

Provided that nothing in this section shall prevent a landlord from accepting a subtenant of his own tenant, in which case the tenant shall be discharged from liability under this section.

(2) If premises are let to two persons for a term at the end of which one holds over the assent of the other, both shall be liable for the time the one actually occupies; but the one who did not actually occupy shall not be liable if the holding over was without his assent.

(3) Where a tenancy from year to year has been determined by notice to quit, the mere accidental detention of the key by the tenant (who has quit the premises and removed his goods) for two to seven days beyond the expiration of the term does not amount to any evidence of use or occupation so as to make him liable.

122. Interpretation

In this Law, unless the context otherwise requires—

"agent" means a person lawfully authorised by another person to do an act for or on behalf of that other person;

"contract for a sublease" includes a contract to create a sub-underlease;

"create" with regard to tenancy includes **"presumed to create"**;

"deed" means a writing which is signed, sealed and delivered by the parties;

"donee" of a power means a person who is given power to create tenancies;

"estate" means the sum total of interests which a person has in any land or tenement;

"infant" means a person under the age of eighteen years;

"person" includes a body corporate or unincorporated;

"power" includes a power of attorney;

"possession" includes right of possession, receipt of rents and profits, and right to receive rent and profits;

"premium" means a sum of money, other than rent, paid by a tenant to the landlord on the creation of a tenancy;

"property" includes land and buildings and interest in them;

"property concerned" means property the subject matter of a tenancy, and **"property let"** has the same meaning;

"rent period" means the period of time with reference to which a rent is fixed or payable under a given tenancy, such as a year in a tenancy from year to year, a month in a monthly tenancy;

"reversion" means the interest which remains vested in the landlord during the currency of a tenancy and includes the interest which revests in him at the end of the tenancy;

"reversioner" means the owner of the reversion;

"right of occupancy" has the meaning assigned to it in the Land Use Act 1978;

"State" means Cross River State of Nigeria;

"sublease" means a term created out of, and coming next in hierarchy to, a right of occupancy; also the term so created;

"sublessor" means the person who creates a sublease;

"sub-underlease" means a term of years created out of an underlease;

"tenancy" includes a subtenancy;

"term of years" means a tenancy for any period of time short of perpetuity; not being dependent directly or indirectly on the existence of a life;

"title paramount" means a title which is superior to the titles both of a landlord neither is enabled to make a valid defence; it also means the owner of such title;

"underlease" has the same meaning as sublease;

"underlessee" and **"underlessor"** have the same meaning as sublessee and sublessor respectively.

123. Short title

This Law may be cited as the Landlord and Tenant Law.

CHAPTER L5

LANDLORD AND TENANT LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER L6

LAW OF PROPERTY LAW

ARRANGEMENT OF SECTIONS

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CHAPTER L6

LAW OF PROPERTY LAW

(20*th December*, 1991)

[Commencement.]

PART I

General Principles as to Legal Interests, Equitable Interests and Powers

1. Legal and equitable interest

(1) The only legal rights and interest which are capable of subsisting or of being created or transferred in land are—

(*a*) a right of occupancy;

(*b*) a sublease;

(*c*) an underlease;

(*d*) a sub-underlease;

(*e*) a charge by way of legal mortgage;

(*f*) a right of entry or re-entry exercisable over or in respect of any of the interests in (*a*), (*b*), (*c*), or (*d*) above.

(2) All other interests and charges in or over land take effect, or may be created, as equitable interest.

(3) Where any land has before the commencement of this Law been held as an estate in fee tail the same shall be deemed to be held as a right of occupancy after the commencement of this Law, and any grant or devise in such terms as would before the commencement of this Law have created an estate in fee tail takes effect as the grant or other disposition of a right of occupancy.

(4) The legal rights, interests and charges which in this section are authorised to subsist or to be created or transferred in land (hereinafter called "legal interests") wherever the context permits shall have the same incidents as legal estates subsisting at the commencement of this Law.

(5) A legal interest may subsist concurrently with or subject to any other legal interest in the same land in like manner as it could have done before the commencement of this Law.

(6) A legal interest is not capable of subsisting or of being created in an undivided share in land.

(7) A legal interest in land is not capable of being held by an infant.

(8) Every power of appointment over, or power to transfer or charge land or any interest therein, whether created by a statute or other instrument or implied by Law, and whether created before or after the commencement of this Law (not being a power vested in a legal mortgagee or the owner of a legal interest in right of his interest and exercisable by him or by another person in his name and on his behalf), operates only in equity.

(9) Right, interest and charges in or over land which are not legal interests are in this Law referred to as "equitable interests", and powers which by this Law are to operate in equity only are in this Law referred to as "equitable powers".

(10) The provisions in any statute or other instrument requiring land to be transferred to uses shall take effect as directions that the land shall (subject to creating or reserving thereout any legal interest authorised by this Law which may be required) be transferred to a person of full age upon the requisite trusts.

2. Profit of the land until sale after payments of rates, taxes, costs of insurance, repairs, and other outgoings, upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the equitable interests and powers affecting the same respectively, of which they have notice, and whether created before or after the disposition upon trust for sale, according to their respective properties.

3. (1) Where, by reason of the exercise of any equitable power or under any trust affecting the proceeds of sale, any principal sum is required to be raised, or any person of full age becomes entitled to require a legal interest in the land to be vested in him in priority to the trust for sale, then unless the claim is satisfied out of the net proceeds of sale, the trustees for sale shall (if so

requested in writing) be bound to transfer or create such legal interest, to take effect in priority to the trust for sale, as may be required for raising the money by way of legal mortgage or for giving legal effect to the rights of the person so entitled:

Provided that, if the proceeds of sale are held in trust for a person of full age in undivided share absolutely free from encumbrances affecting undivided shares, those persons cannot require the land to be transferred to them in undivided shares but may (subject to effect being given by way of legal mortgage in encumbrances affecting the entirety) require the same to be vested in any of them (not exceeding four) as joint tenants on trust for sale; and if the transaction purports to transfer the land to any of them in undivided shares or to more than four such persons, it shall operate only as a transfer to them or (if more than four) to the four first named therein as joint tenants on trust for sale.

Where the legal interest affected is not vested in trustees for sale, the owner thereof shall be bound to give effect to the equitable interests and powers affecting his interest of which he has notice according to their respective priorities; but this provision does not affect the priority or powers of person or representatives for purposes of administration.

(2) Effect may be given by means of a legal mortgage to any agreement for a mortgage, charge or lien (whether or not arising by operation law) if the agreement, charge or lien ought to have priority over the trust for sale.

(3) Where, by reason of a statutory or other right of reverter, or of an equitable right of entry takes effect, or for any other reason, a person becomes entitled to require a legal interest to be vested in him, then and in any such case the owner of the interest that is affected shall be bound to transfer or create such legal interest as the case may require.

(4) If any question arises whether any and what legal interest ought to be transferred or created as aforesaid, any person interested may apply to the court for directions in the manner provided by this Law.

(5) If the trustees for sale or other interest owners refuse or neglect for one month after demand to transfer or create any such legal interest, or if by reason of their being out of Nigeria or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court is satisfied that the transaction cannot otherwise be effected, or cannot be effected without undue delay or expense, the court may, on the application of any person interested, make a vesting order transferring or creating a legal interest in the manner provided by this Law.

(6) This section does not affect a purchaser of a legal interest taking free from an equitable interest or power.

4. Creation and disposition of equitable interest

(1) Interests in land validly created or arising after the commencement of this Law which are not capable of subsisting as legal interests shall take effect as equitable interests, and save as otherwise expressly provided by statute, interests in land which under the law in force at the commencement of this Law could before such commencement have been created as legal interests, shall be capable of being created as equitable interests:

Provided that, after the commencement of this Law (and save as hereinafter expressly enacted) an equitable interest in land shall only be capable of being validly created in any case in which an equivalent equitable interest in property could have been validly created before such commencement.

(2) All rights and interests in land may be disposed of, including—

(*a*) a contingent, executory or future equitable interest in any land, or a possibility coupled with an interest in any land whether or not the object of the gift or limitation of such interest or possibility be ascertained;

(*b*) a right of entry into or upon land whether immediate or future, and whether vested or contingent.

(3) All rights of entry affecting a legal interest which are exercisable on condition broken or for any other reason, may after the commencement of this Law, be made exercisable by any person and the persons deriving title under him, but, in regard to a right of occupancy only within the period authorised by the rule relating to perpetuities.

5. Satisfied terms whether created out of right of occupancy or sublease to cease

(1) Where the purpose of a sublease or an underlease created or limited at any time out of a right of occupancy becomes satisfied either before or after the commencement of this Law (whether or not that term either by express declaration or by construction of law becomes attendant upon the reversion), it shall merge in the reversion expectant thereon and shall cease accordingly.

(2) Where the purpose of a sub-underlease created or limited, at any time, out of a sublease or an underlease, becomes satisfied after the commencement of this Law, that term shall merge in the reversion expectant thereon and shall cease accordingly.

(3) Where the purpose is satisfied only as respects part of the land comprised in a term, this section shall have effect as if a separate term had been created in regard to that part of the land.

6. Saving of sublessor's and sublessee's covenants

(1) Nothing in this Part of this Law affects prejudicially the right to enforce any sublessor's or sublessee's covenant, agreement or conditions (including a valid option to purchase or right of pre-emption over the reversion), contained in any such instrument as is in this section mentioned, the benefit or burden of which runs with the reversion or the term.

(2) This section applies where the covenant, agreement or condition is contained in any instrument—

(*a*) creating a term of years;

(*b*) varying the rights of the sublessor or sublessee under the instrument creating the term.

7. Saving of legal interest in certain cases

(1) A right of occupancy which, by virtue of any enactment, is liable to be divested, is nevertheless a right of occupancy for purposes of this Law and remains liable to be divested as if this Law had not been passed.

(2) A statutory right of occupancy subject to a legal or equitable right of entry or re-entry is, for purposes of this Law, a right of occupancy.

(3) A right of occupancy vested in a corporation which is liable to determine by reason of the dissolution of the corporation is nevertheless a right of occupancy for purposes of this Law.

(4) The provisions of any enactment conferring special facilities or prescribing special modes for the vesting (by transfer or otherwise) of land in trustees or any person or the holder for the time being of an office or any corporation sole or aggregate (including the State) shall remain in full force.

(5) Where any such power for disposing of or creating a legal interest is exercisable by a person who is not the interest owner, the power shall, when practicable, be exercised in the name and on behalf of the interest owner.

8. Saving of certain legal powers to sublease

All subleases or tenancies at a rent for a term of years absolute authorised to be granted by a mortgagor or mortgagee or any enactment (whether or not extended by any instrument) may be granted in the name and on behalf of the interest owner by the person empowered to grant the same, whether being the interest owner or not, with the same effect and priority as if this part of this Law had not been passed; but this section does not (except as respects the usual qualified covenant for quiet enjoyment) authorise any person granting a sublease in the name of an interest owner to impose any personal liability on him.

9. Vesting orders and disposition of legal interests operating as transfers by an interest owner

(1) Every such order, declaration, or transfer as is hereinafter mentioned, namely—

(*a*) every vesting order made by any court or other competent authority;

(*b*) every vesting declaration (express or implied) under any statutory power;

(*c*) every transfer by a person appointed for the purpose under an order of the court or authorised under any statutory power to transfer in the name or on behalf of an interest owner;

(*d*) every transfer made under any power reserved or conferred by this Law,

which is made or executed for the purpose of vesting, transferring or creating a legal interest, shall operate to transfer or create the legal interest disposed of in the like manner as if the same had been a transfer executed by the owner of the legal interest to which the order, declaration or transfer relates.

(2) Where the order, declaration or transfer is made in favour of a purchaser, the provisions of this Law relating to a transfer of a legal interest to a purchaser shall apply thereto.

(3) The provisions of any written law relating to vesting orders and orders appointing a person to transfer shall apply to vesting orders authorised to be made by this Part of this Law.

10. Title to be shown legal interests

(1) Where title is shown to a legal interest in land, it shall be deemed not necessary or proper to include in the abstract of title an instrument relating only to interests or powers which will be over-reached by the transfer of the interest to which title is being shown; but nothing in this Part of this Law affects the liability of any person to disclose an equitable interest or power which will not be so over-reached, or to furnish an abstract of any instrument creating or affecting the same.

(2) A legal practitioner delivering an abstract framed in accordance with this Part of this Law shall not incur any liability on account of an omission to include therein an instrument which, under this section, is to be deemed not necessary or proper to be included, nor shall any liability be implied by reason of the inclusion of any such instrument.

11. Limitation and prescription laws

Nothing in this Part of this Law affects the operation of any enactment or the general law for the limitation of actions or proceedings relating to land or with reference to the acquisition of easements or rights over or in respect of land.

12. Effect of possession of documents

This Law shall not prejudicially affect the right or interest of any person arising out of or consequent upon the possession by him of any documents relating to a legal interest in land or affect any question arising out of or consequent upon any omission to obtain, or any other absence of possession by any person of, any documents relating to a legal interest in land.

13. Interests of persons in possession

This Part of this Law shall not prejudicially affect the interest of any person in possession or in actual occupation of land to which he may be entitled in right of such possession or occupation.

14. Presumption that parties are of full age

The persons expressed to be parties to any transfer of interest in land shall, until the contrary is proved, be presumed to be of full age at the date thereof.

15. Effect of transfer of right of occupancy to infants

(1) A transfer of a right of occupancy to an infant jointly with one or more other persons of full age shall operate to vest the legal interest in that other person or persons on statutory trusts, but not so as to sever any joint tenancy in the net proceeds of sale or in the rents and profits until sale.

(2) A transfer of a right of occupancy to an infant alone or to two or more infants jointly shall not be effectual to pass any legal interest but shall operate as a declaration of trust for sale, and the grantor shall be deemed henceforth to hold the land on trust for sale, with power to postpone sale, for the benefit of the infant or infants.

(3) The foregoing provisions of this section do not apply to transfers on trust or by way of mortgage.

(4) A transfer of a right of occupancy to an infant jointly with a person of full age on any trust shall operate as if the infant had not been mentioned therein, but without prejudice to the beneficial interest, if any, intended to be thereby provided for the infant.

(5) A grant or transfer of a legal mortgage of land to an infant shall operate only as an agreement for valuable consideration to execute a proper transfer when the infant attains full age, and in the meantime to hold any beneficial interest in the mortgage debt on trust for the person for whose benefit the transfer was intended to be made.

(6) A grant or transfer of a legal mortgage of land to an infant and one or more other persons of full age shall operate as if the infant had not been mentioned therein, but without prejudice to any beneficial interest in the mortgage debt intended to be thereby provided for the infant.

16. Infants not to be appointed trustees

The appointment of an infant to be a trustee in relation to any settlement or trust shall be void, but without prejudice to the power to appoint a new trustee to fill the vacancy.

17. Receipts by married infants

A married infant shall have power to give valid receipts for all incomes (including accumulations of income made during the minority) to which the infant may be entitled in like manner as if the infant were of full age.

18. Transfers on behalf of lunatics and as to lands held by them on trust for sale

(1) Where a legal interest in land is vested in a lunatic, either solely or jointly with any other person or persons, his committee or receiver shall, under an order in lunacy or of the court, or under any statutory power, make or concur in making all requisite dispositions for transferring or creating a legal interest in the name and on behalf of the lunatic.

(2) If land held on trust for sale is vested in a lunatic, either solely or jointly with any other person or persons, a new trustee shall be appointed in his place, or he shall be otherwise discharged from the trust, before the legal interest is dealt with under the trust for sale or under the powers vested in the trustees for sale.

19. Effects of future dispositions to tenants in common

(1) An undivided share in land shall not be capable of being created except as thereinafter mentioned.

(2) Where, after the commencement of this Law, land is expressed to be transferred to any persons in undivided shares and those persons are of full age, the transfer shall (notwithstanding anything to the contrary in this Law) operate as if the land had been expressed to be transferred to the grantees, or, if there are more than four grantees, to the four first named in the transfer, as joint tenants upon the statutory trusts hereinafter mentioned and so as to give effect to rights of the persons who would have been entitled to the shares had the transfer operated to create those shares:

Provided that, where the transfer is made by way of mortgage, the land shall vest in the grantees or such four of them as aforesaid for a term of years absolute (as provided by this Law) as joint tenants subject to cesser or redemption in like manner as if the mortgage money had belonged to them in a joint account, but without prejudice to the beneficial interests in the mortgage money interest.

(3) A disposition of appointment made by will, coming into operation after the commencement of this Law, of land to two or more persons in undivided shares shall operate as a disposition or appointment of the land to the personal representatives of the testator, and (but without prejudice to the rights and powers of the personal representatives for purposes of administration) upon the statutory trusts hereinafter mentioned.

(4) Any disposition purporting to make a settlement of an undivided share in land shall only operate as a settlement of a corresponding share of the net proceeds of sale and of the rents and profits until sale of the entirety of the land.

20. Meaning of "statutory trusts"

For the purposes of this Law, land held upon the "statutory trusts" shall be held upon the trusts and subject to the provisions following, namely, upon trust to sell the same and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rents and profits until sale after payment of rates, taxes, costs of insurance, repairs, and other outgoings, provisions as may be requisite for giving effect to the rights of the persons (including an encumbrancer of a former undivided share or whose encumbrance is not secured by a legal mortgage) interested in the land.

21. Joint tenancies

(1) Where a right of occupancy is beneficially limited to or held on trust for any persons as joint tenants, the same shall be held on trust for sale in like manner as if the persons beneficially entitled were tenants in common, but not so as to sever their tenancy in equity.

(2) No severance of a joint tenancy of a right of occupancy, so as to create a tenancy in common in land, shall be permissible, whether by operation of law or otherwise, but this subsection does not affect the right of a joint tenant to realise his interest to the other joint tenants, or the right to sever a joint tenancy in an equitable interest whether or not the legal interest is vested in the joint tenants.

(3) Where a right of occupancy is vested in joint tenants beneficially, and any tenant desires to sever the joint tenancy in equity, he shall give to the other joint tenants a notice in writing of such desire or do such other act or things as would, as in the case of chattels, be effectual to sever the tenancy in equity, and thereupon under the trust for sale affecting the land, the net proceeds of sale and the net rents and profits until sale shall be held upon the trusts which would have been requisite for giving effect to the beneficial interest if there had been an actual severance.

(4) Nothing in this Law affects the right of a survivor of joint tenants, who is solely and beneficially interested, to deal with his legal interest as if it were not held on trust for sale.

(5) Without prejudice to the right of a joint tenant to release his interest to the other joint tenants, no severance of a mortgage term or trust property, so as to create a tenancy in common, shall be permissible.

22. Rights of husband and wife

A husband and wife shall, for all purposes of acquisition of any interest in property under a disposition made or coming into operation after the commencement of this Law, be treated as separate persons.

23. (1) Where under a disposition or other arrangement which, if a holding in undivided shares had been permissible, would have created a tenancy in common, a wall or other structure is or is expressed to be made a party wall or structure, that structure shall be and remain severed vertically as between the respective owners, and the owner of each part shall have such rights to support and user over the rest of the structure as may be requisite for conferring rights corresponding to those which would have subsisted if a valid tenancy in common had been created.

(2) Any person interested may, in case of dispute, apply to the court for an order declaring the rights and interests under this section for the persons interested in any such party structure, and the court may make such order as it thinks fit.

24. Transitional provisions in First Schedule

For the purpose of effecting the transition from the existing prior to the commencement of this Law to the law enacted hereby the provisions set out in the First Schedule hereto shall have effect—

(*a*) for converting existing legal estates, interest and charges not capable under the Law of taking effect as legal interests into equitable interests;

(*b*) for discharging, getting in or vesting outstanding legal interest;

(*c*) for making provisions with respect to legal interests vesting in infants;

(*d*) for subjecting land held in undivided shares to trusts for sale;

(*e*) for dealing with party structures and open spaces held in common;

(*f*) for converting existing freehold mortgages into mortgages of legal interests;

(*g*) for converting existing leasehold mortgages into mortgages of subleases or underleases.

25. Duration of trust for sale

(1) Where land has, either before or after the commencement of this Law become subject to any express or implied trust for sale, such trust shall, so far as regards the safety and protection of any purchaser thereunder, be deemed to be subsisting until the land has been transferred to or under the direction of the persons interested in the proceeds of sale.

(2) This section applies to sales whether made before or after the commencement of this Law, but operates without prejudice to an order of any court restraining a sale.

26. Appointment of trusts of dispositions on trust for sale

(1) The persons having power to appoint new trustees of a transfer of land on trust for sale shall be bound to appoint the same persons (if any) who are for the time being trustees of the settlement of the proceeds of sale, but a purchaser shall not be concerned to see whether the proper persons are appointed trustees of the transfer of the land.

(2) This section applies whether the settlement of the proceeds of sale or the transfer on trust for sale comes into operation before or after the commencement of this Law.

27. Power to postpone sale

(1) A power to postpone sale shall, in the case of every trust for sale of land, be implied unless a contrary intention appears.

(2) Where there is a power to postpone the sale, then (subject to any express direction to the contrary in the instrument, if any, creating the trust for sale) the trustees for sale shall not be liable in any way for postponing the sale, in the exercise of their discretion for any indefinite period; and a purchaser of a right of occupancy shall not be concerned in any case with any directions respecting the postponement of sale.

(3) The foregoing provisions of this section apply whether the trust for sale is created before or after the commencement or by virtue of this Law.

(4) Where a disposition or settlement coming into operation after the commencement of this Law contains a trust either to retain or sell land, the same shall be construed as a trust to sell the land with power to postpone the sale.

28. Consents to execution of a trust for sale

(1) If the consent of more than two persons is by the disposition made requisite to the execution of a trust for sale of land, then, in favour of a purchaser, the consent of two of such persons to the execution of the trust or to the exercise of any statutory or other powers vested in the trustees for sale shall be deemed sufficient.

(2) Where the person whose consent to the execution of any such trust or power is expressed to be required in a disposition is not *sui juris* or becomes subject to a disability, his consent shall not, in favour of a purchaser, be deemed to be requisite to the execution of the trust or the exercise of the power; but the trustees shall, in any such case, obtain the separate consent of the parent or testamentary or other guardian of an infant or the committee (if any) of a lunatic.

(3) Trustees for sale shall so far as practicable consult the persons of full ages for the time being beneficially interested in possession in the rents and profits of the land until sale, and shall, so far as consistent with the general interest of the trust, give effect to the wishes of such persons, or in the case of dispute, of the majority (according to the value of their combined interests) to see that the provisions of this subsection have been complied with.

(4) In the case of a trust for sale, not being a trust for sale created by or in pursuance of the powers conferred by this or any other Law, subsection (3) shall not apply unless the contrary intention appears in the disposition creating the trust.

(5) This section applies whether the trust for sale is created before or after the commencement or by virtue of this Law.

29. Purchaser not to be concerned with the trust of the proceeds of sale which are to be paid to two or more trustees or to a trust corporation

(1) A purchaser of a right of occupancy from trustees for sale shall not be concerned with the trusts affecting the proceeds of sale of land subject to a trust for sale (whether made to attach to such proceeds by virtue of this Law or otherwise), or affecting the rents and profits of the land until sale, whether or not those trusts are declared by the same instrument by which the trust for sale is created.

(2) Notwithstanding anything to the contrary in the instrument (if any) creating a trust for sale of land or in the settlement of the net proceeds, the proceeds of sale or other capital money shall not be paid to or applied by the direction of fewer than two persons as trustees for sale, except where the trustee is a trust corporation, but this subsection does not affect the right of sale, except where the trustee is a trust corporation, but this subsection does not affect the right of a sole personal representative as such to give valid receipts for, or direct the application of, proceeds of sale or other capital money, nor except where capital money arises on the transaction, render it necessary to have more than one trustee.

30. Powers of management, etc., on trustees for sale

(1) Trustees for sale shall, in relation to land and to the proceeds of sale, have all the powers conferred upon them by sections 44 to 66 inclusive and (subject to any express trust to the contrary) all money arising under the said power shall be applicable in the same manner as if the money represented proceeds of sale arising under trust for sale.

(2) All land acquired under subsection (1) shall be transferred to the trustees on trust for sale.

(3) The powers conferred by subsection (1) shall be executed with such consents (if any) as would have been required on a sale under the trust for sale, and when exercised shall operate to over-reach any equitable interests or powers which are by virtue of this Law or otherwise made to attach to the net proceeds of sale as if created by a trust affecting those proceeds.

(4) Subject to any direction to the contrary in this disposition on trust for sale or in the settlement of the proceeds of sale, the net rents and profits of the land until sale, after keeping down costs of repairs or applied insurance and other outgoings shall be paid or applied in like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested.

(5) Where the net proceeds of sale have under the trusts affecting the same become absolutely vested in persons of full age in undivided shares (whether or not such shares may be subject to a derivative trust) the trustees for sale may, with the consent of the person, if any, of full age, not being annuitants, interested in possession in the net rents and profits of the land until sale, subject to the provisions of the Land Use Act—

(*a*) partition the land remaining unsold or any part thereof; and

(*b*) provide (by way of mortgage or otherwise) for the payment of any equality money,

and, upon such partition being arranged, the trustees for sale shall give effect thereto by transferring the land so partitioned in severally (subject or not to any legal mortgage created for raising equality money) to persons of full age and either absolutely or on trust for sale or

partly in one way and partly in another in accordance with the rights of the persons interested under the partition, but a purchaser shall not be concerned to see or inquire whether any such consent as aforesaid has been given:

Provided that—

(i) if a share in the net proceeds belongs to a lunatic, the consent of his committee, if any, shall be sufficient to protect the trustee for sale;

(ii) if a share in the net proceeds is affected by an encumbrance, the trustees for sale may either give effect thereto or provide for the discharge thereof by means of the property allotted in respect of such share, as they may consider expedient.

(6) If a share in the net proceeds is absolutely vested in an infant, the trustees for sale may act on his behalf and retain land (to be held on trust for sale, or other property to represent his share, but in other respects the foregoing power shall apply as if the infant had been of full age.

(7) This section applies to dispositions on trust for sale coming into operation either before or after the commencement or by virtue of this Law.

31. Delegation of powers of management by trustees for sale

(1) The powers of and incidental to leasing, accepting surrenders of subleases and management conferred on trustees for sale whether by this Law or otherwise, may, until sale of the land, be revocably delegated from time to time, by writing signed by them, to any person of full age (not being merely an annuitant) for the time being beneficially entitled in possession to the net rents and profits of the land during his life or for any less period; and in favour of a sublessee such writing shall, unless the contrary appears, be sufficient evidence that the person named therein is a person to whom the powers may be delegated, and the production of such writing shall, unless the contrary appears, be sufficient evidence that the delegation has not been revoked.

(2) Any power so delegated shall be exercised only in the names and on behalf of the trustees delegating the power.

(3) The persons delegating any power under this section shall not, in relation to the exercise or purported exercise of the power, be liable for the acts or defaults of the person to whom the power is delegated, but that person shall, in relation to the exercise of the power by him, be deemed to be in possession and to have the duties and liabilities of a trustee.

32. Powers of court where trustees for sale refuse to exercise power

If the trustees for sale refuse to sell or to exercise any of the powers conferred by either of the last proceeding sections, or any requisite consent cannot be obtained, any person interested may apply to the court for a vesting or other order for giving effect to the proposed transaction or for an order directing the trustees for sale to give effect thereto, and the court may make such order as it thinks fit.

33. Trust for sale of mortgaged property where right of redemption is barred

(1) Where any property, vested in trustees by way of security, becomes by virtue of any enactment relating to the limitation of actions, or of an order for foreclosure or otherwise discharged from the right of redemption, it shall be held by them on trust for sale.

(2) The proceeds of sale, after payment of costs and expenses, shall be applied in like manner as the mortgage debt, if received, would have been applicable, and the income of the property until sale shall be applied in the manner as the interest, if received, would have been

applicable; but this subsection operates without prejudice to any rule of law relating to the apportionment of capital and income between tenant for life and remainder man.

(3) This section does not affect the right of any person to require that, instead of a sale, the property shall be transferred to him or in accordance with his directions.

(4) This section applies whether the right of redemption was discharged before or after the commencement of this Law, but has effect without prejudice to any dealings or arrangement made before that date.

34. Implied trust for sale in settlement

(1) Where a settlement of property other than land or of land held upon trust for sale contains a power to invest money in the purchase or land, such land shall, unless the settlement otherwise provides, be held by the trustees on trust for sale; and the net rents and profits until sale, after keeping down costs of repairs and insurance and other outgoings, shall be paid or applied in like manner as the income or investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested in property other than land.

(2) This section applies to settlements coming into operation after the commencement of this Law.

35. Application of Part III to personal representative

The provisions of this Part of this Law relating to trustees for sale apply to personal representatives holding on trust for sale, but without prejudice to their rights and powers for purposes of administration.

36. Limitation of land by way of succession to create trust for sale

(1) Where any land is, before the commencement of this Law limited to or in trust for any person by way of succession, the same shall be deemed to be held on a trust for sale upon such trust and subject to powers as are necessary to give effect to the rights of the persons to whom the land is limited; and, after the commencement of this Law, land may be limited as aforesaid only by the creation of such trust for sale.

(2) When land is for the time being—

(*a*) limited in trust for any person as a right of occupancy or for a term of years subject to an executory limitation, gift or disposition over a failure of his issue or in any other event;

(*b*) limited in trust for any person in possession, being an infant, as a right of occupancy or for a term of years;

(*c*) limited in trust for any person as a right of occupancy or for a term of years contingent on the happening of any event,

it shall, for the purposes of this Law, be deemed to be limited for persons by way of succession, and the provisions of subsection (1) shall apply to it.

37. Vesting of land limited by way of succession

(1) A transfer or a disposition by will having effect after the commencement of this Law, by which land is limited to or in trust for any person by way of succession shall, if the land is not vested in trustees upon trust for sale in accordance with the provisions of section 136, operate to vest the land in the persons and upon the trusts specified in the succeeding provisions of this section.

(2) (*a*) The land shall vest—

(i) in the persons appointed by the instrument of transfer or the will as trustees of the settlement, or, if there are no such persons, then;

(ii) in the persons, if any, upon whom power of sale of the land or power to consent to or approve the exercise of the power of sale, is conferred, or, if there are no such persons, then;

(iii) in the persons, if any, who are for the time being under the transfer or the will, trustees with power of or upon trust for sale of any other land comprised therein and subject to the same limitations as the land to be sold or otherwise dealt with, or with power of consent to or approval of the exercise of such power.

(*b*) Where the land is limited by will and apart from subsection (1) there would be no trustees for sale for the purposes of this Law, then the personal representatives of the deceased shall, until other trustees are appointed, be the trustees for sale in whom the legal interest in the land concerned is by virtue of this subsection vested but where there is a sole personal representative, not being a trust corporation, it shall be obligatory on him to appoint an additional trustee to act with him for purposes of this Law, and the provisions of any written law in force in the State, relating to the appointment of new trustees and the vesting of trust property shall apply accordingly.

(3) The land shall be held by the trustees upon the trusts and subject to the provisions following, namely upon trust to sell the same with power to postpone sale of the whole or any part thereof and to stand possessed of the net proceeds of sale for payment of costs and the net rents and profits until sale after payment of rates, taxes, costs of insurance, repairs and other outgoings upon such trust and subject to such powers and provisions (including all powers and provisions specified in the settlement not inconsistent with the foregoing) as may be necessary for giving effect to the rights of the persons beneficially interested in the land.

38. Vesting of land under Settled Land Acts 1882-1890

Where by virtue of any deed, will, agreement or other instrument land is immediately before the commencement of this Law settled land for the purpose of the Settled Lands Acts 1882 to 1890 of the United Kingdom, the land shall be held by the persons who are immediately before the commencement of this Law trustees of the settlement for the purposes of the said Acts upon the trusts specified in subsection (3) of section 37.

39. Transfer disposition right of occupancy in infant operative only as declaration to create a trust for sale

(1) A transfer of a right of occupancy to an infant alone or to two or more persons jointly, both or all of whom are infants, for his or their own benefit shall operate only as a declaration that such right of occupancy is vested in the person who made the transfer upon trust to transfer the same to trustees for sale for the benefit of the infant or infants.

(2) A disposition of a right of occupancy by will to an infant alone or to two or more persons jointly, both or all or whom are infants, for his or their benefit shall operate only as a declaration that such right of occupancy is vested in the personal representatives of the testator upon trust, subject and without prejudice to the rights and powers of such personal representatives for purposes of administration, to transfer the same to trustees for sale for the benefit of the infant or infants.

40. Trust for sale arises from devolution of right of occupancy on an infant by reason of intestacy, etc.

Where, after the commencement of this Law, an infant is beneficially entitled to land under a right of occupancy or for a term of years and by reason of an intestacy or otherwise there is no instrument under which the interest of the infant arises or is acquired, a trust for sale for the benefit of the infant shall be deemed to have been created by the intestate or by the person whose interest the infant has acquired.

41. Trustees for sale share infant entitled to right of occupancy

(1) Where, by reason of an infant being beneficially entitled to land under a right of occupancy, such land is deemed to be held under a trust for sale by virtue of the provisions of subsection (2) of section 39, or a trust for sale is deemed to have been created by virtue of the provisions of section 40, and there are no trustees for sale of the land, then—

(*a*) the right of occupancy in the land shall vest in the Public Trustee upon such trusts as may by virtue of this Law be required for giving effect to the rights of the infant;

(*b*) the Public Trustee shall not be entitled to act in the trust, or charge any fee or be liable in any manner unless and until requested in writing to act on behalf of the infant by his parents or parent or testamentary or other guardian in the order named;

(*c*) after the Public Trustee has been so requested to act, and has accepted the trust, he shall become the trustee for sale, and no trustee shall (except by an order of the court) be appointed in his place without his consent;

(*d*) if there is no other person able and willing to appoint trustees the parents or parent or testamentary or other guardian of the infant, if respectively able and willing to act, shall (in the order named) have power by deed to appoint trustees who had refused to act in the trust, and to vest the land held upon trust for sale in them on the trusts aforesaid, and the provisions of any written law in force in the State relating to the appointment of new trustees, and the vesting of trust property shall apply as if the persons aforesaid (in the order named) have been nominated under trust for sale for the purpose of appointing new trustees thereof; and in default of any such appointment the infant by his next friend, may, during the minority, apply to the court for the appointment of trustees for sale, and the court may make such order as it thinks fit, and if thereby trustees for sale are appointed, the land held upon trusts for sale shall vest in such trustees as joint tenants upon the trusts aforesaid:

Provided that in favour of a purchaser a statement in the deed of appointment that the father or mother or both are dead or are unable or unwilling to make the appointment shall be conclusive evidence of the fact stated.

(2) Subsection (1) of this section does not apply where an infant is beneficially entitled in possession of land under a right of occupancy jointly with a person of full age, but it applies where two or more infants are entitled as aforesaid jointly and a trust for sale arises by virtue of subsection (2) of section 39 or section 40.

(3) Where a trust for sale is to be created for the benefit of an infant or infants in accordance with the provisions of section 39 of this Law, the trustees for sale, in whom the right of occupancy shall be vested, shall be such persons as may be appointed trustees by the person who made the transfer or by the personal representatives of the testator, as the case may be, in whom the right of occupancy transferred or disposed of by will to an infant or infants, is in the meantime by virtue of this Law, vested.

(4) As soon as practicable after any such transfer or disposition as is mentioned in section 39 has come into operation, the person or persons having the power under the provisions of subsection (3) of this section to appoint trustees for sale shall make the necessary appointment, and if there are no such person or persons able and willing to make the necessary appointments, then the court may, on the application of the testamentary or other guardian of the infant or infants for whose benefit the trust for sale is to be created, appoint fit persons to be trustees for sale, and the court may make such order as it thinks fit, and if thereby trustees for sale are appointed the land to be held upon trust for sale shall vest in such trustees as joint tenants upon such trusts as may by virtue of this Law be requisite for giving effect to the rights of the infant or infants.

PART II

Powers of Trustees for Sale

42. Powers of sale and exchange

Trustees for sale—

(*a*) may sell the trust land, or any part thereof, or any easement, right or privilege of any kind over or in relation to the land;

(*b*) may make exchange of the trust land, or any part thereof, or of any easement, right, or privilege of any kind, whether or not newly created, over or in relation to the trust land, or any part thereof, for other land, or for any easement, right or privilege of any kind, including an exchange in consideration of money paid for equality of exchange.

43. Stipulations respecting sale

(1) Save as hereinafter provided, every sale shall be made for the best consideration in money that can reasonably be obtained.

(2) A sale may be made in one lot or in several lots, and either by auction or by private contract, and may be made subject to any stipulations respecting title, or other things.

(3) On a sale the trustees for sale may fix reserve biddings and may buy in an auction.

44. Regulations respecting exchange

(1) Save as in this Part of this Law provided every exchange shall be made for the best consideration in land or in land and money that can reasonable be obtained.

(2) An exchange may be made subject to any stipulations respecting title, or evidence of title, or other things.

(3) Trust land in the State shall not be given in exchange for land out of the State.

45. Power to sublease for ordinary or building purposes

The Trustees for sale may sublease the trust land, or any part thereof, or any easement, right or privilege of any kind over or in relation to the land for any purpose whatever, whether involving waste or not for any term not exceeding—

(*a*) in case of any other sublease, ninety-nine years;

(*b*) in case of any other sublease, fifty years.

46. Regulations respecting subleases generally

(1) Save as in this Law provided, every sublease—

(*a*) shall be by deed, and be made to take effect in possession not later than twelve months after its date, or in reversion after an existing sublease that has not more than seven years to run at the date of the new sublease;

(*b*) shall reserve the best rent that can reasonably be obtained, regard being had to any fine taken and to any money laid out or to be laid out for the benefit of the trust land, and generally to the circumstances of the case;

(*c*) shall contain a covenant by the sublease for payment of the rent, and a condition of re-entry if the rent is not paid within a time therein not exceeding thirty days.

(2) A counterpart of every sublease shall be executed by the sublease and delivered to the trustees for sale, of which execution and delivery of the sublease by the trustees shall be sufficient evidence.

(3) A statement, contained in a sublease or in an endorsement thereon, signed by the trustees for sale, respecting any matter of fact or of calculation under this Law in relation to the sublease, shall in favour of the sublessee and those claiming under him be sufficient evidence of the matter stated.

(4) A fine received on the grant of a sublease under any power conferred by this Law shall be applicable in the same manner as if the money represented proceeds of sale arising under the trust for sale.

(5) A sublease at the best rent that can be reasonably obtained within a fine, and whereby the sublease is not exempted from punishment for waste, may be made where the term does not extend beyond three years from the date of the writing, by any writing under hand only containing an agreement instead of a covenant by the sublease for payment of rent.

47. Subleasing powers for special object

The subleasing power of the trustees for sale extends to the making of—

(*a*) a sublease for giving effect (in such manner and so far as the law permits) to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the trust land, and

(*b*) a sublease for confirming, as far as may be, a previous lease being void or voidable, but so that every sublease, as and when confirmed, shall be such a sublease as might at the date of the original sublease have been lawfully granted under this Law or otherwise, as the case may require.

48. Regulations inspecting building sublease

(1) Every building sublease shall be made partly in consideration of the sublease, or some person by whose direction the sublease is granted, or some other person, having erected or agreeing to erect buildings, new or additional, or having improved or repaired or agreeing to improve or repair buildings, or having executed or agreeing to execute on the land subleased, an improvement in connection with building purposes.

(2) A nominal or other rent, less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.

(3) Where the land is contracted to be sublet in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner:

Provided that—

(*a*) the annual rent reserved by a sublease shall not be less than one naira; and

(*b*) the total amount of the rents reserved on all sublease for the time being granted shall not be less than the total amount of the rents which, in order that the sublease may be in conformity with this Law, ought to be reserved in respect of the whole land for the time being sublet; and

(*c*) the rent reserved by any sublease shall not exceed one-fifth part of the full annual value of the land comprised in that sublease with the buildings thereon when completed.

49. Power on dispositions to impose restrictions and make reservations and stipulations

(1) On a sale or other disposition or dealing under the powers of this Law—

(*a*) any easement, right, or privilege of any kind may be reserved or granted over or in relation to the trust land or any part thereof or other land, including the land disposed of, and in the case of an exchange, the land taken in exchange;

(*b*) any restriction with respect to building on or other user of land, or with respect to any other thing, may be imposed and made binding, as far as the law permits, by covenant, condition or otherwise, on the trustees for sale and the trust land or any part thereof, or on the other party and any land disposed of to him; and

(*c*) the whole or any part of any capital or annual sum charged on or payable out of the land disposed of, or any part thereof, and other land subject to the settlement, may as between the trustees for sale and the other party and persons deriving title under or in succession to him (but without prejudice to the rights of the person entitled to such capital or annual sum) be charged exclusively on the land disposed of, or any part thereof, or such other land as aforesaid, or any part thereof exoneration of the rest of the land on or out of which such capital or annual sum is or payable.

(2) A sale of land may be subject to a stipulation that all or any of the timber and other trees, pollards, tellers, underwood, sapling and plantations on the land sold (in this section referred to as "timber") or any articles attached to the land (in this section referred to as "fixtures") shall be taken by the purchaser at a valuation, and the amount of the valuation shall form part of the price of the land, and shall be capital money accordingly.

(3) Where on a sale the consideration attributable to any timber or fixtures is by mistake paid to any person not entitled to receive it, then, if such person or the purchaser or the persons deriving title under either of them subsequently pay the aforesaid consideration, with such interest, if any, thereon as the court may direct, to the trustees or other persons entitled thereto, or into court, the court may, on the application of the purchaser or the persons deriving title under him, declare that the disposition is to the effect as if the whole of the consideration had at the date thereof been duly paid to the trustees or other persons entitled to received the same.

(4) The person, not entitled to receive the same, to whom the consideration is paid under subsection (3), and his estate and effects shall remain liable to make good any loss attributable to the mistake.

50. Power to grant options

(1) The trustees for sale may at any time, either with or without consideration, grant by writing an option to purchase or take a sublease of the trust land, or any part thereof, or an easement, right, or privilege over or in relation to the same at a price or rent fixed at the time of the granting of the option.

(2) Every such option shall be made exercisable within an agreed number of years not exceeding ten.

(3) The price or rent shall be the best which having regard to all the circumstances, can reasonably be obtained and either—

(*a*) may be a specified sum of money or rent, or at a specified rate according to the superficial area of the land with respect to which the option is exercised, or the frontage thereof or otherwise; or

(*b*) in the case of an option to purchase contained in a sublease or agreement for a sublease, may be a stated number of years' purchaser of the highest rent reserved by the sublease or agreement; or

(*c*) if the option is exercisable as regards part of the land comprised in the sublease or agreement, may be a proportionate part of such highest rent and any aggregate price or rent may be made to be apportionable in any manner or according to any system, or by reference to arbitration.

(4) The consideration for the grant of the option shall be applicable in the same manner as if it represented proceeds of sale arising under the trust for sale.

51. Surrenders

(1) The trustees for sale may accept, with or without consideration, a surrender of any sublease of trust, whether made under this Law or not, in respect of the whole land sublet or any part thereof or any of them, and with or without an exception of any easement, right or privilege of any kind over or in relation to the land surrendered.

(2) On a surrender of a sublease in respect of part only of the land concerned, the rent may be apportioned.

(3) On a surrender, the trustees for sale may in relation to the land surrendered or of any part thereof, make a new or other sublease, or new or other subleases, in lots.

(4) A new or other sublease may comprise additional land and may reserve any apportioned or other rent.

(5) On a surrender, and the making of a new or other sublease, whether for the same or for any extended or other term, and whether or not subject to the same or to any other covenants, provisions or conditions, the value of the sublessee's interest in the sublease surrendered may be taken into account in the determination of the amount of the rent to be reserved, and of any fine or consideration money to be taken, and of the nature of the covenants, provisions, and conditions to be inserted in the new or other sublease.

(6) Every new or other sublease shall be in conformity with this Law.

(7) All money received on the exercise by the trustees for sale of the powers conferred by this section, shall, unless the court, on an application made within six months after the receipt thereof or within such further time as the court may in special circumstances allow, otherwise directs, be applicable in the same manner as if it represented proceeds of sale arising under the trust for sale.

52. Acceptance of sublease

(1) The trustees for sale may accept a sublease of any land, or of any easement, right or privilege, convenient to be held or annexed in enjoyment to the trust land, or any part thereof, for such period and upon such terms and conditions as the trustees think proper.

(2) The sublease may contain an option to purchase the reversion expectant on the term thereby granted.

53. Power to compromise claims and release restrictions, etc.

(1) The trustees for sale may, either with or without giving or taking any consideration in money or otherwise, compromise, compound, abandon, submit to arbitration, or otherwise settle any claim, dispute, or any part thereof, including in particular claims, disputes or questions as to boundaries, easements, and restrictive covenants, and for any of those purposes may enter into, give, execute, and do such agreements, assurances, releases, and other things as the trustees may think proper.

(2) The trustees for sale may at any time, by deed or writing, either with or without consideration in money or otherwise, release, waive, or modify, or agree to release, waive, or modify, any covenants, agreement, or restriction imposed on any other land for the benefit of the trust land, or any part thereof, or release, or agree to release, any other land from any easement, right or privilege, including a right of pre-emption, affecting the same for the benefit of the trust land, or any part thereof.

54. Power to vary sublease and to give licences and consents

(1) The trustees for sale may, at any time, by deed, either with or without consideration in money or otherwise, vary, release, waive or modify, either absolutely or otherwise, the terms of any sublease whenever made of the trust land or any part thereof, in respect of the whole or any part of the land comprised in any such sublease, but so that every such sublease shall, after such variation, release, waiver or modification as aforesaid, be such a sublease as might then have been lawfully made under this Law if the sublease had been surrendered.

(2) Where land is or has been disposed of subject to any covenant requiring the licence, consent, or approval of the covenantee or his successors in title as to—

(*a*) the use of the land in any manner; or

(*b*) the erection, construction or alteration of or addition to buildings or works of any description of the land; or

(*c*) the plans or elevations of any proposed buildings or other works on the land; or

(*d*) any other act, manner, or thing relating to the land, or any building or works thereon; or

(*e*) any assignment, underletting or parting with the possession of all or part of the property comprised in any sublease affecting the trust land; and

the covenant ensures for the benefit of the trust land (including, where the disposition is a sublease, the reversion expectant on the determination thereof), the licence, consent or approval may be given by the trustees for sale of the trust land affected.

55. Power to apportion rents

(1) The trustees for sale may, at any time, by deed, either with or without consideration in money or otherwise, agree for the apportionment of any rent reserved or created by any such sublease as mentioned in the last proceeding sections so that the apportioned part of such rent shall thenceforth be payable exclusively out of or in respect of such respective portions of the land subject thereto as may be thought proper and also agree that any covenants, agreements, powers, or remedies for securing such rent and any other covenants or agreements by the sublessee or grantee and any conditions shall also be apportioned and made applicable exclusively to the respective portions of the land out of or in respect of which the apportioned parts of such rent shall thenceforth be payable.

(2) Where the trust land, or any part thereof, is held or derived under a sublease, or subject to covenants, agreements or conditions, whether such sublease comprises other land or not, the trustees for sale may at any time by deed, with or without giving or taking any

consideration in money or otherwise, procure the variation, sublease, waiver, or modification, either absolutely or otherwise, of the terms, covenants, agreements, or conditions contained in such sublease in respect of the whole or any part of the trust land comprised therein, including the apportionment of any rent, covenants, agreement, conditions, and provisions reserved or created by, or contained in, such sublease.

(3) This section applies to subleases made either before or after the commencement of this Law.

56. Provision as to consideration

(1) All money, not being rent, payable by the trustees for sale in respect of any transaction to which any of the three last preceding sections relates shall be paid out of capital; and all money, not being rent, received on the exercise by the trustees for sale of the powers conferred by any of those sections shall, unless the court, on an application made within six months after receipt thereof or within such further time as the court may in special circumstances allow or otherwise direct, be applicable in the same manner as if the money represented proceeds of sale arising under the trust for sale.

(2) For the purpose of the three last preceding sections **"consideration in money or otherwise"** means—

(*a*) a capital sum of money of a rent;

(*b*) land, being a right of occupancy or a sub-leasehold for any term of years whereof no less than sixty years shall be unexpired;

(*c*) any easement, right or privilege over or in relation to the trust land, or any part thereof, or any other land;

(*d*) the benefit of any restrictive covenant or condition; and

(*e*) the release of the trust land, or any part thereof, or any other land from any easement, right or privilege, including a right of pre-emption, or from the burden of any restrictive covenant or condition affecting the same.

57. General power for the trustees for sale to effect any transaction under an order of the court

(1) Any transaction affecting or concerning the trust land, or any part thereof, or any other land (not being a transaction otherwise authorised by this Law or by the settlement) which in the opinion of the court would be for the benefit of the trust land, or any part thereof, or the persons interested under the settlement, may, under an order of the court, be effected by the trustees for sale, if it is one which could have been validly effected by a holder of a right of occupancy.

(2) In this section **"transaction"** includes any sale, exchange, assurance, sublease, surrender, re-transfer, release, reservation or other disposition, **"effected"** has the meaning appropriate to the particular transaction; and the reference to land includes references to restrictions and burdens affecting land.

58. Power to raise money by mortgage

(1) Where money is required for any of the following purposes, namely—

(*a*) discharging an encumbrance on the trust land or part thereof;

(*b*) paying for any improvement authorised by the settlement;

(*c*) equality of exchange; or

(*d*) payment of the costs of any transaction authorised by this section,

the trustee for sale may raise the money so required, on the security of the trust land or of any part thereof, by a legal mortgage, and the money so raised shall be applicable in the same manner as if it represented proceeds of sale arising under the trust for sale.

(2) "Encumbrance" in this section does not include any annual sum payable only during a life or lives or during a term of years absolute or determinable.

(3) The restrictions imposed by this Part of this Law on the subleasing powers of trustees for sale do not apply in relation to a mortgage term created under this Law.

Transfers

59. Completion of transactions by transfer

(1) On a sale, exchange, sublease, mortgage, charge of other disposition, the trustees for sale may as regards land sold, give in exchange, sublet, mortgage, regards easements or other rights or privileges sold, given in exchange, sublet, mortgaged, or otherwise disposed of, or intended so to be, effect the transaction by deed to the extent of the interest vested or declared to be vested in them or any less interest, in the manner requisite for giving effect to the sale, exchange, sublease, mortgage, charge, or other disposition, but so that a mortgage shall be effected by the creation of a term of years in the trust land or by charge by way of legal mortgage, and not otherwise.

(2) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Law shall be effectual to pass the land transferred, or the easements, rights, privileges or other interests created, discharged from all the limitations, powers and provisions of the settlement, and from all interests and charges subsisting or to arise thereunder, but subject to and with the exception of—

(*a*) all legal interests and charges by way of legal mortgage having priority to the settlement;

(*b*) all legal interests and charges by way of legal mortgage which have been transferred or created for securing money actually raised at the date of the deed;

(*c*) all subleases at a rent or otherwise and all grants of easements, rights of common or other rights or privileges which—

(i) were before the date of the deed granted or made for value or agreed so to be made by the trustees for sale under the settlement or under any statutory power or are at the date otherwise binding on them; and

(ii) are at the date of the deed protected under this Law by reason of their registration under the Land Instruments Registration Law thereunder.

(3) Notwithstanding the registration of a general equitable charge under the Land Instruments Registration Law, a disposition by trustees for sale under this Law operates to overreach such charges which shall, according to their priority, take effect as if limited by the instrument creating the trust for sale.

(4) Where a sublease is by the Law authorised to be made by writing under hand only, such writing shall have the same operation under this section as if it has been a deed.

Miscellaneous Provisions

60. Power for trustees to enter into contracts

(1) The trustees for sale may—

(*a*) contract to make any sale, exchange, mortgage, charge or other disposition authorised by this Law;

(*b*) vary or rescind, with or without consideration, the contract in the like cases and manner in which, if they were holders of the right of occupancy in respect of the trust land, they might lawfully vary or rescind the same, but so that the contract as varied shall be in conformity with this Law; and

(*c*) contract to make any sublease, and in making the sublease may vary the terms with or without consideration, but so that the sublease be in conformity with this Law; and

(*d*) accept a surrender of a contract for a sublease in like manner and the like terms in and on which they might accept a surrender or a lease and thereupon may make a new or other contract for and relative to terms in and on which they might make a new or other sublease, or had been executed; and

(*e*) in any other cases, enter into a contract to do any act for carrying into effect any of the purposes of this, and may vary or rescind any such contract.

(2) All money arising on the exercise by the trustees for sale of the powers conferred by subsection (1) of this section, shall, unless the court on application made within six months after the receipt of the money, or within such further time as the court may in special circumstances allow, otherwise directs, be applicable in the same manner as if it represented proceeds of sale arising under the trust for sale.

61. Reference of questions to court

If a question arises or a doubt is entertained—

(*a*) respecting the exercise or intended exercise of any of the powers conferred by this Law or any enactment replaced by this Law or the settlement, or any matter relating thereto; or

(*b*) otherwise in relation to property subject to a settlement,

the trustees, or any other person interested under the settlement, may apply to the court for its decision or direction thereon, or for the sanction of the court to any conditional contract, and the court may make such order or give such directions respecting the matter as the court thinks fit.

62. Management of land

(1) The trustees for sale shall manage or superintend the management of the trust land, with full power—

(*a*) to fell timber or cut underwood from time to time in the usual course for sale or for repairs or otherwise;

(*b*) to erect, pull down, rebuild and repair houses and other buildings and erections;

(*c*) to continue the working of quarries which have usually been worked;

(*d*) to drain or otherwise improve the land or any part thereof;

(*e*) to make allowances to and arrangements with tenants and others;

(*f*) to determine tenancies; and to accept surrenders of subleases and tenancies; and

(*g*) generally to deal with the land in a proper and due course of management.

(2) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum, charged, on the land.

(3) This section applies only if and as far as a contrary intention is not expressed in the settlement.

63. Saving for and exercise of other powers under settlement

(1) Nothing in this Law shall take away, abridge or prejudicially affect any power subsisting under a settlement or by statute or otherwise, exercisable by trustees for sale, and the powers given by this Law are cumulative.

(2) Subject to the provisions of subsection (3) of section 62, in case of conflict between the provisions of a settlement and the provisions of this Law relative to any matter in respect of which the trustees for sale exercise any power under this Law, the provisions of this Law shall prevail.

(3) If a question arises or a doubt is entertained respecting any matter within this section, the trustees for sale or any other person interested under the settlement may apply to the court for its decision thereon, and the court may make such order respecting the matter as the court thinks fit.

64. Saving for additional or larger powers under settlement

(1) Nothing in this Law precludes a settler form conferring on the trustees for sale any powers additional to or larger than those conferred by this Law.

(2) Any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in this Law, operate and be exercisable in the like manner, and with all the like incidents, effects and consequences, as if they were conferred by this Law, and if relating to the trust land, as if they were conferred by this Law on the trustees for sale.

65. Contracts for sale, etc., of land to be in writing

(1) Save as otherwise provided in this Law, no action may be brought upon contract for the sale or other disposition of land or any interest in land unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised.

(2) This section applies to contracts whether made before or after the commencement of this Law but does not affect the law relating to part performance, or sales by the court.

PART III

Contracts, Transfers and other Instruments

66. Stipulations not of the essence of a contract

Stipulations in a contract, as to time or otherwise, which according to rules of equity are not deemed to be or to have become of the essence of the contract are also to be construed and have effect at law in accordance with the same rules.

67. Provisions as to contracts

(1) A stipulation that a purchaser of a legal interest shall accept a title made with the concurrence of any person entitled to an equitable interest shall be void, if a title can be made discharged from the equitable interest without such concurrence—

(*a*) under a trust for sale; or

(*b*) under this Law, or any other statute.

(2) A stipulation that a purchaser of a legal interest shall pay or contribute towards the costs of or incidental to—

(*a*) obtaining a vesting order, or the appointment of trustees of a transfer or trust for sale; or

(*b*) the preparation, stamping or execution of a transfer or trust for sale,

shall be void.

(3) A stipulation contained in any contract for the sale or exchange of land made after the commencement of this Law, to the effect that an outstanding legal interest is to be traced or got in by or at the expense of a purchaser or that no objection is to be taken on account of an outstanding legal interest, shall be void.

(4) If the subject-matter of any contract for the sale or exchange of land—

(*a*) is a mortgage term and the vendor had power to transfer the right of occupancy, or in the case of a mortgage of a term of years, the sub-leasehold reversion affected by the mortgage, the contract shall be deemed to extend to the right of occupancy or such reversion;

(*b*) is an equitable interest capable of subsisting as a legal interest, and the vendor has power to vest such legal interest in himself or in the purchaser or to require the same to be so vested, the contract shall be deemed to extend to such legal interest.

(5) This section does not affect the right of a mortgagee of a sub-leasehold land to sell his mortgage term only if he is unable to transfer or vest the sub-leasehold reversion expectant thereon.

(6) Any contract to transfer an undivided share in land made before or after commencement of this Law shall be deemed to be sufficiently complied with by the transfer of a corresponding share in the proceeds of sale of the land in like manner as if the contract had been to transfer that corresponding share.

(7) A vendor shall not have any power to rescind a contract by reason only of the enforcement of any rights under this section.

(8) This section only applies in favour of a purchaser for money or money's worth.

68. Statutory commencement of title

(1) After the commencement of this Law thirty years shall be substituted for forty years as the period of commencement of title which a purchaser of land may require; nevertheless earlier title than thirty years may be required in cases similar to those in which earlier title than forty years might immediately before the commencement of this Law be required.

(2) Under a contract to grant or assign a term of years, whether derived or to be derived out of right of occupancy or sub-leasehold land, the intended sublessee or assign shall not be entitled to call for the title to the right of occupancy.

(3) Under a contract to sell and assign a term of years derived out of a sub-leasehold interest in land, the intended assign shall not have the right to call for the title to the sub-leasehold reversion.

(4) On a contract to grant a term of years to be derived out of a sub-leasehold interest, with a sub-leasehold reversion, the intended sublessee shall not have the right to call for the title to that reversion.

(5) Where by reason of any of the three preceding subsections an intending sublessee or assign is not entitled to call for the title to the right of occupancy or to a sub-leasehold reversion, as the case may be, he shall not, where the contract is made after the commencement of this Law, be deemed to be affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice.

(6) A purchaser shall not be deemed to be or ever to have been affected with notice of any matter or thing of which, if he had investigated the title or made enquiries in regard to matters prior to the period of commencement of title fixed by this Law or by any other statute, or by any rule of law, he might have had notice, unless he actually makes such investigation or enquiries.

(7) Where a sublease, whether made before or after the commencement of this Law, is made under a power contained in a settlement, will, written law, or other instrument, any preliminary contract for or relating to the sublease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the sublease.

(8) This section, save where otherwise expressly provided, applies to contracts for sale whether made before or after the commencement of this Law, and applies to contracts for exchange in like manner as to contracts for sale, save that it applies only to contracts for exchange made after such commencement.

(9) This section applies only in and so far as contrary intention is not expressed in the contract.

69. Other statutory conditions of sale

(1) A purchaser of any property shall not—

(*a*) require the production, or any abstract or copy, of any deed, will, or other document, dated or made before the time prescribed by law, or stipulated, for the commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; or

(*b*) require any information, or make any requisition, objection or inquiry, with respect to any such deed, will or document, or the title prior to that time, notwithstanding that any such deed, will or other document, or that prior title, is recited, agreed to be produced, or noticed.

It shall be assumed, unless the contrary appears, that the recitals, contained in the abstracted instrument, or any deed, will or other document, forming part of that prior title, are correct, and give all the material contents of the deed, will, or other document so recited, and that every document so recited was duly executed by all necessary parties, or otherwise perfected:

Provided that this subsection shall not deprive a purchaser of the right to require the production, or an abstract or copy of—

(i) any power of attorney under which any abstracted document is executed; or

(ii) any document creating or disposing of an interest, power or obligation which is not shown to have ceased or expired, and subject to which any part of the property is disposed of by an abstracted document; or

(iii) any document creating any limitation or trust by references to which any part of the property is disposed of by an abstracted document.

(2) Where land sold is held by sublease (other than a sub-underlease), the purchaser shall assume, unless the contrary appears, that the lease and every superior interest were duly granted; and, on production of the receipt for the last payment due for rent under the sublease

before the date of the actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the sublease have been duly performed and observed up to the date of actual completion of the purchase.

(3) Where land sold is held by sub-underlease, the purchaser shall assume, unless the contrary appears, that the underlease and every superior interest were duly granted; and, on production of the receipt for the last payment due for rent under the underlease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the underlease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior interest, and all the covenants and provisions of every superior holding, have been paid and duly performed and observed up to that date.

(4) On a sale of any property, the following expenses shall be borne by the purchaser where he requires them to be incurred for the purpose of verifying the abstract or any other purpose, that is to say—

(*a*) the expenses of the production and inspection of all records, proceedings of courts, court rolls, deeds, wills, probate, letters of administration, and other documents, not in the possession of the vendor or his mortgagee or trustees, and the expenses of all journeys incidental to such production or inspection; and

(*b*) the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidence and information not in the possession of the vendor or his mortgagee or trustee, and all attested, stamped, office, or other copies or abstracts of or extracts from, any documents aforesaid, not in the trustee,

and where the vendor or his mortgagee or trustee, retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

(5) On sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expenses.

(6) The inability of a vendor to furnish a purchaser with an acknowledgment of his right to production and delivery of copies of documents of title or with legal covenant to produce and furnish copies of documents of title shall not be an objection to title but the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

(7) Such acknowledgment of the right of production or covenants for production and such undertakings or covenants for safe custody of documents as the purchaser can and does require shall be furnished or made at his expense, and the vendor shall bear the expense of personal and execution on behalf of by himself, and on behalf of and by necessary parties other than the purchaser.

(8) A vendor shall be entitled to retain documents of title where—

(*a*) he retains any part of the land to which the documents relate; or

(*b*) the document consists of a trust instrument or other instrument creating a trust which is still subsisting, or an instrument relating to the appointment or discharge of a subsisting trust.

(9) This section applies to contracts for sale made before or after the commencement of this Law, and applies to contracts for exchange in like manner as to contracts for sale except that it applies only to contracts for exchange made after such commencement.

(10) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the court.

(11) This section shall apply subject to any stipulation or contrary intention expressed in the contract.

70. Application of insurance money on completion of a sale or exchange

(1) Where after the date of any contract for sale or exchange of property, money becomes payable under any policy of insurance maintained by the vendor in respect of any damage to or destruction of property included in the contract, the money shall, on completion of the contract, be held or receivable by the vendor on behalf of the purchaser and paid by the vendor to the purchaser on completion of the sale or exchange, or so soon thereafter as the same shall be received by the vendor.

(2) This section applies only to contracts made after the commencement of this Law and has effect subject to—

(*a*) any stipulation to the contrary contained in the contracts;

(*b*) any requisite consents of the insurers;

(*c*) the payment by the purchaser of the proportionate part of the premium from the date of the contract.

(3) This section applies to a sale or exchange by an order of the court, as if—

(*a*) for references to the "vendor" there were substituted a references to the "person bound by the order";

(*b*) for the reference to the completion of the contract there were substituted a reference to the payment of the purchase or equality money (if any) into court;

(*c*) for the reference to the date of the contract there were substituted a reference to the time when the contract becomes binding.

71. Stipulation preventing a purchaser, sublessee, or sub-underlessee from employing his own legal practitioner to be void

(1) Any stipulation made on the sale of any interest in land after the commencement of this Law to the effect that the instrument of transfer to, or the registration of the title, of, the purchase shall be prepared or carried out at the expense of the purchaser by a legal practitioner appointed by or acting for the vendor, and any stipulation of a legal practitioner to act on his behalf in relation to any interest in land agreed to be purchased, shall be void; and, if a sale is affected by sublease, then for the purpose of this subsection, the instrument giving effect to the transaction shall be deemed to be the instrument of transfer:

Provided that nothing in this subsection shall affect any right reserved to a vendor to furnish a form of transfer to a purchaser from which the draft can be prepared, or to charge a reasonable fee for such form.

(2) Any covenant or stipulation contained in, or entered into with references to any sublease or sub-underlease made before or after the commencement of this Law—

(*a*) whereby the right of preparing, at the expense of a purchaser, any document of transfer of the interest of the sublessee or sub-underlessee in the premises or in any part thereof, or of otherwise carrying out, at the expense of the purchaser, any dealing with such interest, is expressed to be reserved to or vested in the lessor; or

(*b*) which in any way restricts the right of the purchaser to have such transfer carried out on his behalf by a legal practitioner appointed by him,

shall be void:

Provided that, where any covenant or stipulation is rendered void by this subsection, there shall be implied in lieu thereof a covenant or stipulation that the sublessee or sub-underlessee shall register with the sublessor or his legal practitioner within six months from the date thereof, or as soon after the expiration of that period as may be practicable, all transfers and devolutions (including probates or letters of administration) affecting the sublease or sub-underlease and pay a fee of two naira ten kobo in respect of each registration, and the power of entry (if any) on breach of any covenant contained in the sublease or sub-underlease shall apply and extend to the breach of any covenant so to be implied.

(3) Save where a sale is effected by sublease or sub-underlease, this section does not affect the law relating to the preparation of a sublease or sub-underlease or the draft thereof.

(4) In this section **"sublease"** and **"sub-underlease"** include any agreement thereof or other tenancy, and **"sublessee"** and **"sub-underlease"** and **"sublessor"** and **"sub-underlessor"** have corresponding meanings.

72. Application to the vendor and purchaser

(1) A vendor or purchaser of any interest in land, or their representatives respectively, may apply in a summary way by summons or as may be otherwise provided by rules of court to the court, in respect of any requisitions or objections or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the court may make such order upon the application as to the court may appear just, and may order how and by whom all or any of the costs of and incident to the application are to be borne and paid.

(2) Where the court refuses to grant specific performance of a contract, or in any action for the return of a deposit, the court may, if it thinks fit, order the repayment of any deposit.

(3) This section applies to a contract for the sale or exchange of any interest in land.

73. Discharge encumbrances by the court on sale or exchange

(1) Where land subject to any encumbrance, whether immediately realisable or payable or not, is sold or exchanged by the court, or out of court, the court may, if it thinks fit, on the application of any party to the sale or exchange, direct or allow payment into court of such sum as is hereinafter mentioned, that is to say—

(*a*) in the case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, the sum to be paid into court shall be of such amount as, when invested in trustee securities, the court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge; and

(*b*) in any other case of capital money charged on the land, the sum to be paid into court shall be an amount sufficient to meet the encumbrance and any interest due thereon,

but in either case there shall also be paid into court such additional amount as the court considers will be sufficient to meet the contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the court for special reasons thinks fit to require a larger additional amount.

(2) Subject to subsection (1), the court may, if it thinks fit, and either after or without any notice to the encumbrancers, as the court thinks fit, declare the land to be freed from the encumbrance and make any order for transfer, or vesting orders, proper for giving effect to the sale or exchange, and give directions for the retention and investment of the money in court and for the payment or application of the income thereof.

(3) The court may declare all other land, if any, affected by the encumbrance (besides the land sold or exchanged) to be freed from the encumbrance, and this power may be exercised either after or without notice to the encumbrancers and notwithstanding that on a previous occasion an order relating to the same encumbrance has been made by the court which was confined to the land then sold or exchanged.

(4) On any application under this section the court may, if it thinks fit, as respects any vendor or purchaser, dispense with the service of any notice which would otherwise be required to be served on the vendor or purchaser.

(5) After notice served on the persons interested in or entitled to the money or fund in court, the court may direct payment or transfer thereof to the persons entitled to receive or give discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(6) This section applies to sales or exchanges whether made before or after the commencement of this Law, and to encumbrances whether created by statute or otherwise.

Transfer and other Instruments

74. Land lie in grant only

(1) All lands and all interests therein lie in grant and a transfer of an interest in land may operate to pass the possession or right to possession thereof, without actual entry, but subject to all prior rights therein.

(2) The use of the word "grant" is not necessary to transfer land or to create any interest therein.

75. Transfers to be by deed

(1) Except as otherwise provided in this Law, all transfers of land or of any interest therein are void for purposes of transferring or creating a legal interest unless made by deed.

(2) This section does not apply to—

(*a*) assents by a personal representative;

(*b*) surrenders by operation of law, including surrenders which may, by law, be effected without writing;

(*c*) receipts not required by any written law to be under sale;

(*d*) vesting orders of the court or other competent authority;

(*e*) transfers taking effect by operation of law.

76. Instruments required to be in writing

(1) Subject to the provisions hereinafter contained with respect to the creation of interest in land by parol—

(*a*) no interest in land can be created or disposed of except by writing signed by the person creating or transferring the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;

(*b*) a declaration of trust respecting any land of any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;

(*c*) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing the same, or by his agent thereunto lawfully authorised in writing or by will.

77. Creation of interest in land by parol

(1) All interests in land created by parol and not put in writing and signed by the persons so creating the same, or by their agents thereunto lawfully authorised in writing, have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only.

(2) Nothing in the foregoing provisions of this Part of this Law shall affect the creation by parol of a sublease or a sub-underlease taking effect in possession for a term not exceeding three years (whether or not the sublessee or sub-underlessee is given power to extend the term) at the best rent which can be reasonably obtained without taking a fine.

78. Savings in regard to last two sections

Nothing in the last two foregoing sections shall—

(*a*) invalidate dispositions by will;

(*b*) affect any interest validly created before the commencement of this Law;

(*c*) affect the right to acquire an interest in land by virtue of taking possession; or

(*d*) affect the operation of the law relating to part performance.

79. Persons taking who are not parties and as to indentures

(1) A person may take an immediate or other interest in land or other property, or the benefit of any condition, right of entry, covenant or agreement over or respecting land or other property, although he may not be named as a party to the transfer or other instrument.

(2) A deed between parties, to affect its objects, has the effect of an indenture though not indented or expressed to be an indenture.

80. Description of deeds

Any deed, whether or not being an indenture, may be described (at the commencement thereof of otherwise) as a deed simply, or a transfer, deed of exchange, settlement, mortgage, charge, transfer of mortgage, appointment, sublease or otherwise according to the nature of the transaction intended to be effected.

81. Provisions as to supplemental instruments

Any instrument (whether executed before or after the commencement of this Law) expressed to be supplemental to a previous instrument shall, as far as may be, be read and have effect as if the supplemental instrument contained a full recital of the previous instruments, but this section does not operate to give any right to an abstract or production of any such previous instrument, and a purchaser may accept the same as evidence that the previous instrument does not affect the title as if it had merely been mentioned in the supplemental.

82. Conditions and certain covenants not implied

(1) An exchange or other transfer of land made by deed after the thirty-first day of December, eighteen hundred and ninety-nine, does not imply any condition in law.

(2) The word "give" or "grant" does not, in a deed made after the date last aforesaid, imply any covenant in law, save where otherwise provided by statute.

83. Abolition of technicalities in regard to transfer and deeds

(1) A transfer of a right of occupancy over land to any person without words of limitation, or any equivalent expression, shall pass to the grantee the right of occupancy or the whole interest which the grantor had power to transfer in such land, unless a contrary intention appears in the transfer.

(2) A transfer of a right of occupancy to a corporation solely by his corporate designation without the word "successors" shall pass to the corporation the right of occupancy or the whole interest which the grantor had power to transfer in such land, unless a contrary intention appears in the transfer.

(3) In a voluntary transfer a resulting trust for the grantor shall not be implied merely by reason that the property is not expressed to be transferred for the use or benefit of the grantee.

(4) The foregoing provisions of this section apply only to transfers and deeds executed after the commencement of this Law.

(5) In construing a deed executed before the commencement of the Land Use Act, it is sufficient, for the purpose of limiting a freehold estate, if the word "freehold" is used without the use of the word "heirs".

84. Construction of expressions used in deeds and other instruments

(1) In all deeds, contracts, wills, orders and other instruments executed, made or coming into operation after the commencement of this Law, unless the context otherwise requires—

(*a*) **"month"** means calendar month;

(*b*) **"person"** includes a corporation;

(*c*) the singular includes the plural and *vice versa*;

(*d*) the masculine includes the feminine and *vice versa*.

(2) (*a*) A transfer of land shall be deemed to include and shall by virtue of this Law operate to transfer, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, liberties, privileges, easements, rights and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof; or at the time of transfer, sublet, occupied or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

(*b*) A transfer of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Law operate to transfer, with the land, houses or other buildings, all outhouses, erections, fixtures, commons, areas, courts, courtyards, cisterns, showers, gutters, drains, passages, lights, water courses, liberties, privileges, easements, rights and advantages whatsoever, appertaining or reputed to appertain to the land, houses or other buildings transferred, or any of them, or any part thereof, or at the time of transfer, sublet, occupied or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses or other buildings transferred, or any of them, or any part thereof.

(*c*) This section applies only if and as far as a contrary intention is not expressed in the transfer, and has effect subject to the terms of the transfer and to the provisions therein contained.

(*d*) This section shall not be construed as giving to any person a better title to any property, right or thing in this section mentioned than the title which the transfer gives to him to the land expressed to be transferred, or as transferring to him any property, right or thing in this section mentioned, further or otherwise than as the same could have been transferred to him by the transferring parties.

(*e*) This section applies to transfers made after the thirty-first day of December, eighteen hundred and ninety-nine.

85. All interests clause implied

(1) Every transfer is effectual to pass all the right, interest, claim and demand which the transferring parties respectively have in, to or on the property transferred, or expressed or intended so to be, or which they respectively have power to transfer in, to, or on the same.

(2) This section applies only in and as far as a contrary intention is not expressed in the transfer, and has effect subject to the terms of the transfer and to the provisions therein contained.

(3) This section applies to transfers made after the thirty-first day of December, eighteen hundred and ninety-nine.

86. Production and safe custody of documents

(1) Where a person retains possession of documents, and gives to another an acknowledgment in writing of the right of that other to production of those documents, and to delivery of copies thereof (in this section called an "acknowledgment"), that acknowledgment shall have effect as in this section provided.

(2) An acknowledgment shall bind the documents to which it relates in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section by an acknowledgment, unless prevented from so doing by fire or other inevitable accident.

(3) The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a sublessee at a rent, having or claiming any interest or right through or under that person or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates.

(4) The obligations imposed under this section by an acknowledgment are—

(*a*) an obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production or by any person by him authorised in writing;

(*b*) an obligation to produce the documents or any of them at any trial, hearing or examination in any court, or in the execution of any commission, or elsewhere in Nigeria on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production or for any other purpose relative to the title or claim; and

(*c*) an obligation to deliver to the person entitled to request the same true copies or extracts attested or unattested, of or from the documents or any of them.

(5) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.

(6) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

(7) Any person claiming to be entitled to the benefit of any acknowledgment may apply to the court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents or any of them to him, or some person on his behalf; and the court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms, and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(8) Any acknowledgment shall be virtue of this Law satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

(9) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncalled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

(10) Any person claiming to be entitled to the benefit of such undertaking may apply to the court to assess damages for any loss or destruction of, or injury to, the documents or any of them, and the court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(11) The undertaking for safe custody of documents shall, by virtue of this Law satisfy any liability to give a covenant for safe custody of documents.

(12) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents, as are not, by virtue of this Law, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.

(13) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.

(14) This section applies to an acknowledgment or undertaking given, or a liability respecting documents, incurred before or after the commencement of this Law.

87. Reservation of legal interest

(1) A reservation of a legal interest shall operate at law without any execution of the transfer by the grantee of the interest out of which the reservation is made, or any re-agent by him, so as to create the interest reserved, and so as to vest the same in possession in the person (whether being the grantor or not) for whose benefit the reservation is made.

(2) A transfer of a legal interest expressed to be made subject to another legal interest not in existence immediately before the date of the transfer, shall operate as a reservation, unless a contrary intention appears.

(3) This section applies only to reservations made after the commencement of this Law.

88. Confirmation of past transaction

(1) A deed containing a declaration by a property owner that his property shall go and devolve in such a manner as may be requisite for confirming any interests intended to affect his property and capable under this Law of subsisting as legal interests which, at some prior date, were expressed to have been transferred or created, and any dealings therewith which would have been legal if those interests had been legally and validly transferred or created,

shall, to the extent of the interest of the owner and subject to the restrictions imposed by this Law in the case of mortgages, operate to give legal effect to the interests so expressed to have been transferred or created and to the subsequent dealings, aforesaid.

(2) The powers conferred by this section may be exercised by a trustee for sale or a personal representative as well as by the property owner, but if exercised by any person other than the property owner only with the leave of the court.

(3) This section applies to deeds containing such a declaration as aforesaid if executed after the commencement of this Law.

89. Receipts in deed sufficient

(1) A receipt for consideration of securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being endorsed on the deed.

(2) This section applies to deeds executed before or after the commencement of this Law.

90. Receipt in deed or endorsed evidence

(1) A receipt for consideration money or other consideration in the body of a deed or endorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.

(2) This section applies to deeds executed before or after the commencement of this Law.

91. Receipt in deed or endorsed authority or payment of legal practitioner

(1) Where a legal practitioner produces a deed, having in the body thereof or endorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the legal practitioner, without the legal practitioner producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

(2) This section applies whether the consideration was paid or given before or after the commencement of this Law.

92. Release of part of land affected from a judgment

(1) A release from a judgment (including any writ or order imposing a charge) of a part of any land charged therewith does not affect the validity of the judgment as respects any land not specifically released.

(2) This section operates without prejudice to the rights of any person interested in the property remaining unreleased and not concurring the release.

(3) This section applies to releases made before or after the commencement of this Law.

93. Transfers by a person to himself, etc.

(1) Property other than land, including subleases, may be transferred by a person to himself jointly with another person by the like means by which it might be transferred by him to another person.

(2) In transfers made before or after the commencement of this Law, a right of occupancy, or a thing in action, may be transferred by a person to himself jointly with another person, by the like means by which it might be transferred by him to another person, and may, in like manner, be transferred by a husband to his wife, and by a wife to her husband, alone or jointly with another person.

(3) After the commencement of this Law a person may transfer land to or vest land in himself.

(4) Two or more persons (whether or not being trustees or personal representatives) may transfer, and shall be deemed always to have been capable of transferring, any property vested in them to any one or more of themselves in like manner as they could have transferred such property to a third party:

Provided that if the persons in whose favour the transfer is made are, by reason of any fiduciary relationship or otherwise, precluded from validly carrying out the transaction, the transfer shall be liable to be set aside.

94. Execution of deeds by an individual

(1) Where an individual executes a deed, he shall either sign or place his mark upon the same; and sealing alone shall not be deemed sufficient.

(2) This section applies only to deeds executed after the commencement of this Law.

95. Execution of instruments by or on behalf of corporation

(1) In favour of a purchaser a deed shall be deemed to have been duly executed by a corporation aggregate if its seal be affixed thereto in the presence of an attested by its clerk, secretary or other permanent officer or his deputy, and a member of the board of directors, council or other governing body of the corporation, and if the seal has been affixed to a deed, attested by persons purporting to be persons holding such offices as aforesaid, the deed shall be deemed to have been executed in accordance with the requirement of this section, and to have taken effect accordingly.

(2) The board of directors, council or other governing body of a corporation aggregate may, by resolution or otherwise, appoint an agent either generally or in any particular case, to execute on behalf of the corporation any agreement or other instrument not under seal in relation to any matter within the powers of the corporation.

(3) Where a person is authorised under a power of attorney or under any statutory or other power to transfer any interest in property in the name or on behalf of a corporation sole or aggregate, he may as attorney execute the transfer by signing the name of the corporation in the presence of at least one witness, and in the case of a deed affixing his own seal, and such execution shall take effect and be valid in like manner as if the corporation had executed the transfer.

(4) Where a corporation aggregate is authorised under a power of attorney or under any statutory or other power to transfer any interest in property in the name or on behalf of any other person (including another corporation), an officer appointed for that purpose by the board of directors, council or other governing body of the corporation by resolution or otherwise, may execute the deed or other instrument in the name of such other person, and where an instrument appears to be executed by an officer so appointed then in favour of a purchaser, the instrument shall be deemed to have been executed by an officer duly authorised.

(5) The foregoing provisions of this section apply to transactions whenever effected but only to deeds and instruments executed after the commencement of this Law, except that in the case of powers or appointment of an agent or officer, they apply whether the power was conferred or the appointment was made before or after the commencement of this Law or by this Law.

(6) Notwithstanding anything contained in this section, any mode of execution or attestation authorised by law or by practice or by statute, charter, memorandum or articles, deed of settlement or other instrument constituting the corporation or regulating the affairs thereof, shall (in addition to the modes authorised by this section) be as effectual as if this section had not been passed.

96. Right of purchaser as to execution

(1) On a sale, the purchaser shall not be entitled to require that the transfer to him be executed in his presence or in that of his legal practitioner as such, but shall be entitled to have, at his own cost, the execution of the transfer attested by some person appointed by him who may, if he thinks fit, be his legal practitioner.

(2) This section applies to sales made before or after the commencement of this Law.

Covenants

97. Covenants for title

(1) In a transfer there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Law, be implied, a covenant to the effect in this section stated, by the person or by each person who transfers as far as regards the subject-matter or share of subject matter expressed to be transferred by him, with the persons jointly if more than one, to whom the transfer is made as jointly tenants, or with each of the persons, if more than one, to whom the transfer is (when the law permits) made as tenants in common, that is to say—

(*a*) in a transfer for valuable consideration other than a mortgage, a covenant by a person who transfers and is expressed to transfer as beneficial owner in the terms set out in Part I of the Second Schedule to this Law;

(*b*) in a transfer of a sub-leasehold property for valuable consideration other than a mortgage, a further covenant by a person who transfers and is expressed to transfer as beneficial owner in the terms set out in Part II of the Second Schedule of this Law;

(*c*) in a transfer by way of mortgage (including a charge) a covenant by a person who transfers or charges and is expressed to transfer or charge as beneficial owner in the terms set out in Part III of the Second Schedule to this Law;

(*d*) in a transfer by way of mortgage (including a charge) of a right of occupancy subject to a rent or of a sub-leasehold, a further covenant by a person who transfers or charges and is expressed to transfer or set out in Part IV of the Second Schedule of this Law;

(*e*) in a transfer by way of settlement, a covenant by a person who transfers and is expressed to transfer as settler in the terms set out in Part V of the Second Schedule to this Law;

(*f*) in any transfer, a covenant by every person who transfers and is expressed to transfer as trustee or mortgagee, or as personal representative of a deceased person, or as a committee of a lunatic or under an order of the court, in the terms set out in Part VI of the Second Schedule to this Law, which covenant shall be deemed to extend to every such person's own acts only and may be implied in an assent by a personal representative in like manner as in a transfer by deed.

[Second Schedule.]

(2) Where in a transfer it is expressed that by direction of a person expressed to direct as beneficial owner another person transfers, then for the purpose of this section, the person giving the direction whether he transfers and is expressed to transfer as beneficial owner or not, shall be deemed to transfer and to be expressed to transfer as beneficial owner the subject matter so transferred by his direction; and a covenant on his part shall be implied accordingly.

(3) Where in a transfer a person transferring is not expressed to transfer as beneficial owner, or as settler, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic or under an order of the court, no covenant on the part of the person transferring shall be, by virtue of this section, implied in the transfers.

(4) In this section a transfer does not include a sublease at a rent, but includes a charge; and "transfer" has a correspondent meaning.

(5) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is for the whole or any part thereof, from time to time vested.

(6) A covenant implied as aforesaid may be varied or extended by a deed or an assent, and if so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.

(7) This section applies to transfers made before or after the commencement of this Law; but only to assents by a personal representative made after the commencement of this Law.

98. Implied covenants in transfers subject to rents

(1) In addition to covenants implied under the last preceding section, there shall in the several cases in this section mentioned, be deemed to be included and implied, a covenant to the effect in this section stated by and with such persons as are hereinafter mentioned, that is to say—

(*a*) in a transfer for valuable consideration other than a mortgage, of the entirety of the land comprised in a sublease, for the residue of the term or interest created by the sublease a covenant by the assignee or joint and several covenants by the assignees (if more than one) with the transferring parties and with each of them (if more than one) in the terms set out in Part VII of the Second Schedule to this Law;

(*b*) where a rent has been apportioned in respect of any land, with the consent of the sublessor, the covenant in paragraph (*a*) shall be implied in the transfer of that land in like manner as if the apportioned rent were the original rent reserved, and the lease related solely to the land;

(*c*) in a transfer for valuable consideration, other than a mortgage, of part of the land comprised in a sublease, for the residue of the term of interest created by the sublease, subject to a part of the rent which has been or is by the transfer apportioned (but in either case without the consent of the sublessor) in respect of the land transfer—

(i) a covenant by the assignee of the land, or joint and several covenants by the assignees, if more than one, with the transferring parties and with each of them, if more than one, in the terms set out in paragraph (i) of Part VIII of the Second Schedule to this Law;

(ii) a covenant by a person who transfers or is expressed to transfer as beneficial owner, or joint and several covenants by the persons who so transfer or are expressed to so transfer, if at the date of the transfer any part of the

land comprised in the sublease is retained, with the assignees of the land and with each set out in paragraph (ii) of Part VIII of the Second Schedule to this Law.

(2) Where in a transfer for valuable consideration, other than a mortgage, part of the land comprised in a sublease is, without the consent of the sublessor, expressed to be transferred—

(*a*) if subject to the entire rent, then paragraph (*c*) (i) of the subsection shall have effect as if the entire rent were the apportioned rent; or

(*b*) if discharged or exonerated from the entire rent, then paragraph (*c*) (ii) of the last subsection shall have effect as if the entire rent were the balance of the rent, and the words "other than the covenant to pay the entire rent" had been omitted.

(3) In this section "transfer" does not include transfer by way of a sublease at a rent.

(4) Any transfer which would be implied under this section by reason of a person transferring or being expressed to transfer as beneficial owner may, by expressed reference to this section, be implied, with or without variation, in a transfer, whether or not for valuable consideration, by a person who transfers or is expressed to transfer as settler or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee for a lunatic, or under an order of the court.

(5) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with the interest of the implied covenantee, and shall be capable of being enforced by every person in whom that interest is, for the whole or any part thereof, from time to time vested.

(6) A covenant implied as aforesaid may be varied or extended, and shall, as far as may be, operate in the like manner, and with all the like incidents, effects and consequences, as if such variations or extensions were directed in this section to be implied.

(7) In particular, any covenant implied under this section may be extended by providing that—

(*a*) the land transferred; or

(*b*) the part of the land let which remains vested in the covenants,

shall, as the case may require, stand charged with the payment of all money which may become payable under the implied covenant.

(8) This section applies only to transfers made after the commencement of this Law.

99. Benefit of covenant relating to land

(1) A covenant relating to any land of the covenantee shall be deemed to be made with the covenants and his successors in title and the persons deriving title under him or them, and shall have effect as if such successors and other persons were expressed.

(2) For the purposes of subsection (1), in connection with covenants restrictive of the user of land, **"successors in title"** shall be deemed to include the owners and occupiers for the time being of the land of the covenants intended to be benefitted.

(3) This section applies to covenants made after the commencement of this Law but does not affect the operation of a covenant made before the commencement of this Law under any written law then in force in the State.

100. Burden of covenants relating to land

(1) A covenant relating to any land of a covenantor or capable of being bound by him shall unless a contrary intention is expressed, bind his successors in title and the persons deriving title under him or them, and subject as aforesaid, shall have effect as if such successors and other persons were expressed.

(2) Subsection (1) extends to a covenant to do some act relating to the land, notwithstanding that the subject matter may not be in existence when the covenant is made.

(3) For the purposes of this section in connection with covenants restrictive of the user of land, **"successors in title"** shall be deemed to include the owners and occupiers for the time being of such land.

(4) This section applies only to covenants made after the commencement of this Law.

101. Covenants binding land

(1) A covenant and a bond and an obligation contract under seal made before or after the commencement of this Law binds the whole estate of the person making the same if and so far as a contrary intention is not expressed in the covenant, bond, obligation or contract.

(2) Subsection (1) extends to a covenant implied by virtue of this Law.

(3) Every covenant running with the land, whether entered into before or after the commencement of this Law, shall take effect in accordance with any statutory enactment affecting the devolution of the land, and accordingly the benefit or burden of every such covenant shall vest in or bind the persons who by virtue of any such enactment or otherwise succeed to the title of the covenantee or the covenantor, as the case may be.

(4) The benefit of a covenant relating to land entered into after the commencement of this Law may be made to run with land without the use of any technical expression if the covenant is of such a nature that the benefit could have been made to run with the land before the commencement of this Law.

(5) For the purpose of this section, a covenant runs with the land when the benefit or burden of it, whether at law or in equity, passes to the successors in title of the covenantee or the covenantor, as the case may be.

102. Effect of covenant with two or more jointly

(1) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more persons jointly, to pay money or to make a transfer, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, but virtue of this Law, imply, an obligation to or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person to whom the right to sue on the covenant, contract, bond or obligation devolves, and where made after the commencement of this Law shall be construed as being also made with each of them.

(2) This section extends to a covenant implied by virtue of this Law.

(3) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond or obligation, and has effect subject to the covenant, contract, bond or obligation, and to the provisions therein contained.

(4) Except as otherwise expressly provided, this section applies to a covenant, contract, bond or obligation made or implied before or after the commencement of this Law.

103. Covenants and agreements entered into by a person with himself and other

(1) Any covenant, whether express or implied, or agreement entered into by a person with himself and one or more other persons shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been entered into with the other person or persons alone.

(2) This section applies to covenants or agreements entered into before or after the commencement of this Law, and to covenants implied by a statute in the case of a person who transfers or is expressed to transfer to himself and one of more other persons, but without prejudice to any order of the court made before such commencement.

104. Construction on implied covenants

In the construction of a covenant or proviso, or other provisions, implied in a deed or assent by virtue of this Law, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

PART IV

Mortgages and Powers of Attorney

105. Mode of mortgaging right of occupancy

(1) A mortgagee of a right of occupancy shall only be capable of being effected at law either by—

(*a*) a sublease for a term of years, subject to a provision for cesser on redemption; or

(*b*) a charge by deed expressed to be by way of legal mortgage;

(2) A first mortgagee shall have the same right of the possession of documents as if his security included the right of occupancy.

(3) Any purported transfer of a right of occupancy by way of mortgage made after the commencement of this Law shall (to the extent of the interest of the mortgagor) operate as a sublease of the land to the mortgagee for a term of years, without impeachment for waste, but subject to cesser on redemption, in the manner following, namely—

(*a*) a first or only mortgagee shall take a term of three thousand years from the date of mortgage;

(*b*) a second or subsequent mortgagee shall take a term (commencing from the date of the mortgage) one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee,

and, in this subsection, any such purported transfer as aforesaid includes an absolute transfer with a deed of defeasance and any other assurance which, but for this subsection, would operate in effect to redemption.

(4) This section applies whether or not the land is registered or the mortgage is expressed to be made by way of trust for sale or otherwise.

(5) Without prejudice to the provisions of this Law respecting legal and equitable powers, every power to mortgage or to lend money on mortgage of a right of occupancy shall be construed as a power to mortgage the property for a term of years, without impeachment for waste, or by a charge by way of legal mortgage or to lend on such security.

106. Mode of mortgaging sub-leasehold

(1) A mortgage of a term of years shall only be capable of being effected at law either by a sublease for a term of years, less by one day at least than the term vested in the mortgagor, and subject to a provision for a cesser on redemption, or by charge by deed expressed to be by way of legal mortgage; and where a licence to subject by way of mortgage is required, such licence shall not be unreasonably refused.

(2) A first mortgagee shall have the same right to the possession of documents as if his security had been effected by assignment.

(3) Any purported assignment of a term of years by way of mortgage made after the commencement of this Law shall (to the extent of the interest of the mortgagor) operate as sub-underlease of the leasehold land to the mortgagee for a term of years, but subject to cesser on redemption, in manner following, namely—

(*a*) the term to be taken by a first or only mortgagee shall be ten days less than the term expressed to be assigned;

(*b*) the term to be taken by a second or subsequent mortgagee shall be one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of the second or subsequent mortgagee if the length of the last mentioned term permits, and in any case for a term less by one day at least than the term expressed to be assigned,

and, in this subsection, any such purported assignment as aforesaid includes an absolute assignment with a deed of defeasance and any other assurance which, but for this subsection, would operate in effect to vest the term of the mortgagor in a mortgagee subject to redemption.

(4) This section applies whether or not the land is registered or the mortgage is made by way of submortgage of a term of years absolute, or is expressed to be by way of trust for sale or otherwise.

(5) Without prejudice to the provisions of this Law respecting legal and equitable powers, every power to mortgage for or to lend money on mortgage of a term of years absolute by way of assignment shall be construed as a power to mortgage the term by sub-underlease for a term or years absolute or by a charge by way of legal mortgage, or to lend on such security.

107. Charges by way of legal mortgage

(1) Where a legal mortgage of land is created by a charge by deed expressed to be by way of legal mortgage, the mortgagee shall have the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits, or any of them) as if—

(*a*) where the mortgage is of a right of occupancy, a mortgage term for three thousand years without impeachment of waste had been thereby created in favour of the mortgagee; and

(*b*) where the mortgagee is a mortgage of a term years, a sub-term less one day than the term vested in the mortgagor had been thereby created in favour of the mortgagee.

(2) Where an interest vested in a mortgagee immediately before the commencement of this Law has by virtue of this Law been converted into a term of years or sub-term, the mortgagee may, by a declaration in writing to that effect signed by him, convert the mortgage into a charge by way of legal mortgage, and in that case the mortgage term shall be extinguished in the inheritance or in the head term as the case may be, and the mortgage shall have the same protection, powers proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits of any of them) as if the mortgage terms or sub-term had remained subsisting.

(3) Such declaration shall not affect the priority of the mortgagee or his right to retain possession of documents, nor affect his title to or right over any fixtures or personal effects comprised in the mortgage.

(4) The power conferred by subsection (2) may be exercised by a mortgagee notwithstanding that he is a trustee or personal representative.

108. Realisation of a mortgaged right of occupancy

(1) Where a right of occupancy has been mortgaged by the creation of a term of years limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale—

(*a*) the transfer by him shall operate to vest in the purchaser the right of occupancy transferred subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured; and thereupon—

(i) the mortgage term or the charge by way of legal mortgage and any subsequent mortgage term or charges shall merge or be extinguished as respects the land transferred.

(2) Where any such mortgagee obtains an order for foreclosure absolute, the order shall operate to vest the right of occupancy in him (subject to any legal mortgage having priority to the mortgage right of which the foreclose is obtained and to any money thereby secured), and thereupon the mortgage term, if any, shall thereby be merged in the right of occupancy and any subsequent mortgage term or charge by way of legal mortgage bound by the order shall thereupon be extinguished.

(3) Where any such mortgage acquires a title under any limitation law he, or the person deriving title under him, may enlarge the mortgage affected by the title so required, or in the case of a charge by way of legal mortgage may by deed declare that the right of occupancy is vested in him discharged as aforesaid, and the same shall vest accordingly.

(4) Where the mortgage includes fixtures or personal effects any statutory power of sale and any right to foreclose or take possession shall extend to the absolute or other interest therein affected by the charge.

(5) In the case of sub-mortgage by sub-underlease of a long term (less a nominal period) itself limited out of a right of occupancy, the foregoing provisions of this section shall operate as if the derivative terms, if any, created by the sub-mortgagee had been limited out of the right of occupancy and so as to enlarge the principal term and extinguish the derivative term created by the sub-mortgagee as aforesaid, and to enable the sub-mortgagee to transfer the right of occupancy or acquire it by foreclosure, enlargement or otherwise as aforesaid.

(6) This section applies to a mortgage whether created before or after the commencement of this Law, but does not operate to confer a better title to the right of occupancy than would have been required if the same had been transferred by the mortgage (being a valid mortgage) and the restrictions imposed by this Law in regard to the effect and creation of mortgages were not in force, and all prior mortgages (if any) not being merely equitable charges had been created by sublease or by charge by way of legal mortgage.

109. Realisation of sub-leasehold mortgages

(1) Where a term of years has been mortgaged by the creation of another term of years limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale—

(*a*) the transfer by him shall operate to transfer to the purchaser not only the mortgage term, if any, but also (unless expressly excepted with the leave of the court) the

sub-leasehold reversion affected by the mortgage, subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured; and thereupon—

(*b*) the mortgage term or the charge by way of legal mortgage, and any subsequent mortgage term or charge, shall mere in such sub-leasehold reversion or be extinguished unless excepted as aforesaid; and such transfer may, as respects the sub-leasehold reversion, be made in the name of the owner in whom it is vested,

where a licence to assign is required on a sale by a mortgage such licence shall not be unreasonably refused.

(2) Where any such mortgagee obtains an order for foreclosure absolute, the order shall, unless it otherwise provides, operate (without giving rise to a forfeiture for want of a licence to assign) to vest the sub-leasehold reversion affected by the mortgage and any subsequent mortgage term to him subject to any legal mortgage having priority to the mortgage in right of which the foreclosure is obtained and to any money thereby secured; and thereupon the mortgage terms and any subsequent mortgage term or charge by way of legal mortgage bound by the order shall, subject to any express provisions to the contrary contained in the order, merge in such sub-leasehold reversion or be extinguished.

(3) Where any such mortgage acquires a title under any limitation law, he or the person deriving title under him, may by deed declare that the sub-leasehold reversion affected by the mortgage and any mortgage term affected by the title so acquired shall vest in him, free from any right of redemption which is barred, and the same shall (without giving rise to a forfeiture for want of a licence to assign) vest accordingly and thereupon the mortgage term, if any, and any other mortgage term or charge by way of legal mortgage affected by the title so acquired shall, subject to any express provision to the contrary contained in the deed, merge in such sub-leasehold reversion or be extinguished.

(4) Where the mortgage includes fixtures or personal effects, any statutory power of sale and any right to foreclose or take possession shall extend to the absolute or other interest therein affected by the charge.

(5) In this case a sub-mortgage by sub-underlease of a term (less a nominal period) itself limited out of a sublease reversion, the foregoing provision of this section shall operate as if the derivative term created by the sub-mortgage had been limited out of the sub-leasehold reversion, and so as (subject as aforesaid) to merge the principal mortgage term therein as well as the derivative term created by the sub-mortgage and to enable the sub-mortgagee to transfer the sub-leasehold reversion or acquire it by foreclosure, vesting or otherwise as aforesaid.

(6) This section takes effect without prejudice to any encumbrance or trust affecting the sub-leasehold reversion which has priority over the mortgage in right of which the sale, foreclosure or title is made or acquired, and applies to a mortgage whether executed before or after the commencement of this Law, and to a mortgage term created by this Law, but does not apply where the mortgage term does not comprise the whole of the land included in the sub-leasehold reversion unless the rent (if any) payable in respects of that reversion has been apportioned as respects the land affected, or the rent is of no money value or not rent is reserved, and unless the lessee's covenants and conditions (if any) have been apportioned, either expressly or by implication, as respects the land affected.

110. Realisation of equitable charges by the court

(1) Where an order for sale is made by the court in reference to any equitable mortgage on land (not secured by a legal term of years or by a charge by way of legal mortgage) the court may, in favour of a purchaser, make a vesting order transferring the land or may appoint a person to transfer the land or create and vest in the mortgage a legal term of years to enable

him to carry out the sale, as the case may require, in like manner as if the mortgage had been created by deed by way of legal mortgage pursuant to this Law, but without prejudice to any incumbrance having priority to the equitable mortgage unless the incumbrancer consents to the sale.

(2) This section applies to an equitable mortgage made or arising before or after the commencement of this Law, but not to a mortgage which has been over-reached under the powers conferred by this Law or otherwise.

111. Sale of mortgaged property in action or redemption or foreclosure

(1) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption in the alternative.

(2) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and notwithstanding that—

(*a*) any other person dissents; or

(*b*) the mortgagee or any person so interested does not appear in the action,

and which allowing any time for redemption or for payment of any mortgage money, may direct a sale of the mortgaged property, on such term as it thinks fit, including the deposit in court of a reasonable sum fixed by the court to meet the expenses of sale and to secure performance of the term.

(3) In an action brought by a person interested in the right of redemption and seeking a sale, the court may, on the application of any defendant, direct the plaintiff to give such security for costs as the court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4) In any case within this section the court may, if it thinks fit, direct a sale without previously determining the priorities of encumbrancers.

(5) This section applies to actions brought either before or after the commencement of this Law.

(6) In this section mortgaged property includes the interest which a mortgagee would have had power to transfer if the statutory power of sale were applicable.

(7) For the purpose of this section the court may, in favour of a purchaser, make a vesting order transferring the mortgaged property, or appoint a person to do so subject or not to any encumbrance, as the court may think fit, or, in the case of any equitable mortgage, may create and vest a mortgage term in the mortgagee to enable him to carry out the sale as if the mortgage had been made by deed by way of legal mortgage.

112. Restriction on consolidation of mortgages

(1) A mortgagor seeking to redeem any one mortgage is entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, solely on property other than that comprised in the mortgage which he seeks to redeem.

(2) This subsection applies only if and so far as a contrary intention is not expressed in the mortgage deeds or any of them.

(3) Save as aforesaid, nothing in this Law in reference to mortgages, affects any right of consolidation or renders inoperative a stipulation in relation to any mortgage made before or after the commencement of this Law, reserving a right to consolidate.

113. Tacking and further advances

(1) After the commencement of this Law, a prior mortgagee shall have a right to make further advances to rank in priority to subsequent mortgages (whether legal or equitable)—

(*a*) if any arrangement had been made to that effect with the subsequent mortgagees;

(*b*) if he had no notice of such subsequent mortgage at the time when the further advance was made by him; or

(*c*) whether or not he had such notice as aforesaid on him to make such further advances.

(2) Subsection (1) applies whether or not the prior mortgage was made expressly for securing further advances.

(3) In relation to the making of further advances after the commencement of this Law a mortgagee shall not be deemed to have notice of a mortgage merely by reason that it was registered under Part XVIII of this Law if it was not so registered at the time when the original mortgage was created or when the last search (if any) by or on behalf of the mortgagee was made, whichever last happened:

Provided that this subsection only applies when the prior mortgage was made expressly for securing a current account or other further advances.

(4) Save in regard to the making of further advances as aforesaid, the right to tack is hereby abolished:

Provided that nothing in this Law shall affect any property acquired before the commencement of this Law by tacking or in respect of further advances made without notice of a subsequent encumbrance or by arrangement with the subsequent encumbrancer.

(5) This section applies to mortgages of land made before or after the commencement of this Law.

114. Obligation to transfer instead of re-transferring and as to the right to take possession

(1) Where a mortgager is entitled to redeem then subject to compliance with the terms on the compliance with which he would be entitled to require a retransfer or surrender, he shall be entitled to require the mortgagee, instead of a re-transferring or surrendering, to assign the mortgage debt and transfer the mortgaged property to any third person, as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

(2) The rights conferred by this section belong to and are capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of any incumbrancer prevails over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer prevails over a requisition of a subsequent incumbrancer.

(3) The foregoing provisions of this section do not apply in the case of a mortgagee being or having been in possession.

(4) Nothing in this Law affects prejudicially the right of a mortgagee of land whether or not his charge is secured by a legal term of years to take possession of the land, but the taking possession by the mortgagee does not convert any legal interest of the mortgagor into an equitable interest.

(5) This section applies to mortgages made whether before or after the commencement of this Law, and takes effect notwithstanding any stipulation to the contrary.

115. Regulations respecting inspection, production and delivery of documents and priorities

(1) A mortgagor, as long as his right to redeem subsists, shall be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of the mortgagee's expenses in this behalf, to inspect and make copies of abstracts of or extracts from the documents of title relating to the mortgage. This section applies to mortgage made before or after the commencement of this Law, and takes effect notwithstanding any stipulation to the contrary.

(2) A mortgagee whose mortgage is surrendered or otherwise extinguished, shall not be liable on account of delivering documents of title in his possession to the person not having the best right thereto, unless he has notice of the right to claim of a person having a better right, whether by virtue of a right to require a surrender or retransfer or otherwise.

116. Priorities between mortgages

Every mortgage affecting a legal interest made after the commencement of this Law, whether legal or equitable, shall rank according to its date of registration under Part XVI of this Law.

117. Actions for possession by mortgagors

(1) A mortgagor entitled to the possession or receipt of the rents and profits of any land, as to which the mortgagee has not given notice of his intention to take possession or to enter into the receipt of the rents and profits thereof, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereof, in his own name only, unless the cause of action arises upon a sublease or other contract made by him jointly with any other person.

(2) This section does not prejudice the power of a mortgagor independently of this section to take proceedings in his own name only, either in right of legal interest vested in him or otherwise.

118. Leasing powers of mortgagor and mortgagor in possession

(1) A mortgagor of land while in possession shall, as against all prior incumbrancers, and as against the mortgagee, have power to make from time to time a building or other sublease of the mortgaged land or any part thereof for any term not exceeding ninety-nine years.

(2) Every person making a sublease under this section may execute and do all assurances and things necessary or proper in that behalf.

(3) Every such sublease shall be made to take effect in possession not later than twelve months after its date.

(4) Every such sublease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

(5) Every such sublease shall contain a covenant by the sublessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified, not exceeding thirty days.

(6) A counterpart of every such sublease shall be executed by the sublessee and delivered to the sublessor, of which execution and delivery the execution of the sublease by the sublessor shall, in favour of the sublessee and all persons deriving title under him, be sufficient evidence.

(7) Every such building sublease shall be made in consideration of the lessee, or some person by whose direction the sublease is granted, having erected, or agreeing to erect within not more than five years from the date of the sublease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute within that time, on the land sublet, an improvement for or in connection with building purposes.

(8) In any such building sublease a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

(9) In case of a sublease by the mortgagor, he shall, within one month after making the sublease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the sublease duly executed by the sublessee, but the sublessor shall not be concerned to see that this provision is complied with.

(10) A contract to make or accept a sublease under this section may be enforced by or against every person on whom the sublease, if granted, would be binding.

(11) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and has effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(12) The mortgagee may, by agreement in writing, whether or not contained in the mortgage deed reserve to or confer on the mortgagor or the mortgagee, or both, any further or other powers of sub-leasing or having reference to sub-leasing; and any further or other powers so reserved or conferred shall be exercisable, as far as may be, as if they were conferred by this Law, and with all the like incidents, effects and consequences.

(13) The powers reserved or conferred under subsection (12) shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.

(14) Nothing in this Law shall be construed to enable a mortgagor or mortgagee to make a sublease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Law and the enactment replaced by this section had not been passed:

Provided that, in the case of a mortgage of a sub-leasehold land, a sublease granted under this section shall reserve a reservation of not less than one day.

(15) Subject as aforesaid, this section applies to any mortgage made before or after the commencement of this Law, but the provisions thereof, or any of them, may, by agreement in writing made after that date between mortgagor and mortgagee, be applied to a mortgage made before that date, so nevertheless that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

(16) The provisions of this section referring to a sublease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for sub-leasing of sub-letting.

(17) For the purpose of this section "mortgagor" does not include an incumbrancer deriving title under the original mortgagor.

(18) The powers of sub-leasing conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by the mortgagee under his statutory powers, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee were in possession of the land, and the mortgagee may, by writing, delegate any of such power to the receiver.

119. Powers of mortgagor and mortgagee in possession to accept surrenders of subleases

(1) For the purpose only of enabling a sublease authorised under the last preceding section, or under any agreement made pursuant to that section, or by the mortgage deed (in this section referred to as an authorised sublease) to be granted, a mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Law, power to accept from time to time a surrender of any sublease of the mortgaged land or any part thereof comprised in the sublease, and, on surrender of the sublease so far as it comprises part only of the land subleased, the rent may be apportioned.

(2) For the same purpose, a mortgagee of land while in possession shall, as against all prior or other incumbrancers, if any, and as against the mortgagor, have, by virtue of this Law, power to accept from time to time any such surrender as aforesaid.

(3) On a surrender of part of the land subleased, the original sublease may be varied:

Provided that the sublease when varied would have been valid as authorised sublease if granted by the person accepting the surrender; and, and a surrender and the making of a new or other sublease, whether for the same or for any extended or other term, and whether subject or not to the same or to any other covenants, provisions or conditions, the value of the lessee's interest in the sublease surrendered may, subject to the provisions of this section, be taken into account in the determination of the amount of the rent to be reserved, and of the nature of the covenants, provisions and conditions to be inserted in the new or other sublease.

(4) Where any consideration for the surrender, other than an agreement to accept an authorised sublease, is given by or on behalf of the sublessee to or on behalf of the person accepting the surrender, nothing in this section authorises a surrender to a mortgagor without the consent of the incumbrancers, or authorises a surrender to a second or subsequent incumbrancer without the consent of every prior incumbrancer.

(5) No surrender shall, by virtue of this section be rendered valid unless—

(*a*) an authorised sublease is granted of the whole of the land comprised in the surrender to take effect in possession immediately or within one month after the date of the surrender;

(*b*) the term certain or other interest granted by the new sublease is not less in duration than the unexpired term of interest which could have been subsisting under the original sublease if that sublease had not been surrendered, and

(*c*) where the whole of the land originally sublet has been surrendered, the rent reserved has been surrendered, the rent reserve by the new sublease is not less than the rent which would have been payable under the original sublease if it had not been surrendered, or where part only of the land has been surrendered, the aggregate rents respectively remaining payable or reserved under the original sublease and the new sublease if no partial surrender had been accepted.

(6) A contract to make or accept a surrender under this section may be enforced by or against every person on whom the surrender, if completed, would be binding.

(7) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(8) This section applies to a mortgage made after the date of the commencement of this Law but the provisions of this section, or any or them, may, by agreement in writing made after that date, between mortgagor and mortgagee, be applied to a mortgage made before that date, so nevertheless that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

(9) The provisions of this section referring to a sublease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for sub-letting.

(10) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve or confer on the mortgagor or mortgagee, or both, any further or other powers relating to the surrender of subleases; and any further or other power so conferred or reserved shall be exercisable, as far as may be, as if they were conferred by this Law, and with all the like incidents, effects and consequences:

Provided that the powers so reserved or conferred shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.

(11) Nothing in this section operates to enable a mortgagor or mortgagee to accept a surrender which would not have been accepted by the mortgagor with the concurrence of all the incumbrancers if this Law had not been passed.

(12) For the purpose of this section "mortgagor" does not include an incumbrancer deriving title under the original mortgagor.

(13) The powers of accepting surrenders conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by the mortgagee, under the statutory power, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee were in possession of the land; and the mortgagee may, by writing, delegate any of such powers to the receiver.

120. Powers incident to interest or mortgagee

(1) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Law, have the following powers, to the like extent as if they had been terms conferred by the mortgage deed, but not further, namely—

(*a*) a power, when the mortgage money has become due to sell or concur with any other person in selling the mortgaged property, or any part thereof, either subject to prior charges or not, and either together or in lots by public auction or by private contract, subject to such conditions respecting title, or other matter, as the mortgagee thinks fit, with power to vary any contract for sale, and to buy in at any action, or to rescind any contract for sale, and to resell, without being answerable for any loss occasioned thereby;

(*b*) a power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effect or property of an insurable nature, whether affixed to the land or building or not, being or forming part of the property which or an interest wherein is mortgaged, and the premiums paid for any such insurance shall be a charge on the mortgaged property or interest, in addition to the mortgage money, and with the same priority, as mortgage money;

(*c*) a power, when the mortgage money has become due, to appoint a receiver of income of the mortgaged property, or any part thereof; or if the mortgaged property consists of any interest in income, or an annual or other periodical sum, a receiver of that property or any part thereof; and

(*d*) a power, while the mortgage is in possession, to out and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contracts.

(2) Where the mortgage deed is executed after the commencement of this Law the power of sale aforesaid includes the following powers as incident thereto, namely—

(*a*) a power to impose or reserve or make binding as far as the law permits, by covenant, condition, or otherwise, on the unsold part of the mortgaged property or any part thereof, or on the purchaser and any property sold, any restriction or reservation with respect to building on or other use of the land, or with respect to any other thing;

(*b*) a power to sell the mortgaged property, or any part thereof—

(i) with or without a grant or reservation of rights of way, rights of water, easements, rights and privileges for or connected with building or other purposes in relation to the property remaining in mortgage or any part thereof, or to any property sold; and

(ii) with or without covenants by the purchaser to expend money on the land sold.

(3) The provisions of this Law relating to the foregoing powers, comprised whether in this section or in any other section, regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incident effects, and consequences, as if such variations or extensions were contained in this Law.

(4) This section applies only if and as far as a contract intention is not expressed in the mortgage deed and to the terms of the mortgage deed and to the provisions therein contained.

(5) The power of sale conferred by this section includes such power of selling the interest in the right of occupancy or any sub-leasehold reversions as if conferred by the provisions of this Law relating to the realisation of mortgages.

(6) Save as otherwise provided, this section applies where the mortgage deed is executed before or after the commencement of this Law.

121. Provisions as to mortgagees of undivided shares in land

(1) A person who was, before the commencement of this Law, a mortgagee of an undivided share in land, shall have the same power to sell his share in the proceeds of sale of the land and in the rents and profits thereof until sale, as, independently of this Law, he would have had in regard to the share in the land; and shall also have a right to require the trustees for the income attributable to that share or to appoint a receiver to receive the same from such trustees corresponding to the right which, independently of this Law, he would have had to take possession or to appoint a receiver of the rents and profits attributable to the same share.

(2) The powers conferred by this section are exercisable by the person deriving title under such mortgage.

122. Regulating of exercise of power of sale

A mortgagee shall not exercise the power of sale conferred by this Law unless and until—

(*a*) notice requiring payment of the mortgage money has been served on the mortgagor or one or two or more mortgagors, and default has been made in payment of the mortgage money, or part thereof, for three months after such service;

(*b*) some interest under the mortgage is in arrears and unpaid for two months after becoming due; or

(*c*) there has been a breach of some provisions contained in the mortgage deed or in this Law, or in an enactment replaced by this Law, and on the part of the mortgagor to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

123. Transfer on sale

(1) A mortgagee exercising the power of sale conferred by this Law shall have power, by deed, to transfer the property sold for such interest therein as he is by this Law authorised to sell or transfer or may be the subject of the mortgage, freed from all interests and rights to which the mortgage has priority, but subject to all interests and rights which have priority to the mortgage.

(2) Where a transfer is made in exercise of the power of sale conferred by this Law, or any enactment replaced by this Law, the title of the purchaser shall not be unpeaceable on the ground—

(*a*) that no case had arisen to authorise the sale;

(*b*) that due notice was not given; or

(*c*) whether the mortgage was made before or after the commencement of this Law, that the power was otherwise improperly or irregularly exercised,

and a purchaser is not, either before or on transfer, concerned to see or inquire whether a case had arisen to authorise the sale, or due notice has been given or the power is otherwise properly and regularly exercised; but any person damnified by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(3) A transfer on sale by a mortgagee, made after the commencement of this Law, shall be deemed to have been made in exercise of the power of sale conferred by this Law, unless a contrary intention appear.

124. Application of proceeds of sales

The money which is received by the mortgagee, arising from the sale, after discharge or prior encumbrances to which the sale is not made subject, if any, or after payment into court under this Law of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale or otherwise; and secondly, in discharge of the mortgage money, interests and consents, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgage property, or authorised to give receipts for the proceeds of sale thereof.

125. Provisions as to exercise of power of sale

(1) The power of sale conferred by this Law may be exercised by any person entitled to receive and give a discharge for the mortgage money.

(2) The power of sale conferred by this Law does not affect the right of foreclosure.

(3) The mortgagee shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Law, or of any trust connected therewith or, where the mortgage is executed after the commencement of this Law, of any power or provisions contained in the mortgage deed.

(4) At any time after the power of sale conferred by this Law has became exercisable, the person entitled to exercise the power may demand and recover from any person, other than a person having in the mortgaged property an interest or right relating to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

126. Mortgagee's receipts, discharge, etc.

(1) The receipt in writing of a mortgagee shall be sufficient discharge for any money arising under the power of sale conferred by this Law, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.

(2) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Law directed respecting money received by him arising from a sale under the power of sale conferred by this Law, but with this variation, that the costs, charges and expenses properly incurred for recovering and receiving the money or securities and of conversion of securities into money instead of those incident to sale.

127. Amount and application of insurance money

(1) The amount of insurance effected by a mortgage against loss or damage by fire under the power in that behalf conferred by this Law shall not exceed the amount specified in the mortgage deed, or if no amount is therein specified, two-third parts of the amount that would be required, in case of total destruction, to restore the property insured.

(2) An insurance shall not, under the power conferred by this Law, be effected by a mortgagee in any of the following cases, namely—

(*a*) where there is a declaration in the mortgage deed that no insurance is required;

(*b*) where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed;

(*c*) where the mortgage deed contains no stipulation respecting insurance; and an insurance is kept up by or on behalf of the mortgagor with the consent of the mortgagee to the amount to which the mortgagee is by this Law authorised to insure.

(3) All money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Law, or any enactment replaced by this Law, or on a insurance for the maintenance of which the mortgagor is liable under the mortgage deed, shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4) Without prejudice to any obligation to the contrary imposed by law, or by special contract, any insurance benefit received in respect of a mortgaged property insured against loss or damage by fire or otherwise affected under this Law or any enactment replaced by this Law, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, shall be applied in or towards the discharge of the mortgage money.

128. Appointment, powers, remuneration and duties of receiver

(1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Law shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Law, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2) A receiver appointed under the powers conferred by this Law or any enactment replaced by this Law, shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or default unless the mortgage deed otherwise provides.

(3) The receiver shall have power to demand and recover all the income of which he is appointed receiver by action, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the interest which the mortgagor could dispose of, and to give effectual receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee pursuant to this Law.

(4) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.

(5) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

(6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate, not exceeding five *per centum* on the gross amount of all money received, as is specified, in his appointment, and if no rate is so specified, then at the rate of five *per centum* on the gross amount, or at such other rate as the court thinks fit to allow on application made by him or that made by him for that purpose.

(7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured and keep insured against loss or damage by fire, out of the money received by him, any building, effects or other property comprised in the mortgage, whether affixed to the mortgaged property or not, being of an insurable nature.

(8) Subject to the provisions of this Law as to the application of insurance money, the receiver shall apply all money received by him as follows—

(*a*) in discharge of all rents, taxes, rates and outgoings whatever affecting the mortgaged property;

(*b*) in keeping down all annual sums or other payments and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver;

(*c*) in payment of his commission, and of the premiums for fire, life and other insurances, if any, properly payable under the mortgage deed or under this Law, and the cost of executing necessary or proper repairs directed in writing by the mortgagee;

(*d*) in payment of the interest accruing due in respect of any principal money due under the mortgage; and

(*e*) in or towards discharge of the principal money if so directed in writing by the mortgagee,

and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

129. Effect of advance on joint account

(1) Where—

(*a*) in a mortgage or an obligation for payment of money or a transfer of a mortgage or of such an obligation, the sum or any part of the sum advanced or owing to more persons than one out of money or moneys belonging to them on a joint account; or

(*b*) a mortgage or such an obligation or such a transfer is made to more persons than jointly,

the mortgage money or other money or money's worth, being due to those persons on the mortgage or obligation shall, as between them and the mortgagor or obligor, be deemed to be and remain money or money's worth belonging to these persons on a joint account; and the receipt in writing of the survivors or last survivor of them, or of the personal representative of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer or a severance of the joint account.

(2) This section applies if and so far as a contrary intention is not expressed in the mortgage, obligation or transfer, and has effect subject to the terms of the mortgage, obligation or transfer, and to the provisions therein contained.

(3) This section applies to any mortgage obligation or transfer incurred or made before or after the commencement of this Law.

130. Notice of trust affecting mortgage debt

(1) A person dealing in good faith with a mortgagee, or with the mortgagor if the mortgage has been discharged, released or postponed as to the whole or any part of the mortgaged property, shall not be concerned with any trust at any time affecting the mortgage money or the income thereof, whether or not he has notice of the trust, and may assume, unless the contrary is expressly stated in the instruments relating to the mortgage—

(*a*) that the mortgagees (if more than one) are or were entitled to the mortgage money on a joint account;

(*b*) that the mortgagee has or had power to give valid receipts for the purchase money or mortgage money and the income thereof (including any arrears of interest) and to release or postpone the priority of the mortgage debt or any part thereof or to deal with the same or the mortgaged property or any part thereof,

without investigating the equitable title to the mortgage debt or the appointment or discharge of trustees in reference thereto.

(2) This section applies to mortgages made before or after the commencement of this Law, but only as respects dealings effected after such commencement.

(3) This section does not affect the liability of any person in whom the mortgage debt is vested for the purposes of any trust to give effect to that trust.

131. Transfers of mortgages

(1) A deed executed by a mortgagee purporting to transfer his mortgage or the benefit thereof shall, unless a contrary intention is therein expressed, and subject to any provisions therein contain, operate to transfer to the transferee—

(*a*) the right to demand, use for, recover, and give receipts for, the mortgage money or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon;

(*b*) the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee; and

(*c*) all the interest in the mortgaged property then vested in the mortgagee subject to redemption or cesser, but as to such interest subject to the right of redemption then subsisting.

(2) In this section **"transferee"** includes his personal representatives and assigns.

(3) A transfer of a mortgage may be made in the form contained in the Third Schedule to this Law with such variations and additions, if any, as the circumstances may require.

[Third Schedule.]

(4) This section applies whether the mortgage transferred was made before or after the commencement of this Law, but applies only to transfers made after the commencement of this Law.

(5) This section does not extend to a transfer of a bill of sale of chattels by way of security.

132. Retransfer of mortgages by endorsed receipts

(1) A receipt enforced on, written at the feet of, or annexed to, a mortgage for all money thereby secured, which states the name of the person who pays the money and is executed by the charges by way of legal mortgage or the person in whom the mortgaged property is vested and who is legally entitled to give a receipt for the mortgage money, shall operate, without any retransfer, surrender, or release—

(*a*) where a mortgage takes effect by sublease or sub-underlease, as a surrender of the terms, so as to determine the term or merge the same in the reversion immediately expectant thereon;

(*b*) where the mortgage does not take effect by sublease or sub-underlease, as a retransfer thereof to the extent of the interest which is the extent of the interest which is the subject matter of the mortgage, to the person who immediately before the execution of the receipt was entitled to the equity or redemption,

and in either case, as a discharge of the mortgaged property from all principal money and interest secured by, and from all rights under, the mortgage, but without prejudice to any term or other interest which is paramount to the interest of the mortgagee or other person in whom the mortgaged property was vested.

(2) Provided that, where by the receipt the money appears to have been paid by a person who is not entitled to the immediate equity or redemption, the receipt shall operate as if the benefit of the mortgage had by deed been transferred to him, unless—

(*a*) it is otherwise expressly provided; or

(*b*) the mortgage is paid off out of capital money, or other money in the hands of a personal representative or trustee properly applicable for the discharge of the mortgage, and it is not expressly provided that the receipt is to operate as a transfer.

(3) Nothing in this section confers on a mortgagor a right to keep alive a mortgage paid off by him, so as to affect prejudicially any subsequent incumbrancer; and where there is no right to keep the mortgage alive, the receipt does not operate as a transfer.

(4) This section does not affect the right of any person to require a reassignment, surrender, release or transfer to be executed in lieu of a receipt.

(5) A receipt may be given in the form contained in the Third Schedule to this Law, with such variations and additions, if any, as may be deemed expedient; and where it takes effect under this section, it shall (subject as hereinafter provided) be liable to the same stamp duty as if it were a retransfer under seal.

(6) In a receipt given under this section, the same covenants shall be applied as if the person who executes the receipt and by deed expressed to transfer the property as mortgagee, subject to any interest which is paramount to the mortgage.

(7) Where the mortgage consists of a mortgage and a further charge or of more than one deed, if shall be sufficient for the purposes of this section if the receipt refers either to all the deeds whereby the mortgage money is secured or to the aggregate amount of the mortgage money thereby secured and for the time being owing, and is endorsed on, written at the foot of, or annexed to, one of the mortgage deeds.

(8) This section applies to the discharge of a charge by way of legal mortgage, and to the discharge of a mortgage, whether made by way of statutory mortgage or not, executed before or after the commencement of this Law, but only as respects discharges effected after such commencement.

(9) The provisions of this section relating to the operation of a receipt shall (in substitution for the like statutory provisions relating to receipts given by or on behalf of a building, friendly, industrial or provident society) apply to the discharge of a mortgage made to any such society, provided that the receipt is executed in the manner required by the statute relating to the society, but nothing in this section shall render to a receipt given by or on behalf of any such society liable to any stamp duty which would not have been otherwise payable.

(10) This section does not apply to the discharge of a charge or incumbrance registered under Part XVIII of this Law.

(11) In this section **"mortgaged property"** means the property remaining subject to the mortgage at the date of the receipt.

133. Cesser of mortgage terms

Without prejudice to the right of a tenant for life or other persons having only a limited interest in the equity or redemption to require a mortgage term to be kept alive by transfer or otherwise, a mortgage term shall, when the money secured by the mortgage has been discharged, become a satisfied term and shall cease.

134. Forms of statutory legal charges

(1) As a special form of charge by way of legal mortgage, a mortgage of a right of occupancy or a sub-leasehold land may be made by a deed expressed to be made by way of statutory mortgage, being in one of the Forms (Nos. 1 or 4) set out in the Fourth Schedule to this Law, with such variation and additions, if any, as circumstances may require and if so made the provisions of this section shall apply thereto.

(2) There shall be deemed to be included, and there shall by virtue of this Law be implied, in such a mortgage deed—

(*a*) a covenant with the mortgagee by the person therein expressed to charge as mortgagor to the effect following namely—

(i) that the mortgagor will, on the stated day, pay to the mortgagee the stated money, with interest thereon in the meantime at the stated rate; and

(ii) will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgage (as well after as before any judgment is obtained under the mortgage) interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments, the first thereof to be made at the end of six months from the day stated for payment of the mortgage money;

(*b*) a provision to the following effect, namely, that if the mortgagor on the stated day pays to the mortgagee the stated mortgage money, with interest thereon the mortgagee at any time, thereafter, at the request and cost of the mortgagor, shall discharge the mortgaged property or transfer the benefit of the mortgage as the mortgagor may direct.

(3) Subsection (2) applies to a mortgage deed made under the corresponding provisions of the enactment replaced by this section with a substitution of a reference to "the person therein expressed to convey as mortgagor" for the reference in this subsection to "the person therein expressed to charge as mortgagor".

135. Forms of statutory transfers of legal charges

(1) A transfer of a statutory mortgage may be made by a deed expressed to be made by way of statutory transfer or mortgage, being in such one of the three Forms (Nos. 2, 3, or 4) set out in the Fourth Schedule to this Law as may be appropriate to the case with such variations and additions, if any, as circumstances may require, and if so made the provisions of this section shall apply thereto.

(2) In whichever of those three Forms the deed of transfer is made, it shall have effect as follows—

(*a*) there shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred (who, with his personal representatives and assigns, is in this section designated the transferee), the right to demand, sue for, recover and give receipts for the mortgage money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee;

(*b*) all the terms and interest, if any, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

(3) If a covenantor joins in the deed of transfer, there shall also be deemed to be included, and there shall by virtue of this Law be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor to the effect that the covenantor shall, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed, and will thereafter, as long as the mortgage money or any part thereof remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest.

(4) If the deed of transfer is made in Form 4, it shall, by virtue of this Law, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage and the provisions of this section shall have effect in relation thereto accordingly; but it shall not be liable to any increased stamp duty by reason only of it being designated a mortgage.

(5) This section applies to the transfer of a statutory mortgage created under any written law hitherto in force in the State.

136. Implied covenants joint and several

In a deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to transfer or charge as mortgagors, or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them; and where there are more mortgagees or more transferees than one, the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the covenant shall be with each severally in respect of the shares or distinct sum secured to him.

137. Form of discharge of statutory mortgage of charge

A statutory mortgage may be surrendered or discharged by a receipt in Form 5 set out in the Fourth Schedule to this Law with such variations and additions, if any, as circumstances may require.

Powers of Attorney

138. Execution under power of attorney

(1) The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature, and under his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name with the signature and seal of the donor thereof.

(2) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Law, and operates without prejudice to any statutory direction that an instrument is to be executed in the name of an interest owner.

139. Payment by Attorney under power without notice of death, etc.

(1) Any person making any payment or doing any act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become subject to disability or bankrupt or had revoked the power where the fact of the death, disability, bankruptcy or revocation was not at the time of the payment or act known to the person making or doing the same.

(2) A statutory declaration by an attorney to the effect that he had not received any notice or information of the revocation of such power of attorney by death or otherwise shall, if made immediately before or within three months after any such payment or act as aforesaid, be taken to be conclusive proof of such non-revocation at the time when such payment or act was done.

(3) Where the donee of the power of attorney is a corporation aggregate, the officer appointed to act for the corporation in the execution of the power may make the statutory declaration in like manner as if that officer had been the donee of the power.

(4) Where probate or letters of administration have been granted to any person, as attorney for some other person, this section applies as if the payment made or acts done under the grant had been made or done under a power of attorney.

(5) This section does not affect any rights against the payee or any person interested in any money so paid, and that person shall have the like remedy against the payee as he would have had against the power if the payment had not been made by him.

(6) This section applies to payments and acts made and done before or after the commencement of this Law, and in this section **"power of attorney"** includes a power of attorney implied by statute.

140. Effect of irrevocable power of attorney for value

(1) If a power of attorney given for valuable consideration is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser—

(*a*) the power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability or bankruptcy of the donor of the power;

(*b*) any act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power had so been done or happened; and

(*c*) neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power, or of the death, disability or bankruptcy of the donor of the power.

(2) This section applies to powers of attorney created by instruments executed before or after the commencement of this Law.

141. Effect of power of attorney irrevocable for a fixed time

(1) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser—

(*a*) the power shall not be revoked for and during that fixed time either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability or bankruptcy of the donor of the power;

(*b*) any act done within that fixed time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, disability or bankruptcy of the donor of the power, had not been done or happened; and

(*c*) neither the donee of the power nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time without the concurrence of the donee of the power, or of the death, disability or bankruptcy of the donor of the power, within that fixed time.

(2) This section applies to powers of attorney created by instruments executed before or after the commencement of this Law.

142. Devolution of power of attorney given to a purchaser

(1) A power of attorney given for valuable consideration may be given, and shall be deemed to have been always capable of being given, to a purchaser of property or any interest therein and to the persons deriving title under him thereto, and those persons shall be the duly constituted attorneys for all the purposes of the power, but without prejudice to any right to appoint substitutes given by the power.

(2) This section applies to powers of attorney created by instruments executed before or after the commencement of this Law.

143. Power of attorney by married women

(1) A married woman, whether an infant or not, has power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing or doing any other act which she might herself execute or do, and the provisions of this Law relating to instruments creating powers of attorney apply thereto.

(2) This section applies to deeds executed before or after the commencement of this Law.

PART V

Equitable Interests and Things in Action

144. Application of the *Rule in Shelley's case*

Where by any instrument coming into operation after the commencement of this Law an interest in any property is expressed to be given to the heirs or issue or any particular heir or any class of the heirs or issue of any person in word which, but for this section would, under the rule of law known as the *Rule in Shelley's case*, have operated to give to that person an inheritable right of occupancy, such words shall operate in equity as words of vesting and not of description only, and subject to the proviso to subsection (3) of section 5 shall be construed and have affect accordingly; and in the case of an interest in any particular heir or class of heirs, the same person or persons shall take as would in the case of a right of occupancy have answered that description under the law in force before the commencement of this Law.

145. As to heir taking by purchaser

(1) A limitation of property in favour of the heir general of a deceased person which, if limited in respect of a right of occupancy before the commencement of this Law would have conferred on their heir a vested legal interest, shall operate to confer a corresponding equitable interest in the property on the person who would, if the law in force immediately before such commencement had remained unaffected, have answered the description of heir general of the deceased in respect of his right of occupancy, either at the death of the deceased or at the time named in the limitation, as the case may require.

(2) This section applies whether the deceased person dies before or after the commencement of this Law, but only applies to limitations or trusts created by as instrument coming into operation after such commencement.

146. Restriction on executory limitation

(1) Where there is a person entitled to—

(*a*) an equitable interest in a right of occupancy or for any less interest; or

(*b*) any interest in other property,

with an executory limitation over any default or failure of all or any of his issue, whether within or at any specified period of time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of 21 years of the class in default or failure whereof the limitation over was to take effect.

(2) This section applies where the executory limitation is contained in an instrument coming into operation before or after the commencement of this Law, save that, as regards instruments coming into operation before the commencement of this Law it only applies to limitations of land for a right of occupancy, or for a term of years absolute or determinable on life, of for a term of life.

147. Legal assignments of things in action

(1) An absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or thing in action, is effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of such notice—

(*a*) the legal right to such debt or thing in action;

(*b*) all legal and other remedies for the same; and

(*c*) the power to give a good discharge for the same without the concurrence of the assignor.

(2) If the debtor, trustee or other person liable in respect of such debt or thing in action has notice—

(*a*) that the assignment is disputed by the assignor or any person claiming under him, or

(*b*) of any other opposing or conflicting claims to such debt or thing in action,

he may, if he thinks fit, either call upon the persons making claims thereto to interplead concerning the same, or pay the debt or other thing in action into court and give notice of the payment to the assignor or claiming as the case may require.

(3) This section does not affect the provisions of any enactment relating to policies of assurance.

148. Effect of registration of equitable interest

Every instrument registered under the Land Instrument Registration Law shall, so far as it affects any equitable interest in land, take effect, as against other instruments affecting any equitable interest in the same land, from the date of its registration under that law.

149. Dealings with equitable interest in property other than land

(1) Subject to the provisions of this section, the law applicable to dealings with equitable things in action which regulates the priority of competing interests therein shall continue to apply to and regulate the priority of those competing interests.

(2) A notice, otherwise than in writing, given to be received by a trustee after the commencement of this Law as respects any dealing with an equitable interest in property other than land shall not affect the priority of competing claims of purchasers in that equitable interest.

(3) Where, as respects any dealing with an equitable interest in property other than land—

(*a*) the trustees are not persons to whom a valid notice of the dealing can be given;

(*b*) there are no trustees to whom a notice can be given; or

(*c*) for any other reason a valid notice cannot be served, without unreasonable cost or delay,

a purchaser may at his own cost require that—

(i) a memorandum of the dealing be endorsed, written on or permanently annexed to the instrument creating the trust; or

(ii) the instrument be produced to him by the person having the possession or custody thereof to prove that a sufficient memorandum has been placed thereon or annexed thereto,

and such memorandum shall, as respects priorities, operate in like manner as if notice in writing of the dealing had been given to trustees duly qualified to receiver the notice at the time when the memorandum is placed on or annexed to the instrument creating the trust.

(4) Where the trust is created by statute or by operation of law, or in any other case where there is no instrument whereby the trusts are declared, the instrument under which the equitable interest is acquired or which is evidence of the devolution thereof shall, for the purpose of this section, be deemed the instrument creating the trust; and in particular, where the trust arises by reason of an intestacy, the letters of administration or probate in force when the dealing was effected shall be deemed such instrument.

(5) Nothing in this section affects any priority acquired before the commencement of this Law.

(6) Where a notice in writing of a dealing with an equitable interest in such property has been served on a trustee under this section, the trustees from time to time of the property affected shall be entitled to the custody of the notice, and the notice shall be delivered to them by any person who for the time being may have the custody thereof; and subject to the payment of costs, any person interested in the equitable interest may require production of the notice.

(7) This section does not apply until a trust has been created, and in this section **"dealing"** includes a disposition by operation of law.

150. Power to nominate a trust corporation to receive notice

(1) By an instrument creating a trust, a trust corporation may be nominated to whom notices of dealings affecting any property may be given, whether or not under the foregoing section, and in default of such nomination the trustees (if any) of the instrument, or the court on the application of any person interested, may make the nomination.

(2) The person having the possession or custody of an instrument of which notices under this or the last foregoing section may be enforced shall cause the name of the trust corporation to whom notices may be given to be endorsed upon that instrument.

(3) Notice given to any trust corporation whose name is so endorsed shall operate in the same way as a notice or endorsement under the foregoing section.

(4) Where a trust corporation is acting for the purpose of this section, a notice given to a trustee relating to the trust instrument of a dealing relating to the trust property shall forthwith be delivered or sent by post by the trustee to the trust corporation and until received by the corporation shall not affect any priority.

(5) A trust corporation shall not be nominated for the purposes of this section—

(*a*) unless that corporation consents to act;

(*b*) where that corporation has any beneficial interest in or charge upon the trust property; or

(*c*) where a trust corporation is acting as the trustee or one of the trustees of the instrument creating the trust.

(6) Where a trust corporation acting for the purpose of this section becomes entitled to any beneficial interest in or charge upon the trust property, another trust corporation shall be nominated in its place and all documents relating to notices affecting the trust shall be delivered to the corporation so nominated.

(7) A trust corporation acting for the purpose of this section shall be bound to keep a separate register of notices of dealings in respect of each equitable interest and shall enter therein—

(*a*) the date of the notice;

(*b*) the name of the person giving the notice;

(*c*) short particulars of the equitable interest intended to be affected; and

(*d*) short particulars of the effect of the dealing if mentioned in the notice.

(8) The trust corporation may, before making any entry in the register, require the applicant to pay a fee not exceeding the prescribed fee.

(9) Subject to the payment of a fee not exceeding the prescribed fee the trust corporation shall permit any person who would, if the corporation had not been the trustee of the trust instrument, have been entitled to inspect notices served on the trustee, to inspect and take copies of the register and any notices held by the corporation.

(10) Subject to the payment by the applicant of a fee not exceeding the prescribed fee, the trust corporation shall reply to all inquiries respecting notices received by the corporation in like manner and in the same circumstances as if the corporation had been the trustee of the trust instrument.

(11) In this section **"prescribed fee"** means the fee prescribed under the Public Trustee Law, in cases when the Public Trustee acts as a trust corporation for the purposes of this section.

PART VI

Subleases and Tenancies

151. Effect of extinguishment of reversion

(1) Where a reversion expectant on a sublease of land is surrendered or merged, the interest which as against the sublease for the time being confers the next vested right to the land, shall be deemed the reversion for the purpose of preserving the same incidents and obligations as would have affected the original reversion had there been no surrender or merger thereof.

(2) This section applies to surrenders or merges effected before or after the commencement of this Law.

152. Apportionment of conditions of severance

(1) Notwithstanding the severance by transfer, surrender or otherwise of the reversionary interest in any land comprised in a sublease and notwithstanding the avoidance or cesser in any other manner of the term granted by a sublease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the sublease shall be apportioned, and shall remain annexed to the several parts of the reversionary interest as served, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in that part of the land as to which the term has not been surrendered, or has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the sublease.

(2) In this section **"right of re-entry"** includes a right to determine the sublease by notice to quit or otherwise; but where the notice is served by a person entitled to a severed part of the reversion so that it extends to part only of the land sublet, the sublessee may within one month determine the sublease in regard to the rest of the land by giving to the owner of the reversionary interest therein a counter-notice expiring at the same time as the original notice.

(3) This section applies to subleases made before or after the commencement of this Law and whether the severance of the reversionary interest or the partial avoidance or cesser of the term was effected before or after such commencement:

Provided that, where the sublease was made before the first day of January, nineteen hundred, nothing in this section shall affect the operation of severance of the reversionary interest or partial avoidance or cesser of the term which was effected before the commencement of this Law.

153. Rent and benefit of lessee's covenants to run with the reversion

(1) Rent reserved by a sublease, and the benefit of every covenant or provision therein contained, having reference to the subject matter thereof, and on the sublessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary interest in the land, or in any part immediately expectant on the term granted by the sublease, notwithstanding severance of that reversionary interest, and without prejudice to any liability affecting a covenant or his interest.

(2) Any such rent, covenant or provision shall be capable of being recovered, enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land sublet.

(3) Where that person becomes entitled by transfer or otherwise, such rent, covenant or provision may be recovered, received, enforced or taken advantage of by him notwithstanding that he becomes so entitled after the condition of re-entry or forfeiture has become enforceable, but this subsection does not render enforceable any condition of re-entry or other condition waived or released before such person becomes entitled as aforesaid.

(4) This section applies to subleases made before or after the commencement of this Law, but does not affect the operation of—

(*a*) any severance of the reversionary interest; or

(*b*) any acquisition by transfer or otherwise of the right to receive or enforce any rent, covenant or provision,

effected before the commencement of this Law.

154. Obligation of sublessor's covenants to run with reversion

(1) The obligation under or of a covenant entered into by a sublessor with reference to the subject matter of the sublease shall, if and as far as the sublessor has power to bind the reversionary interest immediately expectant on the term granted by the sublease, be annexed and incident to and shall go with that reversionary interest, or the several parts thereof, notwithstanding severance of that reversionary interest, and may be taken advantage of the enforced by the person in whom the term is from time to time vested by transfer, devolution in law or otherwise; and, if and as far as the sublessor has power to bind the person from time to time entitled to that reversionary interest, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

(2) This section applies to subleases made before or after the commencement of this Law, whether the severance of the reversionary interest was effected before or after such commencement:

Provided that, where the sublease was made before the first day of January, nineteen hundred, nothing in this section shall affect the operation of any severance of the reversionary interest effected before such commencement.

(3) This section takes effect without prejudice to any liability affecting a covenantor or his estate.

155. Effect of licences granted to sublessees

(1) Where a licence is granted to a sublessee to do any act, the licence, unless otherwise expressed, extends only—

(*a*) to the permission actually given;

(*b*) to the specific breach of a provision or covenant referred to; or

(*c*) to any other matter thereby specifically authorised to be done,

and the licence does not prevent any proceeding for any subsequent breach unless otherwise specified in the licence.

(2) Notwithstanding any such licence—

(*a*) all rights under covenants and powers of re-entry contained in the sublease remain in full force and are available as against any subsequent breach of covenant, condition or other matter not specifically authorised or waived, in the same manner as if no licence had been granted; and

(*b*) the condition or right of entry remains in force in all respects as if the licence had not been granted, save in respect of the particular matter authorised to be done.

(3) Where in any sublease there is a power or condition of re-entry on the sublessee assigning, subletting or doing any other specified act without a licence, and a licence is granted—

(*a*) to any one or two or more sublessees to do any act, or to deal with his equitable share or interest; or

(*b*) to any sublessees to assign or underlet part only of the property, or to do any act in respect of part only of the property,

the licence does not operate to extinguish the right of entry in case of any breach of covenant or condition by the co-sublessees of the other shares or interests in the property, or by the sublessee or sublessees of the rest of the property (as the case may be) in respect of the shares, interests or property not the subject of the licence.

(4) This subsection does not authorise the grant after the commencement of this Law of a licence to create an undivided share in a right of occupancy.

(5) This section applies to licences granted before and after the commencement of this Law.

156. No fine to be exacted for licence for assign

In all subleases containing a covenant, condition or agreement against assigning, underletting or parting with the possession or disposing of the land or property sublet without licence or consent, such covenant, condition or an agreement shall, unless the sublease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that no fine shall be payable for or in respect of such licence or consent; but this proviso does not preclude the right to require the payment of a reasonable sum in respect of any legal or other expenses incurred in relation to such licence or consent.

157. Sublessee to give notice of ejectment to sublessor

Every sublessee to whom there is delivered any writ for the recovery of premises sublet to or held by him, or to whose knowledge any such writ comes, shall forthwith give notice thereof to his sublessor or his agent or receiver, and, if he fails so to do, he shall be liable to

forfeit to the person of whom he holds the premises an amount equal to the value of three years' improved or best rent of the premises, to be recovered by action in any court having jurisdiction in respect of claims for such an amount.

158. Restrictions on and relief against forfeiture of subleases and sub-underleases

(1) A right of re-entry or forfeiture under any provision or stipulation in a sublease for a breach of any covenant or condition in the sublease shall not be enforceable by action or otherwise, unless and until the sublessor serves on the sublessee a notice—

(*a*) specifying the particular breach complained of;

(*b*) if the breach is capable of remedy, requiring the sublessee to remedy the breach; and

(*c*) in any case, requiring the sublessee to make compensation in money for the breach,

and the sublessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the sublessor, for the breach.

(2) Where a sublessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the sublessee may, in the sublessor's action, if any, or in any action brought himself, apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages or an injunction to restrain any like breach in the future, as the court, in the circumstances of each case, thinks fit.

(3) A sublessor shall be entitled to recover as a debt due to him from a sublessee, and in addition to damages (if any), all reasonable costs and expenses properly incurred by the sublessor in the employment of a legal practitioner, surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the sublessee is relieved, under the provisions of this Law.

(4) Where a sublessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a sublease, or for non-payment of rents, the court may, on application by any person claiming or sub-underlessee any interest in the property comprised in the sublease or any part thereof, either in the sublessor's action (if any) or in any action brought by such person for that purpose, make an order vesting, for the whole term of the sublease or any less term, the property comprised in the sublease or any part thereof in any person entitled as sub-underlessee to any interest in such property upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise as the court in the circumstances of each case may think fit, but in no case shall any such sub-underlessee be entitled to require a sub-underlease by him for any longer term than he had under his original sub-underlease.

(5) For the purposes of this section—

(*a*) **"sublease"** includes an original or derivative underlease; also an agreement for a sublease where the sublessee had become entitled to have his sublease granted; also a grant securing a rent by condition;

(*b*) **"sublessee"** includes an original or derivative sub-underlessee, and the persons deriving title under a sublessee; also a grantee under any such grant as aforesaid and the persons deriving title under him;

(*c*) **"sublessor"** includes an original or derivative sub-underlessor, and the person deriving title under a sublessor; also a person making such grant as aforesaid and the person deriving title under him;

(*d*) **"sub-underlease"** includes an agreement for a sub-underlease where the sub-underlessee has become entitled to have his sub-underlease granted;

(*e*) **"sub-underlessee"** includes any person deriving title under a sub-underlease.

(6) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the sublease in pursuance of the directions of an enactment.

(7) For the purposes of this section a sublease limited to continue as long only as the sub-lessee abstains from committing a breach of covenant shall be and take effect as a sublease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(8) This section does not extend to a covenant or condition against assigning, under-letting, parting with the possession or disposing of the land sublet where the breach occurred before the commencement of this Law.

(9) Where a condition of forfeiture on taking in execution of the sublessee's interest is contained in any sublease, then—

(*a*) if the sublessee's interest is sold within a year from the taking in execution, this section applies to the forfeiture conditions aforesaid;

(*b*) if the sublessee's interest is not sold before the expiration of that year, this section only applies to the forfeiture condition aforesaid during the first year from date of the taking in execution.

(10) This section does not, save as otherwise mentioned, affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(11) This section has effect notwithstanding any stipulation to the contrary.

159. Waiver of a covenant in a sublease

(1) Where actual waiver by a sublessor or the persons deriving title under him of the benefit of any covenant or condition in any sublease is proved to have taken place in any particular instance, such waiver shall not be deemed to extend to any instance, or to any breach of covenant or condition save that to which such waiver specially relates, nor operate as a general waiver of the benefit or any such covenant or condition.

(2) This section applies unless a contrary intention appears, and extends to waivers effected before or after the commencement of this Law.

160. Abolition of *interesse termini* and as to reversionary subleases and subleases for lives

(1) The doctrine of *interesse termini* is hereby abolished.

(2) As from the commencement of this Law all terms of years shall, whether the interest is created before or after such commencement, be capable of taking effect at law or in equity, according to the interest or powers of the grantor, from the date fixed for commencement of the term, without actual entry.

(3) A term, at a rent or granted in consideration of a fine, limited after the commencement of this Law to take effect more than 21 years from the date of the instrument purporting to create it, shall be void, and any contract made after such commencement to create such a term shall likewise be void, but this subsection does not apply to any term taking effect in equity under an equitable power for mortgage, indemnity or other like purposes.

(4) Nothing in subsections (1) and (2) of this section prejudicially affects the right of any person to recover any rent or to enforce or take advantage of any covenants or conditions, or as respects terms or interest created before the commencement of this Law, operates to vary any statutory or other obligations imposed in respect of such terms or interests.

(5) Nothing in this Law affects the rule of law that a legal term, whether or not being a mortgage term, may be created to take effect in reversion expectant on a longer term, which rule is hereby confirmed.

(6) Any sublease or sub-underlease, at a rent, or in consideration of a fine, for life or lives or for any term of years determinable with life or lives, or on the marriage of the sublessee, or any contract therefor, made before or after the commencement of this Law shall take effect as a sublease, sub-underlease or contract therefor, for a term of ninety years determinable after the death or marriage (as the case may be) of the original sublessee, or of the survivor of the original sublessees, by at least one month's notice in writing given to determine the same on one of the quarter days applicable to the tenancy, either by the sublessor or the persons deriving title under him, to the person entitled to the existence, by affixing the same to the premises, or by the sublessee or other persons in whom the sub-leasehold interest is vested to the lessor or other persons deriving title under him:

Provided that—

(*a*) if the sublease, sub-underlease or contract therefor is made determinable on the dropping of the lives of persons other than or besides the sublessees, then the notice shall be capable of being served after the death of any person or of the survivor of any person (whether or not including the sublessee) on the cesser of whose life or lives the sublease, sub-underlease, or after the death of the original sublessee or of the survivor of the original sublessees;

(*b*) if there is no quarter days specially applicable to the tenancy, notice may be given to determine the tenancy on one of the usual quarter days.

161. Surrender of a sublease, without prejudice to leases with a view to the grant of a new sublease

(1) A sublease may be surrendered with a view to the acceptance of a new sublease in place thereof, without a surender of any sub-underlease derived thereout.

(2) A new sublease may be granted and accepted, in place of any sublease so surrendered, without any such surrender or a sub-underlease as aforesaid, and the new sublease operates as if all sub-underleases derived out of the surrendered sublease had been surrendered before the surrender of that sublease was effected.

(3) The sublessee under the new sublease and any person deriving title under him is entitled to the same rights and remedies in respect of the rent reserved by the covenants, agreements and conditions contained in any sub-underlease as if the original sublease had not been surrendered by or was or remained vested in him.

(4) Each sub-underlessee and any person deriving title under him is entitled to hold and enjoy the land comprised in his sub-underlease (subject to the payment of any rent reserved by and to the observance of the covenants, agreements and conditions contained in the sub-underlease) as if the sublease out of which the sub-underlease was derived had not been surrendered.

(5) The sublessor granting the new sublease and any person deriving title under him is entitled to the same remedies, by entry in and upon the land comprised in any such sub-underlease for rent reserved by or for breach of any covenant, agreement or conditions contained in the new sublease do not exceed or impose greater burdens than those reserved by or

contained in the original sublease out of which the sub-underlease is derived as he would have had—

(*a*) if the original sublease had remained on foot; or

(*b*) if a new sub-underlease derived out of the new sublease had been granted to the sub-underlessee or a person deriving title under him,

as the case may require.

(6) This section does not affect the powers of the court to give relief against forfeiture.

162. Provisions as to attornment by tenants

(1) Where land is subject to a sublease, the transfer of a reversion in the land expectant on the determination of the sublease shall be valid without any attornment of the sublessee; but nothing in this subsection—

(*a*) affects the validity of any payment of rent by the sublessee to the person making the transfer or grant before notice of the transfer or grant is given to him by the person entitled thereunder; or

(*b*) renders the sublessee liable for any breach of covenant to pay rent, on account of his failure to pay rent to the person entitled under the transfer or grant before such notice is given to the sublessee.

(2) An attornment by the sublessee in respect of any land to a person claiming to be entitled to the interest in the land of the sublessor, if made without the consent of the sublessor, shall be void; but this subsection does not apply to an attornment—

(*a*) made pursuant to a judgment of a court of competent jurisdiction;

(*b*) to a mortgagee, by a sub-underlessee holding under a sub-underlease from the mortgagor where the right of redemption is barred; or

(*c*) to any other person rightfully deriving title under the sublessor.

163. Subleases invalidated by reason of non-compliance with terms of powers under which they are granted

(1) Where in the intended exercise of any power of sub-leasing, whether conferred by any enactment or any other instrument, a sublease (in this section referred to as an invalid sublease) is granted which by reason of any failure to comply with the terms of the power is invalid, then—

(*a*) as against the person entitled after determination of the interest of the grantor to the reversion; or

(*b*) as against any other person who, subject to any subleased property granted under the power, would have been entitled to the land comprised in the sublease,

the sublease, if it was made in good faith, and the sublessee has entered thereunder, shall take effect in equity as a contract for the grant, at the request of the sublessee, of a valid sublease, subject to such variations as may be necessary in order to comply with the terms of the power:

Provided that a sublessee under an invalid sublease shall not, by virtue of any such implied contract, be entitled to obtain a variation of the sublease if the other persons who would have been bound by the contract are willing and able to confirm the sublease without variation.

(2) Where a sublease granted in the intended exercise of such a power is invalid by reason of the grantor not having power to grant the sublease at the date thereon, but the grantor's interest in the land comprised therein continues after the time when he might, in the exercise of the power, have properly granted a sublease in the like terms, the sublease shall take effect as a valid sublease in like manner as if it has been granted at that time.

(3) Where during the continuance of the possession taken under an invalid sublease the person for the time being entitled, subject to such possession of the land comprised therein or to the rents and profits thereof, is able to confirm the sublease without variation, the sublessee, or other person who would have been bound by the sublease had it been valid, shall, at the request of the person so able to confirm the sublease, be bound to accept a confirmation thereof, and thereupon the sublease shall have effect and be deemed to have had effect as a valid sublease from the grant thereof; and confirmation under this subsection may be by a memorandum in writing signed by or on behalf of the persons respectively confirming and accepting the confirmation of the sublease.

(4) Where a receipt or a memorandum in writing confirming an invalid sublease is, upon or before the acceptance of rent thereunder, signed by or on behalf of the person accepting the rent, that acceptance shall, as against the persons, be deemed to be a confirmation of the sublease.

(5) The foregoing provisions of this section do not affect prejudicially—

(*a*) any right of action or other right or remedy to which, but for those provisions or any enactment replaced by those provisions, the sublessee named in an invalid sublease would or might have been entitled under any covenant on the part of the grantor for title or quiet enjoyment contained therein or implied thereby; or

(*b*) any right of re-entry or other right or remedy to which, but for those provisions or any enactment replaced thereby, the grantor or the person for the time being entitled to the reversion expectant on the termination of the sublease, would or might have been entitled by reason of any breach of the covenants, conditions or provisions contained in the sublease and binding on the sublessee.

(6) Where a valid power of subletting is vested in or may be exercised by a person who grants a sublease which, by reason of the termination of the interest of the grantor or otherwise, cannot have effect and continuance according to the terms thereof independently of the power, the sublease shall for the purposes of this section be deemed to have been granted in the intended exercise of the power although the power is not referred to in the sublease.

(7) This section does not apply to a sublease of land held on charitable, ecclesiastical or public trust.

(8) This section takes effect without prejudice to the provisions in this Law for the grant of subleases in the name and on behalf of the interest owner of the land affected.

164. Application of Part V to existing subleases

In this Part of this Law, except where otherwise expressly provided or after the commencement of this Law **"sublease"** includes a sub-under lease or other tenancy.

PART VII

Powers

165. Release of powers simply collateral

A person to whom any power, whether coupled with an interest or not, is given may by deed release or contract not to exercise the power.

166. Disclaimer of power

(1) A person to whom any power, whether coupled with an interest or not, is given by deed, disclaim the power, and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power.

(2) On such disclaimer, the power may be exercised by the other person or persons or the survivor or survivors of the other persons, to whom the power is given, unless the contrary is expressed in the instrument creating the power.

167. Protection of purchasers claiming under certain void appointment

(1) An instrument purporting to exercise a power of appointment over property, is held in trust for a class or number of persons of whom the appointee is one, shall not (save as hereinafter provided) be void on the ground of fraud on the power as against a purchaser in good faith.

(2) If the interest appointed under subsection (1) exceeds, in amount or value, the interest in such property to which immediately before the execution of the instrument the appointee was presumptively entitled under the trust in default of appointment, having regard to any advances made in his favour and to any hotchpot provisions, the protection afforded by this section to a purchaser shall not extend to such excess.

(3) In this section **"a purchaser in good faith"** means a person dealing with an appointee of the age of not less than 25 years for valuable consideration in money or money's worth, and without notice of the fraud, or of any circumstances for which, if reasonable inquiries had been made, the fraud might have been discovered.

(4) Persons deriving title under any purchaser entitled to the benefit of this section shall be entitled to the like benefit.

(5) This section applies only to dealings effected after the commencement of this Law.

168. Validation of appointments where objects are excluded or take illusory shares

(1) No appointment made in exercise of any power to appoint any property among two or more objects shall be invalid on the ground that—

(*a*) an insubstantial, illusory or nominal share only is appointed to, or left unappointed to devolve upon, any one or more of the objects of the power; or

(*b*) any object of the power is thereby altogether excluded,

but every such appointment shall be valid notwithstanding that any one or more of the objects is not thereby or in default of appointment, to take any share in the property.

(2) This section does not affect any provision in the instrument creating the power which declares the amount of any share from which any object of the power is not to be excluded.

(3) This section applies to appointments made before or after the commencement of this Law.

169. Execution of powers not testamentary

(1) A deed executed in the presence of and attested by two or more witnesses (in the manner in which deeds are ordinarily executed and attested) is, so far as respects the execution and attestation thereof, a valid execution of a power of appointment by deed or by any instrument in writing, not testamentary, notwithstanding that it is expressly required that a deed or instrument in writing, made in exercise of the power, is to be executed or attested with some additional or other form of execution or attestation or solemnity.

(2) This section does not operate to defeat any direction in the instrument creating the power that—

(*a*) the consent of any particular person is to be necessary to a valid execution; or

(*b*) in order to give validity to any appointment, any act is to be performed having no relation to the mode of executing and attesting the instrument.

(3) This section does not prevent the donee of a power from executing it in accordance with the power by writing, or otherwise than by an instrument executed and attested as a deed; and where a power is so executed this section does not apply.

(4) This section applies to appointment by deed made before or after the commencement of this Law.

170. Applications of Part VI to existing powers

This Part of this Law applies to powers creating or arising either before or after the commencement of this Law.

PART VIII

Perpetuities and Accumulations

171. Abolition of rules against perpetuity and accumulation

(1) The rules of law known as the rules against perpetuity are hereby abolished in the State.

(2) All rules of law against the accumulation of income or profits arising from interest in land or otherwise are hereby abolished in the State.

PART X

Lunatics

172. Power of court to settle the beneficial interest of a lunatics

(1) The court may direct a settlement to be made of the property of a lunatic, or any part thereof or any interest therein, on such trusts and subject to such powers and provisions as the court may deem expedient, and in particular may give such directions—

(*a*) where the property has been acquired under a settlement, a will or an intestacy, or represents property so acquired; or

(*b*) where by reason of any change in the law of intestacy or of any change in circumstances since the execution by the lunatic of a testamentary disposition, or of any absence of information at the time of such execution, or on account of the former management of the property or the expenditure of money in improving or maintaining the same or for any other special reason the court is satisfied that any person might suffer an injustice if the property were allowed to devolve as undisposed of on the death intestate of the lunatic or under any testamentary disposition executed by him.

(2) The court may direct the receiver of the lunatic, or any trustee for him, to execute any transfer or other instrument, and to do any other act or thing which may be required for giving effect to the settlement, in the name and on behalf of the lunatic, and, for that purpose, may make a vesting order or appoint a person to transfer; and any settlement approved by the court shall be as effectual and binding on all persons interested as if the same had been made by the lunatic while of full capacity.

(3) This section applies whether or not the lunatic has executed a testamentary disposition and notwithstanding that it is not known whether he has executed such a disposition or not, but does not apply when he is an infant.

(4) Any person who under the Administration of Estate Law, had, or if that Law, or any enactment which it replaces, had not been passed would have had, a *spes successionis* (whether under any testamentary disposition which is known to exist or in the event of the intestacy of the lunatic) or an interest in the property of the lunatic or in any part thereof, as well as the receiver and any other person who may be authorised by rules made under this section, shall have power to apply to the court for an order under this section.

(5) Subject to making due provisions for the maintenance of the lunatic in accordance with his station in life, whether out of the capital or income of the property settled or other property or partly in one way and partly in another, and to providing, by means of power of appointment or revocation, or otherwise, for the possibility of the lunatic recovering full capacity, the court may, in making any order under this section, have regard to—

(*a*) the manner in which the property has been settled or dealt with on former occasions;

(*b*) in the case of land, the welfare of the labourers and other persons employed thereon, and the expediency of settling personal estate to devolve therewith;

(*c*) the continuation or provisions of any pensions, and the application of any part of the income for charitable purposes;

(*d*) the provisions of any testamentary disposition of the lunatic;

(*e*) the expediency of providing for—

(i) discretionary trusts, trusts for effecting or maintaining policies of insurance, powers of appointment, sinking funds for making good loss by fire (in lieu of, or in addition to, insurance) or for any other purpose.

(ii) the extension of any statutory powers of investment, management or otherwise;

(iii) the manner in which any costs are to be raised and paid, whether out of the settled property or otherwise;

(iv) any other matter or thing which, having regard to the nature of the settlement, or the property to be settled, and the management, development and enjoyment thereof, and to the persons who are to take, either successively or otherwise, the court may consider material.

(6) In this section, **"testamentary disposition"** means an instrument executed by the lunatic while of full testamentary capacity, which, if unrevoked, might, on his death, be proved as a will or condicil; and the court may act on such evidence as to the existence or absence of a testamentary disposition as it thinks fit.

(7) At any time before the death of the lunatic, the court may, as respects any property remaining subject to the trusts of a settlement made under this section, on being satisfied that any material fact was not disclosed to the court when the settlement was made, or on account of any substantial change in circumstances, by order vary the settlement in such manner as it thinks fit, and give any consequential directions.

(8) Rules of court may be made for giving effect to the provisions of this section, and in particular for compelling information to be furnished respecting lodgment thereof in court; for prescribing what notices, if any, of the proceedings are to be served; for dispensing with such notices and, when necessary, for making representation orders.

PART X

Voidable Dispositions

173. Voluntary transfers to defraud creditors voidable

(1) Save as provided in this section, every transfer of property, made whether before or after the commencement of this Law, with intent to defraud creditors, shall be voidable at the instance of any person thereby prejudiced.

(2) This section does not extend to any interest in property transferred for valuable consideration and in good faith or upon good consideration and in good faith to any person not having, at the time of the transfer, notice of the intent to defraud creditors.

174. Voluntary disposition of land; how far voidable as against purchasers

(1) Every voluntary disposition of land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser.

(2) For the purposes of this section, no voluntary disposition shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for valuable consideration was made, if such subsequent transfer was made before the commencement of this Law.

175. Acquisition of reversions at and under value

(1) No acquisition made in good faith, without fraud of unfair dealing, of any reversionary interest in any property, for money or money's worth, shall be liable to be opened or set aside merely on the ground of under-value.

(2) In this subsection **"reversionary interest"** includes an expectancy or possibility.

(3) This section does not affect the jurisdiction of the court to set aside or modify unconscionable bargains.

PART XI

Miscellaneous

176. Provisions as to corporation sale

(1) Where either after or before the commencement of this Law any property or any interest is or has been vested in a corporation sole, the same shall, unless and until otherwise disposed of by the corporation, pass and devolve to and vest in and be deemed always to have passed and devolved to or vested in the successors from time to time of such corporation.

(2) Where either after or before the commencement of this Law there is or has been vacancy in the office of a corporation sole or in the office of the head of a corporation aggregate (if any case in which the vacancy affects the status or powers of the corporation) at the time when, if there had been no vacancy, an interest in or charge on property would have been acquired by the corporation, such interest shall notwithstanding such vacancy vest and be deemed to have vested in the successor to such office on his appointment as a corporation sole, or in the corporation aggregate (as the case may be), but without prejudice to the right of such successor, or of the corporation aggregate after the appointment of its head officer to disclaim that interest or charge.

(3) Any contract or other transaction expressed or purported to be made with a corporation sole, or any appointment of a corporation sole as a custodian or other trustee or a personal representative, at a time (either before or after the commencement of this Law) when there

was vacancy in the office, shall on the vacancy being filled take effect and be deemed to have taken effect as if the vacancy had been filled before the contract, transaction or appointment was expressed to be made or was capable of taking effect, and on the appointment of a successor shall be capable of being enforced, accepted, disclaimed or renounced by him.

177. Dissolution of a corporation

Where, by reason of the dissolution of a corporation, whether before or after the commencement of this Law, a legal interest in any property has determined, the court may be by order create a corresponding interest and vest the same in the persons who would have been entitled to the interest which determined had it remained a subsisting interest.

178. Protection of legal practitioners and trustees adopting law

(1) The powers given by this Law to any person, and the covenants, provisions, stipulations and words which under this Law are to be deemed to be included or implied in any instrument, or are by this Law made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations and words, to be given by or to be contained in any such instrument, or to be adopted in connection with, or applied to, any such contract or transaction and a legal practitioner shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting in good faith, in any such instrument, or in connection with any such contract or transaction, to negative the giving, inclusion, implication, or application of any of those powers, covenants, provisions, stipulations or words, or to insert or apply any other in place thereof, in any case where the provisions of this Law would allow of his doing so.

(2) Save as expressly provided by this Law, nothing in this Law shall be taken to imply that the insertion in any such instrument, or the adoption in connection with, or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations or words is improper.

(3) Where the legal practitioner is acting for trustees, executors or other persons in a fiduciary position, these persons shall also be protected in like manner.

(4) Where such persons are acting without a legal practitioner, they shall also be protested in like manner.

179. Merger

There is no merger by operation of law only of any property the beneficial interest in which would not be deemed to be merged or extinguished in equity.

180. Right of pre-emption capable of release

All statutory and other rights of pre-emption affecting a legal interest shall be and be deemed always to have been capable of release.

181. Legal easements

(1) Where an easement, right or privilege for a legal interest is created, it shall ensure for the benefit of the land to which it is intended to be annexed.

(2) Nothing in this Law affects the right of a person to acquire, hold or exercise an easement, right or privilege over or in relation to land for a legal interest in common with any other person, or the power creating or transferring such an easement, right or privilege.

182. Power to direct division of chattels

Where any chattels belong to persons in undivided shares, the persons interested in one half or upwards may apply to the court for an order for division of the chattels or any of them, according to a valuation or otherwise, and the court may make such order and give any consequential directions as it thinks fit.

183. Indemnities against rents

The benefit of all covenants and powers given by way of indemnity against a rent or any part thereof payable in respect of land, or against the breach of any covenant or condition in relation to land, is and shall be deemed always to have been annexed to the land to which the indemnity is intended to relate, and may be enforced by the interest owner for the time being of the whole or any part of the land, notwithstanding that the benefit may not have been expressly apportioned or assigned to him or to any of his predecessors in title.

Notice

184. Regulations respecting notice

(1) Any notice required or authorised to be served or given by this Law shall be in writing.

(2) Any notice required or authorised by this Law to be served on a sublessee or a mortgagor shall be sufficient, although only addressed to the sublessee or the mortgagor by that designation, without his name, or generally to the person interested, without any name and notwithstanding that any person to be affected by the notice is absent, under disability, unborn or unascertained.

(3) Any notice required or authorised by this Law to be served shall be sufficiently served if it is left at the last-known place of abode or business in Nigeria of the sublessor, mortgagee, mortgagor or other person to be served, or, in case of a notice required or authorised to be served on a sublessee or a mortgagor, is affixed or left for him on the land or any house or building comprised in the sublease or mortgage.

(4) Any notice required or authorised by this Law to be served shall be sufficiently served if it is sent by post in a registered letter addressed to the sublessee, sublessor, mortgagee, mortgagor or other person to be served, by name, at the aforesaid place of abode or business, office or counting-house, and if that letter is not returned through the post-office undelivered, that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5) The provisions of this section shall extend to notices required to be served by any instrument affecting property executed or coming into operation after the commencement of this Law unless a contrary intention appears.

(6) This section does not apply to notices served in proceedings in the court.

185. Effect of registration of instrument under Land Instruments Registration Law

(1) The registration of any instrument under the provisions of the Land Instruments Registration Law or any other enactment requiring the registration of instruments relating to land shall be deemed to constitute actual notice of such instrument insofar as it creates or affects any of the following—

(*a*) an estate contract;

(*b*) an equitable charge;

(*c*) a general equitable charge; or

(*d*) a restrictive covenant,

to all persons and for all purposes connected with the land affected, as from the date of registration or other prescribed date and so long as the registration continues in force.

(2) This section operates without prejudice to the provisions of the Law respecting the making of further advances by a mortgage, and applies only to instruments and matters required or authorised to be registered under the Land Instruments Registration Law.

186. Restrictions on constructive notice

(1) A purchaser shall not be prejudicially affected by notice of—

(*a*) any instrument or matter capable of registration under the provisions of the Land Instruments Registration Law which is void or not enforceable as against him under that Law by reason of the non-registration thereof;

(*b*) any instrument or matter or any fact or thing unless—

(i) it is within his own knowledge, or would have come to his knowledge if such inquires and inspections had been made as ought reasonably to have been made by him; or

(ii) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his legal practitioner or other agent, as such, or would have come to the knowledge of his legal practitioner or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the legal practitioner or other agent.

(2) Sub-paragraph (ii) of subsection (1) (*b*) shall not exempt a purchaser from any liability under, or any obligation to perform or observe any covenant, condition, provision or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if that paragraph had not been enacted.

(3) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

(4) This section applies to purchases made either before or after the commencement of this Law.

187. Notice of restrictive covenants and easements

(1) Where land, having a common title with other land, is disposed of to a purchaser (other than a sublessee or a mortgagee) who does not hold or obtain possession of the documents forming the common title, such purchaser, notwithstanding any stipulation to the contrary, may require that a memorandum giving notice of any provision contained in the disposition to him restrictive of use of, or giving rights over, any other land comprised in the common title, shall, where practicable, be written or endorsed on, or where impracticable, be permanently annexed to some one document selected by the purchaser but retained in the possession or power of the person who makes the disposition, and being or forming part of the common title.

(2) The title of any person omitting to require an endorsement to be made or a memorandum to be annexed shall not, by reason only of this enactment, be prejudiced or affected by the omission.

PART XII

General Provisions

188. Provisions of Law to apply to inheritable interest in land

(1) The provisions of this part of this Law relating to legal interests apply to inheritable interests in land, subject only to qualifications necessarily arising by reason of the inherent nature of the interest affected.

(2) This section takes effect subject to the express provisions of this Law, relating to undivided shares.

189. Payment into court; jurisdiction and procedure

(1) Payment of money into court effectually exonerates therefrom the person making the payment.

(2) Subject to any rules of the court to the contrary—

(*a*) every application to the court under this Law shall, save as otherwise expressly provided;

(*b*) on an application by a purchaser, notice shall be served in the first instance on the vendor;

(*c*) on an application by a vendor, notice shall be served in the first instance on the purchaser;

(*d*) on any application, notice shall be served on such persons, if any, as the court thinks fit.

(3) The court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges and expenses of all or any of the parties to any application.

190. Orders of court conclusive

(1) An order of the court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice or service, whether the purchaser has notice of any such want or not.

(2) This section has effect with respect to any sublease, sale or other act under the authority of the court, and purporting to be in pursuance of any statutory power notwithstanding any exception in such statute.

(3) This section applies to all orders made before or after the commencement of this Law.

191. Application to the State

(1) This Law shall not in any manner (save as otherwise expressly provided and except so far as it relates to undivided share, joint ownership, subleases for lives or subleases for years terminable with life or marriage, affect or alter the descent, devolution or tenure or the nature of the interest of or in any land for the time being vested in the State, but so nevertheless that, after the commencement of this Law, no interests or charges in or over any such lands as aforesaid shall be transferred or created, except such interests or charges as are capable under this Law of subsisting or of being transferred or created.

(2) Subject as aforesaid and to the provisions of the Land Use Act, the provisions of this Law shall bind the State.

192. Application

(1) For avoidance of doubt, this Law shall apply subject to the provisions of the Land Use Act, and in particular, nothing in this Law shall be construed to—

(*a*) apply to the radical title to any land in the State, which, in accordance with the provisions of the Land Use Act, is vested in the State;

(*b*) confer upon any person, family or community any higher right or interest in land than a right of occupancy;

(*c*) authorise the holder of a right of occupancy in any land to alienate such right without the consent of the Governor or the Local Government, as the case may be; or

(*d*) affect the power of the Governor to revoke a right of occupancy in accordance with the provisions of the Land Use Act.

[Cap. L4 LFN.]

(2) Subject to the provisions of subjection (3) of this section, this Law shall apply to all lands within the State.

(3) This Law shall not apply to any right or interest in land which is regulated by customary law or Islamic Law except where in any transaction the parties agreed, or must from the nature of the transaction be presumed to have agreed, that the transaction should be exclusively regulated otherwise than by customary law or Islamic Law.

193. Interpretation

(1) In this Law, unless the context otherwise requires—

"building purposes" includes the erecting and improving of, and the adding to, and repairing of buildings;

"building sublease" is a sublease for building purposes or purposes connected therewith;

"Court" means the High Court of Cross River State;

"disposition" includes a transfer, and a gift or an appointment of any property or interest therein contained in a will, and **"dispose of"** has a correspondent meaning;

"equitable easement" means any easement, right or privilege over or affecting land and being merely an equitable interest;

"equitable interest" means any interest or charge in or over land or in the proceeds of sale of land other than a legal interest;

"estate contract" means any contract by an interest owner or by a person entitled at the date of the contract to have legal interest transferred to him to transfer or create a legal interest, including a contract conferring either expressly or by implication of law a valid option to purchase, a right of pre-emption or any other like right;

"fine" includes a premium and any payment, consideration or benefit in the nature of a fine or premium;

"general equitable charge" means any equitable charge whether or not protected by a deposit of documents relating to the legal interest affected, and which does not arise, or affect any interest arising, under a trust for sale and is not included in any other class of interests or charges set out in section 1;

"holder" has the meaning assigned to it in the Land Use Act;

"encumbrance" includes a legal or equitable mortgage and a trust for securing money, a loan, annuity, or other capital or annual sum; and **"encumbrancer"** has the meaning corresponding with that of encumbrance, and includes every person entitled to the benefit of an encumbrance, or to require payment or discharge thereof;

"interest owner" means the owner of a legal interest in land; but an infant is not capable of being an interest owner;

"land" includes land held under a right of occupancy or under any other tenure (other than under customary law), things growing or attached to land, including buildings or parts of buildings (whether the division is horizontal, vertical, or made in any other way) and other tangible property; also a rent and other non-tangible property, and an easement, right, privilege, or benefit in, over or derived from land;

"legal interest" means a right, interest or charge, in or over land (subsisting or created at law) which is by this Law authorised to subsist or to be created as a legal interest;

"legal mortgage" means a mortgage by sublease or sub-underlease or a charge by way of legal mortgage, and **"legal mortgagor"** has a corresponding meaning;

"legal power" includes power vested in a charge by way of legal mortgage or in any interest owner under which a legal interest can be transferred or created; and **"equitable power"** means the power in or over land under which equitable interest or power only can be transferred or created;

"limitation" in relation to the disposition of property means the marketing out, by deed or other instrument, of—

(*a*) property or interest in property to be held;

(*b*) the person or class of persons intended to hold fit; and

(*c*) the class of persons that shall succeed to it; and

"limited" with its grammatical derivations has a corresponding meaning;

"lunatic" includes a lunatic whether so found or not;

"mortgage money" means money or money's worth secured by a mortgage;

"mortgaged" includes a charge by way of legal mortgage and any person from time to time deriving title under the original mortgagee;

"mortgagee in possession" is a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgage property;

"mortgagor" includes any person from time to time deriving title under the original mortgagor or entitled to redeem a mortgaged property;

"notice" includes constructive notice;

"personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death includes any person who takes possession of or intermeddles with the property of a decease person without the authority of the personal representatives or the court;

"possession" includes receipt of rents and profits or the right to receive the same if any;

"power of attorney" means an authority given by one party to another party to act for him in respect of one or more specified subjects; also the document containing such authority; the party who gives the authority is the **"donor"**, and the party to whom it is given is the **"donee"** or **"attorney"**;

"purchaser" means purchaser in good faith for valuable consideration and includes a sublessee, mortgagee or other person who for valuable consideration acquires an interest in property;

"rent" includes an annual or periodical payment in money or money's worth, reserved or issuing out of land, but does not include mortgage interest;

"restrictive covenant" means a covenant or agreement (not being a covenant or agreement made between sublessor and sublessee) restrictive of the user of land;

"right of occupancy" has the meaning assigned to it in the Land Use Act 1978;

"securities" includes stocks, fund and share;

"settlement" means any deed, will, agreement or other instrument under or by virtue of which any property is or is deemed under this Law to be limited to or in trust for any person by way of succession; and the expressions **"settle"**, **"settled"** and **"settler"** shall be construed accordingly;

"sublease" means a legal interest created by a transfer in writing of a right of occupancy for a specified period of time; also the right so transferred, or the document containing such transfer;

"sub-underlease" means a transfer of part of the term of a sublease; also the term so transferred or the document containing such transfer;

"tenancy" means the holding or possession of land or buildings thereon for any term;

"term of years absolute" means a term of years (taking effect either in possession or in reversion whether or not at a rent) with or without impeachment for waste, subject or not to another legal interest, and either certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event (other than the dropping of a life, or in determination of a determinable life interest) but does not include any term of years determinable with life or lives or with cesser of a determinable life interest, nor, if created after the commencement of this Law, a term of years which is not expressed to take effect in possession within 21 years after the creation thereof where required by this Law to take effect within that period;

"transfer" includes a mortgage, charge, sublease, assent, vesting declaration, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will;

"trust corporation" means the public trustee or a corporation either appointed by the court in any particular case to be a trustee, or entitled by any written law to act as a custodian trustee;

"trust for sale", in relation to land, means an immediate trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power to postpone the sale, and **"power to postpone sale"** means power to postpone in the exercise of a discretion;

"trust land" means any land held on a trust for sale;

"trustee for sale" means the person (including a personal representative) holding land on trust for sale;

"underlease" has the same meaning as **"sublease"**;

"will" includes codicil.

(2) Where an equitable interest in a power over property arises by statute or operation of law, reference to the creation of an interest or power includes references to any interest or power so arising.

194. Short title

This Law may be cited as the Law of Property Law.

SCHEDULES

FIRST SCHEDULE

[Section 24.]

Transitional Provisions

PART I

Conversion of certain existing legal estates into equitable interests

All estates, interests and charges in or over land, including fees determinable whether by limitation or condition, which immediately before the commencement of this Law were estates interests or charges, subsisting at law, or capable of taking effect as such, but which by virtue of Part II of this Law are not capable of taking effect as legal interests, shall as from the commencement of this Law be converted into equitable interests either in the land or in the proceeds of sale thereof, nor shall the priority of any such interest, charge or interest over other equitable interests be affected.

PART II

Vesting of legal interests

1. Where the purposes of a term of years, created or limited out of sub-leasehold land, are satisfied at the commencement of this Law, that term shall merge in the reversion expectant thereon and shall cease accordingly; but where the term was vested in the owner of the reversion, the merger and cesser shall take effect without prejudice to any protection which would have been afforded the owner for the time being of that reversion had the term remained subsisting.

Where the purposes are satisfied only as respects part of the land comprised in a term, this provision has effect as if a separate term had been created in regard to that part of the land.

2. Where immediately after the commencement of this Law any owner of a legal interest is entitled, subject or not to the payment of the costs of tracing the title and of transfer, to require any other legal interest in the same land to be surrendered, released or transferred to him so as to merge or be extinguished, the last-mentioned interest shall by virtue of this Part of this Schedule be extinguished, but without prejudice to any protection which would have been afforded to him had that interest remained subsisting.

3. (1) Where immediately after the commencement of this Law any person is entitled subject or not to the payment of the costs of tracing the title and of transfer, to require any legal interest (not vested in trustees for sale) to be transferred to or otherwise vested in him, such legal interest shall, by virtue of this Part of this Schedule, vest in the manner hereinafter provided.

(2) The divesting of a legal interest by virtue of this paragraph shall not, where the person from whom the interest is so divested was a trustee, operate to prevent the legal interest being transferred or a legal interest being created, by him in favour of a purchaser for money or money's worth, if the purchaser has no notice of the trust and if the documents of title relating to the interest divested are produced by the trustee or by a person deriving title under him.

(3) This paragraph shall (without prejudice to any claim, in respect of fines and fees) apply to a person who, under a surrender or any disposition having the effect of a surrender, or under a covenant to surrender or otherwise, was immediately before the commencement to be vested in him.

(4) Any person who immediately after the commencement of this Law, is entitled to an equitable interest capable of subsisting as a legal interest which has priority over any legal interest in the same land, shall be deemed to be entitled for the foregoing purposes to require a legal interest to be vested in him for an interest of a like nature not exceeding in extent or duration the equitable interest:

Provided that this paragraph shall not—

(*a*) apply where the equitable interest is capable of being overreached by virtue of a subsisting trust for sale;

(*b*) operate to prevent such person from accruing any other legal interest under this Part of this Schedule to which he may be entitled.

(5) Under the provisions of this Part of this Schedule, the legal interest affected (namely, any interest which a person is entitled to require to be vested in him as aforesaid) shall vest as follows—

(*a*) where at the commencement of this Law, land is subject to a mortgage (not being an equitable charge unsecured by any interest), the legal interest affected shall vest in accordance with the provisions relating to mortgages contained in this Schedule;

(*b*) where the land is at the commencement or by virtue of this Law or any statute coming into operation at the same time or subsequently subject or is by virtue of any statute made subject to a trust for sale, the legal interest affected shall vest in the trustees for sale (including personal representatives holding land on trust for sale) but subject to any mortgage term subsisting or created by this Law;

(*c*) in any case to which the foregoing subparagraphs do not apply the legal interest affected shall vest in the person of full age who, immediately after the commencement of this Law, is entitled (subject or not to the payment of costs) to require the legal interest to be vested in him, but subject to any mortgage term subsisting or created by this Law.

(6) Nothing in this Part of this Schedule shall operate—

(*a*) to vest in a mortgagee of a term of years absolute any nominal sub-leasehold reversion which is held in trust for him subject to redemption;

(*b*) to vest in a mortgagee any legal interest except a term of years absolute;

(*c*) to vest in a person entitled to a sub-leasehold interest, as respects such interest, any legal interest except a term of years absolute;

(*d*) to vest in a person entitled to an easement, right or privilege with reference thereto any legal interest in the easement, right or privilege; or

(*e*) to vest any legal interest in a person for an undivided share; or

(*f*) to vest any legal interest in an infant; or

(*g*) to affect prejudicially the priority of any mortgage or other incumbrance or interest subsisting at the commencement of this Law;

(*h*) to render invalid any limitation or trust which would have been capable of taking effect as an equitable limitation or trust;

(*i*) to invest in a purchaser or his personal representatives any legal interest which he has contracted to acquire and in regard to which a contract, including an agreement to create a legal mortgage, is pending at the commencement of this Law, although the consideration may have been paid or satisfied and the title accepted, or to render transfer of such estate; or

(*j*) to vest in any person any legal interest affected by any rent, covenants or conditions if, before any proceedings are commenced in respect of the legal interest or dealing therewith *inter vivos* is affected, he or his personal representatives disclaim it in writing by him or them.

(7) Any legal interest acquired by virtue of this part of this Schedule shall be held upon the trust and subject to the powers, provisions, rents, covenants, conditions, right of redemption (as respects terms of years absolute) and other rights, burdens and obligations, if any, upon or subject to which the interest acquired ought to be held.

(8) No stamp duty shall become payable by reason only of any vesting, surrender or release affected by this Schedule.

PART III

Provision as to legal interest vested in infant

1. Where immediately before the commencement of this Law a legal interest in land is vested in one or more infants beneficially or where immediately after the commencement of this Law a legal interest in land would by virtue of this Law have become vested in one or more infants beneficially if he or they had been of full age, the legal interests shall vest in the manner provided by this Law.

2. Where immediately before the commencement of this Law a legal interest in land would by virtue of this Law have become vested in one or more infants beneficially if he or they had been of full age, the legal interest shall vest in the manner provided by this Law.

3. Where immediately before the commencement of this Law a legal interest in land is vested in an infant jointly with one or more other persons of full age beneficially, the legal interest shall be virtue of this Law vest in that other person or those other persons on statutory trusts, but not so as to sever any joint tenancy in the net proceeds of sale or in the rents and profits until sale:

Provided that, if by virtue of this paragraph the legal interest becomes vested in one person as trustee, then, if no other person is able and willing to do so, the parents or parent, testamentary or other guardian of the infant, if respectively able and willing to act (in the order named) may and at the request of any person interested shall (subject to the costs being provided for) by writing appoint an additional trustee and thereupon by virtue of this Law the legal interest shall vest in the additional trustee and existing trustee as joint tenants.

4. Where, immediately before the commencement of this Law, a legal interest in land is vested solely in an infant as a personal representative, or a trustee of a settlement, or on trust for sale or on any other trust, or by way of mortgage, or where immediately after the commencement of this Law or otherwise would have been so vested if the infant were of full age, the legal interests and the mortgage debt (if any) and interest thereon shall by virtue of this Law vest in the Public Trustee, pending the appointment of trustees as hereinafter provided—

(*a*) as to the land, upon the trust, and subject to the equities affecting the same, but in the case of a mortgage estate for a term of years absolute in accordance with this Law; and

(*b*) as to the mortgage debt and interest, upon such trusts as may be requisite for giving effect to the rights (if any) of the infant or other persons beneficially interested therein:

Provided that—

(i) the public trustee shall not be entitled to act in the trust, or charge any fee, or be liable in any manner, unless and until requested in writing to act by or on behalf of the person interested in the land or the income thereof, or in the mortgage debt or interest thereon (as the case may be), which request may be made on behalf of the infant by his parents or parent, or testamentary or other guardian (in the order named) and those persons may, in the order aforesaid (if no other person is able and willing to do so) appoint new trustees in the place of the Public Trustees, and thereupon by virtue of this Law the land or term and mortgage money shall vest in the trustees so appointed upon the trusts and subject to equities aforesaid:

Provided that the Public Trustee may, before he accepts the trust, but subject to the payment of his costs, transfer to a person of full age who becomes entitled;

(ii) after the Public Trustee has been so requested to act, and has accepted the trust, no trustee shall (except by an order of the court) be appointed in his place without his consent;

(iii) any person interested in the land or the income thereof, or in the mortgage debt or in the interest thereon (as the case may be), may, at any time during the minority, apply to the court for the appointment of trustees of the trust, and the court may make such order as it think fit, and if thereby new trustees are appointed the legal interest (but in the case of a mortgage interest only for a term of years absolute as aforesaid) and the mortgage debt (if any) and interest shall, by virtue of this Law, vest in the trustees as joint tenants upon the trust and subject to the equities aforesaid;

(iv) neither a purchaser of the land nor a transferee for money or money's worth of the mortgage shall be concerned in any way with the trusts affecting the legal interest or the mortgage debt and interest thereon;

(v) the vesting in the Public Trustee of a legal interest or a mortgage debt by virtue of this Part of this Schedule shall not affect any directions previously given as to the payment of income or of interest on any mortgage money, but such directions may, until he accepts the trust, continue to be acted on as if no such vesting had been affected.

5. Where immediately before the commencement of this Law, a legal interest in land is vested in two or more persons jointly as personal representatives, trustees, or mortgagees, and anyone of them is an infant, or where immediately after the commencement of this Law a legal interest in land would, by virtue of this Law, or otherwise have been so vested if the infant were of full age, the legal interest in the land with the mortgage debt (if any) and the interest thereupon shall, by virtue of this Law, vest in the other person or persons of full age—

(*a*) as to the legal interest, upon the trusts and subject to the equities affecting the same (but in the case of a mortgage interest only for a term of years absolute as aforesaid); and

(*b*) as to the mortgage debt and interest, upon such trusts as may be requisite for giving effect to the rights (if any) of the infant or other persons beneficially interested therein; but neither a purchaser of the land nor a transferee for money or money's

worth of the mortgage shall be concerned in any way with the trusts affecting the legal interest or the mortgage debt and interest thereupon:

Provided that, if, by virtue of this paragraph, the legal and mortgage debt, if any, become vested in a sole trustee, then if no other person is able and willing to do so, the parents or parent, testamentary or other guardian of the infant (in the order named) may, and the request of any person interested shall (subject to the costs being provided for) by writing appoint a new trustee in place of the infant, and thereupon by virtue of this Law the legal interest and mortgage money shall vest in the new and continuing trustees upon that trusts and subject to the equities aforesaid.

6. This Part of this Schedule does not affect the interest of powers of an administrator during minority.

PART IV

Provisions subjecting land held in undivided shares to a trust for sale

1. If the entirety of the land is vested in trustees of personal representatives whether subject or not to the incumbrances affecting the entirety or an undivided share in trust for persons entitled in undivided shares, then—

(*a*) if the land is subject to incumbrances affecting undivided shares or to incumbrances affecting entirety which under this Law or otherwise are not secured by legal terms of years absolute, the entirety of the land shall vest free from such incumbrances in such trustees or personal representatives and be held by them upon the statutory trusts; and

(*b*) in any other case, the land shall be held by such trustees or personal representatives upon the statutory trusts; subject in the case of personal representatives, to their rights and powers for the purposes of administration.

2. If the entirety of the land is vested absolutely and beneficially in not more than four persons of full age entitled thereto in undivided shares free from incumbrances affecting undivided shares but subject or not to incumbrances affecting the entirety, it shall, by virtue of this Law, vest in them as joint tenants upon the statutory trusts.

3. In any case to which the foregoing provisions of this Part of this Schedule do not apply, the entirety of the land shall vest (free as aforesaid) in the Public Trustee upon the statutory trusts—

(*a*) the Public Trustee shall not be entitled to act in the trust, or charge any fee, or to be liable in any manner, unless and until requested in writing to act by or on behalf of the person interested in more than an undivided half of the land or the income thereof;

(*b*) after the Public Trustee had been so requested to act, and has accepted the trust, no trustee shall (except by any order of the court) be appointed in the place of the Public Trustee without his consent;

(*c*) subject as aforesaid, any person interested in more than an undivided half of the land or the income thereof may appoint new trustees in the place of the Public Trustee with the consent of any incumbrancer of undivided shares (but so that a purchaser shall not be concerned to see whether any such consent has been given) and thereupon the land shall by virtue of this Law vest in the persons so appointed (free as aforesaid) in the trustees as joint tenants upon the statutory trusts;

(*d*) if the persons interested in more than an undivided half of the land or the income thereof, either request the Public Trustee to act, or (whether he refuses to act or has not been requested to act) apply to the court for the appointment of trustees in his place, within three months from the time when they have been requested in writing by any person interested so to do then and in any such case, any person interested

may apply to the court for the appointment of trustees in the place of the Public Trustee, and the court may make such order as it thinks fit, and if thereby trustees are appointed the same shall, by virtue of this Law, vest (free as aforesaid) in the trustees upon the statutory trusts.

4. The vesting in the Public Trustee of land by virtue of this Part of this Schedule shall not affect any directions previously given as to the payment of income or of interest on any mortgage money, but such instructions may, until he accepts the trust, continue to be acted on as if no such vesting has been effected.

5. The court or the Public Trustee may act on evidence given by affidavit or by statutory declaration as respects the undivided shares without investigating the title to the land.

6. Where all the undivided shares in the land are vested in the same mortgagees for securing the same mortgage money and might have been subsisting if the entirety and been mortgaged by an owner before the undivided shares were created, the land shall by virtue of this Law, vest in the mortgagees as joint tenants for a legal term of years absolute (in accordance with this Law) subject to cesser on redemption by this Law and for the purposes of this Part of this Schedule the mortgage shall be deemed an incumbrance affecting the entirety.

7. This Part of this Schedule does not (except where otherwise expressly provided) prejudice incumbrancers whose incumbrances affect the entirety of the land at the commencement of this Law, but (if the nature of the incumbrances admits) the land shall vest in them for legal terms of years absolute in accordance with this Law but not so as to affect subsisting priorities.

8. The trust for sale and powers of management vested in persons who hold the entirety of the land on trust for sale shall, save as hereinafter mentioned, not be exercisable without the consent of any incumbrancer, being this Part of this Schedule, but a purchaser shall not be concerned to see or inquire whether any such consent has been given, nor, where the incumbrancer is not in possession, shall any such consent be required if, independently of this Part of this Schedule or any enactment replaced thereby the transaction would have been binding on him, had the same been effected by the mortgagor.

9. This Part of this Schedule does not apply to land in respect of which a subsisting contract for sale (whether made under an order in a partition action or by or on behalf of all the tenants in common or coparceners) is in force at the commencement of this Law if the contract is completed in due course (in which case titled may be made in like manner as if this Law and any enactment thereby replaced, had not been passed), nor to the law in respect of which a partition action is pending at such commencement if an order for partition or sale is subsequently made in such action.

10. Notwithstanding that the enactment relating to partition ceases to apply, it shall be without prejudice to any proceedings thereunder commenced before the commencement of this Law, and to the jurisdiction of the court to make any orders in reference thereto, and subject to the following provisions; namely—

(*a*) in any such proceedings, at any stage thereof, any person or persons interested individually or collectively in one half or upwards of the land to which proceedings relate, may apply to court for an order staying such proceedings;

(*b*) the court may upon application make an order staying the proceedings as regards the whole or any part, not being an undivided share, of the land;

(*c*) as from the date of such order the said enactments shall cease to apply to the land affected by the order and the provisions of this Part of this Schedule shall apply thereto;

(*d*) the court may by such order appoint trustees of the land and the same shall by virtue of this Law vest (free as aforesaid) in the trustees as joint tenants upon the statutory trusts;

(*e*) the court may order that the costs of the proceedings and of the application shall be raised by the trustee, by legal mortgage of the land or any part thereof, and paid either wholly or partially into court or to the trustees;

(*f*) the court may act on such evidence as appears to be sufficient, without investigating the title to the land.

11. Where undivided shares in land, created before the commencement of this Law, fall into possession after such commencement, the personal representatives (subject to their rights and powers for purpose of administration) land is vested shall, by an assent or a transfer, give effect to the foregoing provisions of this Part of this Schedule in like manner as if the shares had fallen into possession immediately before the commencement of this Law and in the meantime the land shall be held on the statutory trusts.

PART V

Provisions as to party structures and open spaces

1. Where, immediately before the commencement of this Law a party wall or other party structure is held in undivided share, the ownership thereof shall be deemed to be served vertically as between the respective owners, and the owner of each part shall have such rights to support and of user over the rest of the structures as may be requisite for conferring rights corresponding to those subsisting at the commencement of this Law.

2. Where, immediately before the commencement of This Law, an open space of land (with or without any building used in common for the purposes of any adjoining land) is held in undivided share, in right whereof each owner has rights of access and user over the open space, the right of occupancy trusts which shall be executed only with the leave of the court, and, subject to any order of the court to the contrary each person who would have been a tenant in common shall, until the open space is transferred to a purchaser, have right of access and user over the open space corresponding to those which would have subsisted if the tenancy in common had remained subsisting.

3. Any person interested may apply to the court for an order declaring the rights and interests under this Part of this Schedule, of the person interested in any such party structure or open space, or generally may apply in relation to the provisions of this Part of this Schedule, and the court may make such order as it thinks fit.

PART VI

Conversion of existing mortgages into mortgages by sublease

1. All land, which immediately before the commencement of this Law, was vested in a right or only mortgagee for an interest equivalent to a right of occupancy, shall from and after the commencement of this Law, vest in the first or only mortgagee for a term of three thousand years from such commencement, without impeachment of waste, but subject to a provision for cesser corresponding to the right of redemption which, at such commencement, was subsisting with respect to the right of occupancy.

2. All land, which immediately before the commencement of this Law, was vested in a second or subsequent mortgage for an interest equivalent to a right of occupancy shall, from and after the commencement of this Law, vest in the second or subsequent mortgagee for a term one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee, without impeachment of waste, but subject to the term or terms vested in such first or other prior mortgagee and subject to a provision for cesser corresponding to the right of redemption which, at such commencement, was subsisting with respect to the right of occupancy.

3. The right of occupancy which, immediately before the commencement of this Law, was vested in any such mortgagee shall, from and after such commencement, vest in the mortgagor or trustee for sale, personal representative, or other person of full age who if all money owing on the security of the mortgage and all other mortgages or charges (if any) had been discharged at the commencement of this Law, would have been entitled to have the right of occupancy, to him, but subject to any mortgage term created by this part of this Schedule or otherwise and to the money secured by any such mortgage or charge.

4. If a sub-mortgage by transfer of the right of occupancy is subsisting immediately before the commencement of this Law, the principal mortgage shall take the principal term created by paragraph 1 or 2 of this Part of this Schedule (as the case may require) and the sub-mortgagee shall take a derivable term less by one day than the term so created, without impeachment of waste, subject to a provision for cesser corresponding to the right of redemption subsisting under the sub-mortgage.

5. This part of this Schedule (save where expressly excepted) applies to land whether or not the same is registered under the Land Instruments Registration Law or the mortgage is made by way of trust for sale or otherwise.

6. A mortgage affecting a legal interest made before the commencement of this Law which is not protected by registration, shall, not as against a purchaser in good faith without notice thereof, obtain any benefit by reason of being converted into a legal mortgage by this Schedule, but shall in favour of such purchaser, be deemed to remain an equitable interest.

This paragraph does not apply to mortgage or charges registered or protected under the Land Instruments Registration Law.

7. Nothing in this Part of this Schedule shall affect priorities or the right of any mortgagee to retain possession of documents, nor affect his title to or rights over any fixtures or chattels personal comprised in the mortgage.

8. This Part of this Schedule does not apply unless a right of redemption is subsisting immediately before the commencement of this Law.

PART VII

Conversion of existing sub-leasehold mortgages into mortgages by sublease

1. All leasehold land, which immediately before the commencement of this Law, was vested in a first or only mortgage by way of assignment of a term of years absolute shall, from and after the commencement of this Law, vest in the first or only mortgagee for a term equal to the term assigned by the mortgage, less the last ten days thereof, but subject to a provision for cesser corresponding to the right of redemption which at such commencement was subsisting with respect to the term assigned.

2. All sub-leasehold land, which immediately before the commencement of this Law, was vested in a second or subsequent mortgagee by way of assignment for a term of years absolute (whether legal or equitable) shall, from and after the commencement of this Law vest in the second or subsequent mortgagee for a term one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee if the length of the last mentioned term permits, and in any case for a term less by one day at least than the term assigned by the mortgage, but subject to the term or terms vested in such first or other period mortgagee, and subject to a provision for cesser corresponding to the right of redemption which, at the commencement of this Law, was subsisting with respect to the term assigned by the mortgage.

3. The term of years absolute which was assigned by any such mortgage shall, from and after the commencement of this Law, vest in the mortgagor or trustee for sale, personal representative, or other person of full age who, if all the money owing on the security of the mortgage and all other mortgages or charges, if any, had been discharged at the commencement of this Law, would have been entitled to have the term assigned or surrendered to him, but subject to any derivative mortgage term created by this Part of this Schedule or otherwise and to the money secured by any such mortgage or charge.

4. If a sub-mortgage by assignment of a term is subsisting immediately before the commencement of this Law, the principal mortgagee shall take the principal derivative term created by paragraph 1 or 2 of this part of this Schedule or the derivation term created by this mortgage (as the case may requires), and the sub-mortgagee shall take a derivative term less by one day than the term so vested in the principal mortgagee, subject to a provision for cesser corresponding to a right of redemption subsisting under the sub-mortgage.

5. A mortgage affecting a legal interest made before the commencement of this Law which is not protected by registration shall not, as against a purchaser in good faith without notice thereof, obtain any benefit by reason of being converted into a legal mortgage by this Schedule, but shall, in favour of such purchaser, be deemed to remain an equitable interest.

This paragraph does not apply to mortgages or charges registered or protected under the Land Instruments Registration Law.

6. This part of this Schedule applies to perpetually renewable sub-leaseholds, and to sub-leaseholds for lives, which are by statute converted into long terms, with the following variations, namely—

(*a*) the term to be taken by a first or only mortgagee shall be ten days less than the term created by such statute;

(*b*) the term to be taken by a second or subsequent mortgagee shall be one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of the second or subsequent mortgagee, if the length of the last mentioned term permits and in any case for a term less by one day at least than the term created by such statute;

(*c*) the term created by such statute shall, from and after the commencement of this Law, vest in the mortgagor, trustee for sale, personal representative, or other person of full age, who if all the money owing on the security of the mortgage and all other mortgages or charges, if any, had been discharged at the commencement of this Law, would have been entitled to have the term assigned or surrendered to him, but subject to any derivative or otherwise and to the money secured by any such mortgage or charge.

7. This part of this Schedule applies (save where expressly excepted) whether or not the sub-leasehold land is registered under the Land Instruments Registration Law, or the mortgage is made by way of trust for sale or otherwise.

8. Nothing in this part of this Schedule shall affect priorities or the right of any mortgagee to retain possession of documents, nor affect his title to or rights over any fixtures or chattels personal comprised in the mortgage, but this part of this Schedule does not apply unless a right of redemption is subsisting at the commencement of this Law.

SECOND SCHEDULE

[Sections 97 and 99.]

Implied Covenants

PART I

Covenant implied in a transfer for valuable consideration other than a mortgage, by a person who conveys and is expressed to transfer as beneficial owner

That notwithstanding anything by the person who so transfers or anyone through whom he derives title otherwise than by purchase for value, made, done, executed, or omitted, or knowingly

suffered, the person who so transfers, has with the concurrence of every other person, if any, transferring by his direction, full power to transfer the subject matter expressed to be transferred, subject as, if so expressed, and in the manner in which it is expressed to be transferred, and that, notwithstanding anything as aforesaid, but subject matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the transfer is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly without any lawful interruption or disturbance by the person who so transfers or any person transferring by his direction, or rightly claiming or to claim by, through, under, or in trust for the person who so transfers; or any person transferring by his direction, or by, through or under anyone (not being a person claiming in respect of an estate or interest subject whereto the transfer is expressly made), through whom the person who so transfers derives title, otherwise than by purchase for value.

And that, freed and discharged from, or otherwise by the person who so transfers sufficiently indemnified against, all such estates, incumbrances, claims and demand, other than those subject to which the transfer is expressly made, as, either before or after the date of the transfer have been or shall be made, occasioned, or suffered by that person or by any person transferring by his direction, or by any person rightfully claiming by, through, under, or in trust for the person who so transfers, or by, through, or under any one through whom the person so transfers derives title, otherwise than by purchase for value.

And further, that the person who so transfers and any person transferring by his direction, and every other person having or rightfully claiming any interest in the subject matter of the transfer, other than an interest subject whereto the transfer is expressly made, by, through, under, or in trust for the person who so transfers, or by, through, or under any person transferring by his direction, or by through, or under any one through whom the person who so transfers derives title, otherwise than by purchase for value, will from time to time and at all times after the date of the transfer on the request and at the cost of any person to whom the transfer is expressed to be made, or of any person deriving title under him execute and do all such lawful assurances and things for further or more perfectly assuring the subject matter of the transfer to the person to whom the transfer is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the transfer is expressed, and in the manner in which the transfer is expressed to be made, as by him or them or any of them shall be reasonably required.

In the above covenant a purchase for value shall not be deemed to include a transfer in consideration of marriage.

PART II

Further covenant implied in a transfer for sub-leasehold property for valuable consideration, other than a mortgage, by a person who transfers and is expressed to transfer as beneficial owner

That, notwithstanding anything by the person who so transfers, or anyone through whom he derives title, otherwise than by purchase for value made, done, executed, or omitted, or knowingly suffered, the sublease or grant creating the term or interest for which the land is transferred is, at the time of transfer, a good, valid, and effectual sublease or grant of the property transferred, and is in full force unforfeited, unsurrendered, and has in the wise become void or voidable, and that, notwithstanding, anything as aforesaid all the rents reserved by, and all the covenants, conditions, and agreements contained in, the sublease or grant, and on the part of the sublessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of transfer.

In the above covenant a purchase for value shall not be deemed to include a transfer in consideration of marriage.

PART III

Covenant implied in a transfer by way of mortgage by a person who transfers and is expressed to transfer as beneficial owner

That the person who so transfers, has, with the concurrence of every other person, if any, transferring by his direction, full power to transfer the subject matter expressed to be transferred by him, subject as, if so expressed, and in the manner in which it is expressed to be transferred.

And also that, if default is made in payment of the money intended to be secured by the transfer, or any interest thereon, or any part of that money or interest, contrary to any provision expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and henceforth quietly hold, occupy, and enjoy or take and have, the subject matter expressed to be transferred, or any part thereof, without any lawful interruption or disturbance by the person who so transfers, or any person conveying by his direction, or any other (not being a person claiming in respect of any interest subject whereto the transfer is expressly made);

And that, freed and discharged from, or otherwise by the person who so transfers sufficiently indemnified against all estates, incumbrances, claims, and demands, whatever, other than those subject whereto the transfer is expressly made;

And further, that the person who transfers and every person transferring by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject matter of the transfer, or any part thereof, other than an estate or interest subject whereto the transfer is expressly made, will from time to time and at all times, on the request of any person to whom the transfer is expressed to be made, or of any person deriving title under him, but as long as any right of redemption exists under the transfer, at the cost of the person so transferring, or of those deriving title under him and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject matter of the transfer and every part thereof to the person to whom the transfer is made, and to those deriving title under him, subject as if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required.

The above covenant in the case of a charge shall have effect as if for references to “transfers” “transferred” and “transfer”, there were substituted respectively references to “charges”, “charged” and “charge”.

PART IV

Covenant implied in a transfer by way of mortgage or freehold property subject to a rent or of sub-leasehold property by a person who transfers and is expressed to transfer as beneficial owner

That the sublease or grant creating the term or interest for which the land is held is, at the time of transfer, a good, valid, and effectual sublease or grant of the land transferred and is in full force, unforfeited, and unsurrendered and has in the wise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in the sublease or grant, and on the part of the sublessee or grantee and the persons deriving title under him to be paid, observed and performed, have been paid, observed and performed upon to the time of transfer.

And also that the person so transferring, or the persons deriving title under him, will at all times, as long as any money remains owing on the security of the transfer, pay observe, and perform, or cause to be paid, observed, and performed all the rents reserved by, and all the covenants, conditions, and agreements contained in, the sublease or grant, and on the part of the sublessee or grantee and the persons deriving title under him to be paid, observed, and performed, and will keep the person to whom the transfer is made, and those deriving title under him indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any so incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenant, condition and agreements, or any of them.

The above covenant in the case of a charge shall have effect as if for references to "transfers" "transferred" and transfer" there were substituted respectively references to "charges", "charged" and "charge".

PART V

Covenant implied in a transfer by way of settlement by a person who transfer and is expressed to transfer as settler

That the person so transferring, and every persons deriving title under him by deed or act or operation of law in his lifetime subsequent to that transfer, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times after the date of that transfer, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject matter of the transfer to the persons to whom the transfer is made and those deriving title under them, as by them or any of them shall be reasonably required, subject as, if so expressed, and in the manner in which the transfer is expressed to be made.

PART VI

Covenant implied in any transfer, by every person who conveys and is expressed to convey as trustee or mortgage, or as person, or as committee of a lunatic or under an order of the court

That the person so transferring has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing, whereby or by means whereof the subject matter of the transfer, or any part thereof, is or may be impeached, charged, affected, or encumbered in title, interest, or otherwise, or whereby or by means whereof the person who so conveys is in any way hindered from transferring the subject matter of the transfer, or any part thereof, in the manner in which it is expressed to be transferred.

The foregoing covenant may be implied in an assent in like manner as in a transfer by deed.

PART VII

Covenant in a transfer for valuable consideration, other than a mortgage of the land comprised in a sublease for the residue of the term or interest created by the sublease

That the assignees, or the person deriving title under them, will at all times, from the date of transfer or other date therein stated, duly pay all rent becoming due under the sublease creating the term or interest for which the land is transferred, and observe and perform all the covenants, agreements, and conditions therein contained and thenceforth on the part of the sublessees to be observed and performed.

And also will at all times, from the date aforesaid, save harmless and keep indemnified the transferring parties and their interests and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said rent or any breach of any of the said covenants, agreements and conditions.

PART VIII

Covenants implied in a transfer for valuable consideration other than a mortgage, of part of the land comprised in a sublease, for the residue of the term of interest created by the sublease, subject to a part (not legally apportioned) of that rent

1. That the assignees, or the person deriving title under them will at all times, from the date of the transfer or other date therein stated, pay the apportioned rent and observe and perform all the covenants, other than the covenant to pay the entire rent, agreements and conditions contained in the sublease creating the term or interest for which the land is transferred, and thenceforth on the part of the sublessees to be observed and performed, so far as the case relates to the land transferred;

And also will at all times from the date aforesaid save harmless and keep indemnified, the transferring parties and their respective interests and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said apportioned rent or any breach of any of the said covenants, agreements and conditions so far as the same relate as aforesaid.

2. That the transferring parties, or the person deriving title under them will at all times, from the date of the transfer, or other date therein stated, pay the balance of the rent (after deducting the apportioned rent aforesaid and any other rents similarly apportioned in respect of land not retained) and observe and perform all the covenants, other than the covenant to pay the entire rent, agreements and conditions contained in the sublease and on the part of the sublessees to be observed and performed so far as the same relate to the land demised (other than the land comprised in the transfer) and remaining vested in the covenantors:

And also will at all times, from the date aforesaid, save harmless and keep indemnified, the assignee and their estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the aforesaid balance of the rent or any breach of any of the said covenants, agreements and conditions so far as they relate as aforesaid.

THIRD SCHEDULE

[Sections 131 and 132.]

Forms of Transfer and Discharges of Mortgages

FORM 1

Form of Transfer of Mortgages

This Transfer of Mortgage made on the ..... day of ....., 20 ..... between M. (etc.). And T. of (etc.) of the other parts, supplemental to a mortgage dated (etc.), and made between (etc.) (here state short particulars of the mortgaged property).

Witnesseth that in consideration of the sums of ..... and ..... (for interest) now paid by T. to M. (being the respective amounts of the mortgage money and interest owing in respect of the said hereby acknowledges) M., as mortgagee hereby transfers to T. the benefit of the said mortgage and further charge.

In witness, etc.

FORM 2

Forms of Receipt on Discharge of a Mortgage

A.B., of (etc.) hereby acknowledge that I have this ..... day of ....., 20 .....,

received the sum of ..... representing the (aggregate) (balance remaining owing in respect of the principal money secured by the within (above) written (annexed) mortgage (and by a further charge dated, etc., or otherwise as required) together with all interest and cost, the payment having been made by C.D. of (etc.) and E.F. of (etc.).

Note.—If the persons paying are not entitled to the equity of redemption state that they are paying the money out of funds applicable to the discharge of the mortgage.

FOURTH SCHEDULE

[Sections 134 and 135.]

Forms relating to Statutory Charges or Mortgages of Rights of Occupancy of Sub-leasehold Land

FORM 1

Statutory Charge by way of Legal Mortgage

This Legal Charge made by way of Statutory Mortgage on the ..... day of ..... 20 ..... ,

between A. of (etc.) of the one Part and M. of (etc.) of the other part witnesseth that in consideration of the sum of .....

now paid to A. by M. of which sum A. hereby acknowledges the receipts, A. as Mortgagor and as beneficial owner hereby charges by way of legal mortgage ALL THAT (etc.) with the payment to M. on the

..... day of ....., 20 ..... of the principal sum of .....

as the mortgage money with interest thereon at the rate ..... of ..... per centum per annum.

In witness, etc.

Note.—Variations in this and the subsequent forms in this Schedule to be made, if required, for sub-leasehold land or for giving effect to special arrangements. M. will be in the same position as if the charge had been affected by a sublease or rights of occupancy or sub-underlease of sub-leaseholds.

FORM 2

Statutory Transfer, Mortgagor not joining

This Transfer of Mortgage made by way of statutory transfer on the ..... day of ..... 20 ..... ,

between M. of (etc.) of the one part and T. of (etc.) of the other part supplemental to a legal charge made by way of statutory mortgage dated (etc.) Witnesseth that in consideration of the sum of .....

now paid to M. by T. (being the aggregate amount of ..... interest due in respect of the said legal charge (or which sum M. hereby acknowledges the receipt). M. as mortgagee hereby transfers to T. the benefit of the said legal charge.

In witness etc.

Note.—This and the next two forms also apply to a transfer of a statutory mortgage made before the commencement of this Law, which will then be referred to as a mortgage instead of a legal charge.

FORM 3

Statutory Transfer, a Covenantor Jointing

This Transfer of Mortgage made by way of statutory transfer on the ..... day of ..... 20 ..... ,

between A. of (etc.) of the first part and B. of (etc.) of the second part and C. of (etc.) of the third part supplemental to a legal charge made by way of statutory mortgage dated (etc.) and made (etc.). Witnesseth that in consideration of the sum of ..... now paid by A. to C. (being the mortgage money due in respect of the said legal charge no interest being now due or payable thereon of which sum. S. hereby acknowledges the receipt). A. as mortgagee with the concurrence of B. who joins hereby transfers to C. benefit of the said Legal Charge.

FOURTH SCHEDULE—*continued*

FORM 4

Statutory Transfer and Mortgage combined

This Transfer of Legal Charge is made by way of statutory transfer and mortgage on the ..... day of ..... 20 ....., between A. of (etc.) of the first part, and B. of (etc.) of the second part and C. of (etc.) of the third part. Supplemental to a Legal Charge made by way of statutory mortgage date (etc.) and made (etc.).

Whereas a principal sum of ..... only remains due in respect of the said Legal Charge as the mortgage money and no interest is now due thereon; and whereas B. is owner of the freehold estate in the land comprised in the said Legal Charge subject to that Charge.

Now this Deed Witnesseth as follows—

1. In consideration of the sum of ₦ ..... now paid to A. by C. (the receipt and payment of which sum A. and B. hereby respectively acknowledge), A. as mortgagee hereby transfers to C. the benefit of the said Legal Charge.
2. For the consideration aforesaid B. as beneficial owner hereby charges by way of legal mortgagor all the premises comprised in the said Legal Charge with the payment to C. on the ..... day of ....., 20 ..... of the sum of ₦ ..... as the mortgage with interest thereon at the rate of ..... per centum per annum.

In witness, etc.

Note.—(or in the case of a further advance after "acknowledge" insert and of the further sum of ₦ ..... now paid by C. to B. of which sum B. hereby acknowledges the receipt" also at I "as beneficial owner" insert "mortgagor and" as well as where B. is not the original mortgagor.

And after "of" at 1 insert "the sums of ₦ ..... and ₦ ..... making together").

Note.—Variations to be made, as required in case of the deed being by endorsement or in respect of any other thing.

CHAPTER L6

LAW OF PROPERTY LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER L7

LAW REFORM COMMISSION LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Establishment of the Commission.
2. Appointment of Chairman and constitution of Commission.
3. Status of Commission.
4. Qualification for appointment.
5. Tenure of office of Chairman.
6. Removal of Chairman or Commissioner from office.
7. Functions of Commission.
8. Attorney-General to lay programmes before State Executive Council.
9. Commission to be autonomous.
10. Secretary and other staff of Commission.
11. Appointment of persons to assist Commission.
12. Service in Commission to be pensionable, etc.
13. Commission's fund.
14. Accounts and audit.
15. Enactment of proposed revised laws.
16. Bringing revised laws into force.
17. Distribution of copies of revised edition.
18. Expenses of preparation and publication of revised laws.
19. Validity of acts of Commission.
20. Repeal of Law No. 7 of 1984.
21. Interpretation.
22. Short title.

CHAPTER L7

LAW REFORM COMMISSION LAW

(14*th May*, 1987)

[Commencement.]

1. Establishment of the Commission

There is established for the State, for the purpose of promoting the reform and revision of the Laws of the State, a Law Reform Commission.

2. Appointment of Chairman and constitution of Commission

(1) The Governor shall appoint a Chairman as head of the Commission and not less than two or more than five part-time Commissioners to constitute the Commission.

(2) The Chairman shall preside at all meetings and hearings of the Commission, and in the absence or disability of the Chairman, the members of the Commission shall select one of their number to preside.

(3) The appointment of the Chairman shall, subject to the provisions of this Law, be in accordance with such terms and conditions as may be contained in his instrument of appointment, but the salary and other conditions of service of the Chairman shall not be less favourable than those applicable to a High Court Judge.

(4) The remuneration and conditions of service of a Commissioner shall, subject to the provisions of this Law, be in accordance with such terms as may be specified in the instrument of appointment:

Provided that the salary and other conditions of service of a full-time Commissioner shall not be less favourable than those applicable to a High Court Judge.

3. Status of Commission

The Commission shall be a body corporate with perpetual succession and a common seal and may hold, acquire and dispose of any property or interest in property, movable and immovable.

4. Qualification for appointment

(1) A person may be appointed a Chairman or a Commissioner under this Law if he is or has been—

(*a*) a judge of a superior court of record having unlimited jurisdiction in both civil and criminal matters in Nigeria or any part of the Commonwealth or a court having jurisdiction in appeals from any such court; or

(*b*) a legal practitioner of not less than twelve years' post-qualification experience in the case of a Chairman and not less than ten years' in the case of a Commissioner; or an eminent scholar in law.

(2) Subject to the provisions of this Law a person who holds a judicial office may be appointed a Commissioner but shall not relinquish the judicial office except that having been so appointed he shall not be required to perform his duties as holder of a judicial office while serving as a Commissioner.

(3) Notwithstanding subsection (2) of this section, a judicial office holder appointed as a part-time Commissioner may combine the duties of a Commissioner with the duties of his judicial office.

5. Tenure of office of Chairman

(1) The Chairman or a Commissioner shall, subject to the provisions of this Law, hold office for such period as the Governor may specify in the instrument appointing such Chairman or Commissioner, as the case may be.

(2) The Chairman or a Commissioner may at any time by writing addressed to the Governor through the Attorney-General, resign his appointment.

6. Removal of Chairman or Commissioner from office

(1) The Governor may at any time remove the Chairman or a Commissioner from office if the Governor is satisfied that such Chairman or Commissioner—

(*a*) is unable to perform the functions of his office owing to physical or mental illness; or

(*b*) has failed to comply with the conditions of his appointment.

(2) A person who ceased to be a Chairman or Commissioner otherwise than under subsection (1) of this section may be reappointed.

7. Functions of Commission

(1) The Commission shall take and keep under review all laws of the State and shall systematically develop and reform them; in particular he may recommend the codification of the laws, the elimination of anomalies in the laws, the repeal of obsolete or unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the laws.

(2) For the purposes of subsection (1) above, the Commission shall—

(*a*) receive and consider any proposals for the reform of any law which the Attorney-General may make or refer to him;

(*b*) prepare and from time to time submit programmes for the examination of different branches of the law with a view to reform, including recommendations as to any agency (whether the Commission or another body) by which any such examination may be carried out;

(*c*) undertake the critical examination of particular branches of the law and the formulation, by means of draft laws or otherwise, of proposals for reform;

(*d*) prepare from time to time a comprehensive programme of consolidation and statute law revision and undertake the preparation of draft laws pursuant to any such programme;

(*e*) provide advice to Government departments and other authorities or bodies with proposals for reform, revision or amendment of any law relating to such departments, authorities or bodies; and

(*f*) obtain such information as to the legal systems of other countries as may assist the Commission in its proposals for the reform or modernisation of the laws of the State.

(3) Where a proposal for the reform of any law is referred to the Commission by the Attorney-General, the Commission shall—

(*a*) critically examine the law with respect to the matter mentioned in the reference;

(*b*) report to the Attorney-General the results of the examination of the law and as to whether that law—

(i) is obsolete, unnecessary, incomplete, of a temporary nature, of restricted or person application or otherwise defective;

(ii) ought to be simplified, consolidated, codified, repealed or revised, and, if appropriate, whether new or more effective methods for the administration of that law ought to be developed and suggest such new or more effective methods; or

(iii) ought to be changed so as to accord with modern conditions.

8. Attorney-General to lay programmes before State Executive Council

It shall be the duty of the Attorney-General to lay before the State Executive Council any programmes prepared by the Commission and any proposals for reform formulated by the Commission pursuant to such programmes.

9. Commission to be autonomous

Notwithstanding the foregoing provisions, the Commission shall be autonomous in its day-to-day operations.

10. Secretary and other staff of Commission

(1) There shall be provided for the Commission such supporting legal, administrative and other staff as would enable the Commission to carry out its functions under this Law and such staff shall be under the immediate supervision of the Secretary to the Commission.

(2) The Secretary, who shall be appointed by the Civil Service Commission, shall be a legal practitioner of not less than seven years' post-qualification experience.

(3) The Secretary shall, in the discharge of his duties, be responsible to the Chairman.

(4) The supporting legal, administrative and other staff of the Commission shall be drawn where possible from the public service of the State.

(5) The remuneration and tenure of office of the employees of the Commission shall be determined by the Commission after consultation with the Department of Establishment and Training.

(6) Notwithstanding the provisions of subsection (4) of this section, the Chairman may cause the Civil Service Commission to engage on contract such professional persons as may be necessary to enable the Commission to carry out effectively its functions under this Law.

11. Appointment of persons to assist Commission

The Commission may appoint a person or group of persons as may appear to it necessary for the purpose of research and making recommendations on a subject matter in which the person or group of persons has expertise.

12. Service in Commission to be pensionable, etc.

(1) Subject to subsection (2) below, persons employed in the Commission shall in respect of their service in the Commission be entitled to pensions, gratuities and other retirement benefits as prescribed under the Pension Law in force in the State in respect of persons holding equivalent posts.

(2) Nothing in this section shall prevent the appointment of a person to any office in the Commission on terms and conditions which preclude the grant of a pension or gratuity in respect of services in that office.

13. Commission's fund

(1) The Commission shall establish and maintain a fund consisting of such moneys as may in each financial year be appropriated by the State Government for the purposes of the Commission.

(2) The Commission shall defray from the fund established pursuant to subsection (1) above all the amounts payable under or in pursuance of this Law, being sums representing—

(*a*) amounts payable to the Chairman and other members of the Commission (including allowances);

(*b*) costs of employment of staff of the Commission;

(*c*) amounts payable as pensions, gratuities and other retirement benefits under or pursuant to this Law or any other enactment;

(*d*) costs of acquisition and upkeep of premises belonging to the Commission and any other capital expenditure of the Commission;

(*e*) any other payment for anything incidental to the foregoing provision or in connection with or incidental to any other function of the Commission under or pursuant to this Law.

14. Accounts and audit

(1) The Secretary to the Commission shall in each financial year prepare estimates of recurrent and capital expenditure and when approved by the Chairman, the estimates shall be forwarded through the Attorney-General by the Commissioner for approval by the State Executive Council.

(2) The Secretary shall keep proper accounts and proper records in relation thereto.

(3) The accounts of the Commission shall be annually audited by the Auditor-General or his representative.

15. Enactment of proposed revised laws

(1) The Chairman shall as soon as the Commission completes work on the revised edition or proposed reform forward copies thereof to the Attorney-General who shall, by memorandum, submit the same to the State Executive Council for consideration and approval.

(2) After the State Executive Council has approved the revised edition or proposed reform the House of Assembly shall enact same into law.

16. Bringing revised laws into force

(1) On the enactment of the revised edition or proposed reform into law the Governor may, by order published in the *Gazette* or otherwise, appoint a date for the coming into force of the revised edition or reform.

(2) Notwithstanding the provisions of subsection (1) of this section, the Governor may, by order published in the *Gazette* or otherwise, bring into force the whole or such part or parts of the revised edition or reform as may from time to time be completed and published.

17. Distribution of copies of revised edition

(1) After the enactment and publication of the revised edition the Chairman shall forward a copy thereof to the Chief Judge of the State for the records of the High Court and another copy to the Attorney-General.

(2) Copies of the revised edition shall be distributed among such persons, bodies, ministries and institutions as the Attorney-General may direct.

(3) Copies of the revised edition or reform may also be distributed without cost to other States with which there is reciprocal arrangement with the State.

(4) The Attorney-General shall, having regard to the cost of production and publication, give directions as to the price at which the revised edition or reform may be offered for sale to the general public.

18. Expenses of preparation and publication of revised laws

The Accountant-General shall, upon the direction of the Governor, defray all expenses incurred in connection with or incidental to the preparation, printing and publication of the revised edition or reform.

19. Validity of acts of Commission

No act of the Chairman, Commissioner or staff of the Commission or of any person or group of persons appointed under section 12 of this Law shall be questioned or rendered invalid by reason only of any defect in the instrument by which each of such persons is appointed.

20. Repeal of Law No. 7 of 1984

The Law Reform Commission Law 1984 is hereby repealed.

21. Interpretation

In this Law unless the context otherwise requires—

"Accountant-General" means the State Accountant-General;

"Attorney-General" means the State Attorney-General and Commissioner for Justice;

"Auditor-General" means the State Auditor-General;

"Commission" means the Commission established under section 1 of this Law;

"Executive Council" means the State Executive Council;

"function" includes power and duty;

"*Gazette*" means the State *Gazette*;

"law" includes subsidiary legislation made under any enacted law;

"Governor" means the Governor of the State;

"revised edition" means the revised edition of the laws of the State prepared under the authority of this Law;

"State" means Cross River State of Nigeria.

22. Short title

This Law may be cited as the Law Reform Commission Law.

CHAPTER L7

LAW REFORM COMMISSION LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER L8

LAW REPORTING COUNCIL LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Establishment of Law Reporting Council.
2. Composition of the Council.
3. Tenure of Office.
4. Cessation of membership.
5. Remuneration.
6. Functions.
7. Proceeding of the Council.
8. Appointment and discipline of the staff of the Council.
9. Appointment of editor and deputy editor of the Council.
10. Secretary to the Council.
11. Funds of the Council.
12. Rules.
13. Law reports to be the official report.
14. Interpretation.
15. Citation.

CHAPTER L8

LAW REPORTING COUNCIL LAW

A Law to establish a Council for Law Reporting.

(1*st December*, 1981)

[Commencement.]

1. Establishment of Law Reporting Council

(1) There is hereby established a body to be known as the Law Reporting Council (in this Law referred to as "the Council").

(2) The Council shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name.

2. Composition of the Council

The Council shall consist of the following members, namely—

(*a*) a full time Chairman who shall be a Legal Practitioner of not less than ten years experience or a retired High Court Judge;

(*b*) deputy chairman who shall be the Solicitor-General and Permanent Secretary or his duly authorised representative not below the rank of Senior State Counsel;

(*c*) the Government Printer or his duly authorised representative;

(*d*) two members of the Cross River State branch of the Nigerian Bar Association of not less than seven years post-call standing, who shall be nominated by the branch;

(*e*) the Dean of the Faculty of Law, University of Calabar or his authorised representative.

3. Tenure of Office

(1) Subject to the provisions of this Law, a person appointed a member of the Council shall hold office for four years from the date of his appointment and shall be eligible for re-appointment.

(2) Any member, not being an *ex officio* member of the Council may at any time resign his appointment by a letter addressed to the chairman and his resignation shall take effect on the date of receipt by the chairman of such letter.

4. Cessation of membership

A member, not being an *ex officio* member, shall cease to be a member if he—

(*a*) resigns;

(*b*) dies;

(*c*) is adjudged bankrupt;

(*d*) is, whilst a member, convicted of an offence involving fraud, dishonesty or other moral turpitude;

(*e*) is incapacitated from discharging the functions of his office by reason of infirmity of body or mind or otherwise;

(*f*) not being an *ex officio* member, is absent without reasonable excuse from three consecutive meetings of the Council; or

(*g*) is guilty of gross misconduct or other acts of misbehaviour including abuse of office as a member.

5. Remuneration

A member of the Council not being an *ex officio* member shall be entitled to such allowances as the Governor may approve.

6. Functions

(1) Subject to the provisions of this Law, the Council—

(*a*) shall prepare and publish law reports to be known as "the Cross River State Law Report" containing judgments of the High Courts of the State; and

(*b*) may carry out such other legal publications as it deems fit.

(2) The Council shall have power for the purpose of carrying out its functions to do all such acts as appear to be requisite, advantageous or convenient for or in connection with its functions or incidental to their proper discharge and may carry on any activities in that behalf either alone or in association with any other person or body.

7. Proceeding of the Council

(1) The Council may meet as often as its business shall require at such times and places as the Chairman may appoint: Provided that it meets at least once every three months.

(2) At a meeting of the Council any three members shall form a quorum.

(3) The chairman or his deputy or, in their absence, the member elected by the members present to act as chairman shall preside.

(4) All questions at a meeting of the Council shall be decided by a majority of votes of the members present and voting and in the event of an equality of votes, the chairman or other member presiding shall have a casting vote.

(5) The validity of any proceedings of the Council shall not be affected by any vacancy in the membership or a defect in the appointment of a member of the Council.

8. Appointment and discipline of the staff of the Council

(1) There shall be an editor and a deputy editor of the Council.

(2) The editor and deputy editor shall be public officers and shall be appointed by the Governor on the advice of the Council.

(3) No person shall be qualified for appointment as editor or deputy editor under subsection (2) unless he has—

(*a*) in the case of editor, seven years; and

(*b*) in the case of deputy editor, five years post-call experience.

(4) The editor shall, subject to the general control of the Council on matters of policy, be responsible for the preparation, editing and publication of the Cross River State Law Report and for other legal publications as the Council may direct.

(5) The editor shall be the administrative head of the Council and shall be responsible for the day to day administration of the affairs of the Council.

(6) The editor shall be assisted in the performance of his duties by the deputy editor.

9. Appointment of editor and deputy editor of the Council

(1) The editorial or technical staff of the Council shall be appointed by the Council.

(2) The staff appointed under section 8 and 9 of this law shall be subject to the disciplinary control of the Council.

10. Secretary to the Council

(1) The editor shall be the secretary to the Council.

(2) The Secretary to the Council shall be responsible for—

(*a*) making arrangements for Council meetings;

(*b*) preparing the agenda of and recording the minutes of proceedings at Council meetings;

(*c*) conveying the directives of the Council to the appropriate authorities for implementation;

(*d*) performing such other duties as the Council may from time to time direct.

11. Funds of the Council

(1) The Chairman shall cause to be prepared and laid before the Council at any time before the commencement of each financial year estimates of the revenue and expenditure of the Council for the ensuing financial year.

(2) The expenditure contained in the estimates shall be included in the recurrent and capital estimates of the Ministry of Justice as a separate sub-head to be submitted for inclusion in the Appropriation Law.

(3) All sums of money received on account of the Council as revenue shall be paid into the treasury of the State.

(4) The Council shall prepare and submit to the State Attorney-General not later than 31st December in every year a report on the activities of the Council during the preceding year and the State Attorney-General shall as soon as possible after receiving that report cause it to be laid before the State House of Assembly.

12. Rules

The Council may make rules generally for the effective carrying out of the purposes of this Law.

13. Law reports to be the official report

The Law reports published by the Council shall be deemed to be the official law reports of the State.

14. Interpretation

In this Law unless the context otherwise requires—

"the chairman" means the chairman of the Council;

"the Council" means the Council for Law Reporting established under section 1 of this Law;

"the Governor" means the Governor of the Cross River State;

"the State" means the Cross River State of Nigeria.

15. Citation

This Law may be cited as the Law Reporting Council Law.

CHAPTER L8

LAW REPORTING COUNCIL LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER L9

LAWS AUTHENTICATION LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Printing of Laws.
2. Authentication of Bills.
3. Presentation of Bills for assent.
4. Sealing and dating of Laws.
5. Copies of Law promulgated.
6. Enrolment of Laws.
7. Publication in State *Gazette.*
8. Laws to be published.
9. Short title.

SCHEDULES

FIRST SCHEDULE

Form of Authentication

SECOND SCHEDULE

Form of Assent

THIRD SCHEDULE

Dating of Assent

CHAPTER L9

LAWS AUTHENTICATION LAW

A Law to make provision for the Authentication and Recording of Laws passed by the House of Assembly of the Cross River State.

(1*st April*, 1965)

[Commencement.]

1. Printing of Laws

A Bill for a Law to be enacted shall, when passed by the House of Assembly, be immediately set up in fair and legible type by the Government Printer and six copies printed from the type so set up on vellum or on paper of an enduring quality, shall be struck off by him.

2. Authentication of Bills

The six printed copies referred to in section 2 shall be carefully compared by the Clerk of the Legislature with the Bill which has been passed by the House of Assembly, as the case may be, and, on being found by him to be correct, shall be authenticated by him in the words set out in Part 1 or Part 2 of the First Schedule, as the case may be.

[First Schedule.]

3. Presentation of Bills for assent

(1) The Clerk of the Legislature shall, on the direction of the Speaker, present to the Governor for assent for six authenticated printed copies of the Bill and the Governor shall signify his assent to the Bill on each copy in the form set out in the Second Schedule, duly signed by him.

(2) After the Governor has assented to the Bill the authenticated printed copies shall be returned to the Clerk of the Legislature who shall cause to be recorded on each of them particulars of the day on which the Law is to come into operation, or, if that day is not determined, a reference to a provision in the Law whereby it may be determined.

(3) The six printed copies signed by the Governor containing the particulars mentioned in subsection (2) shall be the original copies of the Law.

(4) Of the original copies of the Law, one shall be deposited with the Clerk of the Legislature.

4. Sealing and dating of Laws

(1) The Governor shall cause the original copies of a Law to be sealed with the Public Seal of the State and the date on which the Law is assented to by him to be indorsed thereon.

(2) The Laws passed in each year shall be distinguished by consecutive numbers beginning in each year with the number one.

(3) Laws passed by the House of Assembly and assented to by the Governor shall be dated as of the day on which the assent of the Governor is given but, whatever that day may be, shall be numbered as of the year in which they are passed.

5. Copies of Laws promulgated

The copies of every Law passed in the first instance shall be impressions from the same form as the copy deposited with the Clerk of the Legislature.

6. Enrolment of Laws

The Clerk of the Legislature shall transmit to the Chief Judge to be enrolled in the High Court an original copy, sealed with the Public Seal of Cross River State of Nigeria, of very Law assented to by the Governor.

7. Publication in State *Gazette*

(1) A Law assented to by the Governor shall be published in the State *Gazette* and shall come into operation—

(*a*) on the date of the assent; or

(*b*) if it is provided by that Law or by other enactment that it shall come into operation on some other date, on that date.

(2) The Law so published shall have indorsed therein, in the words set out in the Third Schedule, the date on which it was assented to by the Governor.

8. Laws to be published

As soon as may be after the commencement of each year the Clerk of the Legislature shall cause a complete collection of all laws enacted by the Legislature during the preceding year to be published for general information.

9. Interpretation

In this Law unless the context otherwise required—

"House of Assembly" means House of Assembly of the State;

"Governor" means the Governor of Cross River State;

"State" means Cross River State.

10. Short title

This Law may be cited as the Laws Authentication Law.

SCHEDULES

FIRST SCHEDULE
[Section 3.]

PART 1

This printed impression has been carefully compared by me with the Bill which has been passed by the Legislative Houses and found by me to be a true and correctly printed copy of the said Bill.

.....
Clerk of the Legislature

PART 2

This printed impression has been carefully compared by me with the Bill which has been passed by the House of Assembly pursuant to section 27 of the Constitution of Eastern Nigeria, and found by me to be a true and correctly printed copy of the said Bill.

.....
Clerk of the Legislature

SECOND SCHEDULE
[Section 4 (1).]

I assent.

(Signed).....
Governor

Dated the ..... day of ....., 20 .....

THIRD SCHEDULE
[Section 8 (2).]

Assented to on the ..... day of ..... , 20.....

CHAPTER L9

LAWS AUTHENTICATION LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER L10

LEASING OF GOVERNMENT-OWNED ESTATES AND ENTERPRISES LAW

ARRANGEMENT OF SECTIONS

PART I

Establishment and Composition of Bureau

SECTION

1. Establishment and composition of Bureau.
2. Powers of Bureau.
3.
4. Functions of Bureau.
5. Power to impose or confer duties or powers on the Bureau.
6.

PART II

Appointment of Supervisory Committee

7.
8. Functions of Committee.

PART III

Leasing of Government-Owned Estates and Enterprises

9. Estates and enterprises.
10. Estates and enterprises to operate as commercial venture.
11. Tenure of lease.

PART IV

Establishment of Cocoa Estates Management Committee

12.
13. Secretary.
14. Function of Committee.
15. Interpretation.
16. Repeal of 1996 No. 3.
17. Short title.

SCHEDULE

CHAPTER L10

LEASING OF GOVERNMENT-OWNED ESTATES AND ENTERPRISES LAW

(1*st July*, 1998)

[Commencement.]

PART I

Establishment and Composition of Bureau

1. Establishment and composition of Bureau

(1) There is hereby established for the purposes of leasing Government owned Estates, a Bureau known as the Lease Monitoring Bureau consisting of a Chairman and three other members all of whom shall be appointed by the Governor.

(2) The members of the Bureau shall be persons with proven integrity, detailed knowledge and wide experience in agriculture, business and commercial enterprises and shall be appointed on such terms and conditions as the Governor may determine.

(3) The members of the Bureau appointed by the Governor shall in the first instance hold office for four years commencing from the date of appointment.

2. Powers of Bureau

(1) The Bureau shall—

(*a*) carry out periodic study, investigation and review of the State, operations and management of government-owned estates and enterprises to determine their viability;

(*b*) shall have right of access to all the records of any investor or entrepreneur to whom this Law applies to ascertain the extent of discharging his duties under this Law;

(*c*) may, by notice in writing served on any person in control of any estate or industry, require that person to supply information of a specific nature or produce documents which might assist the Committees reach a decision as to which estate or enterprise in the State is ailing and how best to deal with it;

(*d*) shall advise the Government on the desirability of leasing any estate or enterprise to a prospective entrepreneur and investor;

(*e*) shall do other acts and take such other measures as are necessary or incidental to the performance of its duties.

(2) It shall be the duty of any person required to furnish information or documents pursuant to paragraph (*b*) of subsection (1) of this section to comply with the notice within a reasonable time.

(3) The Bureau shall have a fee of 18% of total collections from the lessees as accruals for general running costs, emoluments, administrative costs, etc.

3. (*a*) The Bureau shall carry out periodic study, investigation and review of the State of operations and management of Government-owned estates and enterprises not on lease to determine their viability;

(*b*) may, by notice in writing served on any person in control of any estate or industry, require that person to supply information of a specific nature or produce documents which might assist the Bureau to reach a decision as to which estate is ailing and how best to deal with it.

4. Functions of Bureau

(1) The functions of the Bureau shall be—

(*a*) to act as agent of the lessor to ensure compliance by the lessees for their obligations under the lease agreement and report any case of non-compliance to Government through the Supervisory Committee;

(*b*) to serve as an audit institution to the lease exercise for which purpose the Bureau or their agent shall have unrestricted access to the books of accounts of lessees;

(*c*) to evolve a scheme which will underscore Government's policy on leasing and preserve the rights and benefits of staff who may be affected as a consequence of the leasing exercise.

(2) Subject to the provisions of subsection (1) and subsection (2) of section (4) of this Law, the Bureau shall submit two reports on the activities of the lessees to the lessor as follows—

(*a*) quarterly report on the management of the estates and enterprises; and

(*b*) annual report on each of the leased estates or enterprises incorporating its comments on subject areas of focus in paragraphs (*a*), (*b*), (*c*), (*d*) and (*e*) or section 4 hereto.

5. Power to impose or confer duties or powers on the Bureau

The Governor may, by order published in the *Gazette* impose such additional powers as in his opinion can conveniently be discharged or exercised by the Bureau along with the duties and powers imposed or conferred under this Law—

(*a*) to ensure that the incorporated status of the leased enterprise is guaranteed in terms of—

(i) preparation and rendering of quarterly accounts by the lessees;

(ii) prompt preparation and auditing of final accounts; and

(iii) filing of reports in the manner required by law;

(*b*) by itself or its agent authorised in that behalf in writing by the Bureau at all reasonable times between 8.00 a.m. to 6.00 p.m. in the day enter and inspect the leased estates and lessee as may be required in the discharge of its obligations under this Law;

(*c*) to ensure that rentals are paid as and when due;

(*d*) to ensure that Community grants are made, verified and reported to Government and also ensure smooth company-community relations in line with Government police on rural development;

(*e*) to ensure that assets of the leased estates and companies are properly insured, maintained and secured;

(*f*) to advise Government on and embark upon replanting and extension programmes;

(*g*) to ensure the welfare of all staff of the leased estates and companies;

(*h*) to ensure proper management by lessees of the agricultural estates and companies under lease;

(*i*) to verify all debts and other liabilities and draw up schedules for settlement by the lessees;

(*j*) to scrutinise and evaluate all proposals made or submitted by the lessees for investment and improvements;

(*k*) to determine the quality, managerial and technical skills or expertise of prospective entrepreneurs or investors.

6. (1) Subject to subsection (4) of this section the Bureau may regulate its own procedure and perform its functions notwithstanding vacancy in its membership.

(2) The Chairman shall preside over all meetings of the Bureau.

(3) Where the office of the Chairman is vacant or the Chairman is unavoidably absent, the member who is next to the Chairman shall cover the duties of the Chairman.

(4) The Chairman and any other two members shall form a quorum.

(5) For the purpose of subsection (4) of this section the word **"Chairman"** includes any person who performs such duties in line with subsection (3) of section 6.

PART II

Appointment of Supervisory Committee

7. (1) There is hereby for purpose of this Law appointed a body to be known as the Supervisory Committee.

(2) Membership of the Committee shall be drawn from the Commissioners representing Ministries of Justice, Agriculture, Water Resources and Rural Development, Industry, Business Development and Tourism and Finance and Economic Planning.

8. Functions of Committee

The Committee shall—

(*a*) supervise the activities of the Lease Monitoring Bureau established under section 6 of this Law;

(*b*) receive reports on behalf of the Government from the Monitoring Bureau on a quarterly and annual basis on the activities of leases of each estate and enterprise; and

(*c*) study the reports and make its own brief summary and recommendations to the Governor.

PART III

Leasing of Government-Owned Estates and Enterprises

9. Estates and enterprises

(1) The estates and enterprises listed in the Schedule to this Law shall be leased in accordance with the provisions of this Law.

(2) The Governor may at any time by order published in the *Gazette* alter, modify or amend the list of estates and enterprises in the Schedule.

10. Estates and enterprises to operate as commercial venture

(1) All estate and enterprises leased under the provisions of this Law shall for the duration of such lease, have the power to operate as purely commercial ventures.

(2) Nothing in subsection (1) of this section shall affect the equity holding of Government in each of the estates of enterprises.

11. Tenure of lease

(1) For the purpose of giving effect to the terms and conditions to be stipulated in a lease agreement, the tenure to be granted to each Lessees in the first instance shall not exceed ten years.

(2) The Bureau may, if it is of the opinion that a longer lease tenure shall enhance a more result-oriented and efficient management of the estates and industries by the lessees, review the tenure granted in subsection (1) from time to time.

PART IV

Establishment of Cocoa Estates Management Committee

12. (1) For the purpose of management of the cocoa estates as contained in the Schedule to this Law, there is hereby established a committee known as the Cross River Cocoa Estate Management Committee.

(2) The Committee shall consist of a part-time Chairman and other three part-time members who shall be appointed by the Commissioner for Agriculture and shall hold office for four years.

13. Secretary

(1) There shall be a Secretary to the Committee who shall be appointed from the Ministry of Agriculture by the Commissioner for Agriculture, Water Resources and Rural Development.

(2) Any person appointed as Secretary shall not be below the rank of Grade Level 10.

(3) The Secretary shall—

(*a*) record the proceedings of meetings of the Committee;

(*b*) keep custody of minutes of the Committee;

(*c*) carry out the correspondence of the Committee as the Committee or the Chairman may, from time to time direct.

14. Function of Committee

(1) The Committee shall perform the following functions—

(*a*) the work closely with the head of the cocoa Development Unit who shall be responsible for day-to-day administration of the estates in accordance with policy decisions of the Committee;

(*b*) equitable allocation of plots to viable cocoa farmers;

(*c*) reclamation of Boje, Obrenyi and Iyamitet Cocoa farms;

(*d*) personally examine all existing agreements with lessees to ascertain validity of claims in respect of lease tenure and hectarage covered per lessee for further recommendation to the office of the Commissioner;

(*e*) reconciliation and rectification of all existing anomalies associated with existing allocations;

(*f*) appraisal of re-allocation conditions by the end of November, 1997.

15. Interpretation

In this Law—

"Bureau" means Lease Monitoring Bureau;

"Chairman" means Chairman of the Committee;

"Committee" means the Cross River State Cocoa Estates Management Committee;

"enterprise" means the enterprises listed for leasing under the Schedule;

"estate" means agro-based establishments listed under the Schedule to this Law;

"functions" includes powers and duties;

"*Gazette*" means the Cross River State Government *Gazette*;

"Governor" means Governor of the State;

"Government" means the Government of Cross River State;

"leasing" means the granting of leases to or the renting out of estates and enterprises listed in the Schedule to this Law and excludes sales in any form or manner of any such estates or Enterprises;

"member" mean member of the Committee or Bureau;

"Monitoring Bureau" means the body responsible for the monitoring of the activities of the entrepreneurs and investors and the implementation of the policy objectives of the exercise;

"Secretary" means the Secretary to the Committee appointed under section 13 of this Law;

"Supervisory Committee" means the Committee charged with responsibility for supervising the activities of the Monitoring Committee.

16. Repeal of 1996 No. 3

The Contract Leasing of Government-Owned Enterprises Law 1996 is hereby repealed.

17. Short title.

This Law may be cited as the Leasing of Government-Owned Estates and Enterprises Law.

SCHEDULE

(A) AGRICULTURAL ESTATES

1. Boki Oil Palm Estate;
2. Calaro Oil Palm Estate;
3. Ibiae Oil Palm Estate;

SCHEDULE—*continued*

4. Kwa Oil Palm Estate;
5. Nsadop Oil Palm Estate;
6. Akridam and Boam Rubber Estate including Cross River Estates Limited (CREL) Head-quarters;
7. Uwet Rubber Estate;
8. Ikot Okpora Rubber Estate;
9. Nko Rubber Estate;
10. Uyanga Rubber Estate;
11. Agoi Rubber Estate;
12. Biakpan Rubber Estate;
13. Oban rubber and Oil Palm Estate;
14. Aboninta Cocoa Farms;
15. Cross River Cocoa Farms;
16. Abia/Bendeghe Cocoa Farms;
17. Ikom Cocoa Estate.

(B) COMPANIES

1. Calabar Veneer and Plywood Limited (CALVENPLY);
2. Durafoam Industries Limited;
3. Obudu Cattle Ranching Company Limited and Meat Processing Factory;
4. Ogoja Rice Mills Limited;
5. Polyrub Industries Limited;
6. Interfruit Juice Company Limited.

(C) HOTELS

1. Metropolitan Hotel, Calabar;
2. Metropolitan Hotel, Ogoja;
3. Metropolitan Hotel, Ikom.

CHAPTER L10

LEASING OF GOVERNMENT-OWNED ESTATES AND ENTERPRISES LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER L11

LEGISLATIVE HOUSE LAW

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CHAPTER L11

LEGISLATIVE HOUSE LAW

A Law to make provision for the Legislative House of Cross River State: To declare and define the Privileges and Immunities and Powers of the Legislative House and of the members thereof: To secure freedom of speech in the Legislative House: To regulate the Conduct of Members and other Persons in connection with the proceedings thereof: To regulate Admittance to the Precincts of the Legislative Chambers: To give Protection to Persons employed in the Publications of the reports and Order Papers in the Legislative House and for purposes incidental to or connected with the Matters aforesaid.

(1*st April*, 1965)

[Commencement.]

PART 1

Preliminary

1. Vacation of seat

Where a member of the House of Assembly is absent from two consecutive meetings of the House without leave given in writing under the hand of the Speaker and has failed to obtain such leave within one month from the end of the second meeting, then and in such case, the seat of such member shall become vacant.

2. Use and occupation of the two front benches

The seating arrangement in regard to the two front benches of the House of Assembly shall be as follows—

(*a*) the front bench as far as the centre gangway on the right of the Speaker which is to be officially known and called the Treasury Bench shall be occupied by Commissioners and other members of the Government;

(*b*) the other front bench shall be occupied by the Leader and other members of the Opposition.

3. Duty of the Leader of the House

The duty of the Leader of the House shall include the following—

(*a*) to suggest and fix the course of all principal matters of the business of the House;

(*b*) to supervise and keep in harmony the actions of his colleagues;

(*c*) to take the initiative in matters of ceremonial procedure;

(*d*) to advise the House in every difficulty as it arises.

4. Whips

(1) The House may appoint a Chief Whip, who shall be responsible to the Leader of the House for the organisation of government business, and Whips to assist the House Chief Whip.

(2) The office of a Whip or of the Chief Whip shall become vacant—

(*a*) if he ceases to be a member of the Legislative House otherwise than by reason of a dissolution of that House;

(*b*) if the office of Speaker becomes vacant; or

(*c*) if the Speaker so directs.

5. Leader of the Opposition

(1) The Leader of the Opposition shall be that elected member of the House who is for the time being the leader of the party in opposition to the Government having the greatest numerical strength in the House.

(2) Any question, as to which party in opposition has the greatest numerical strength in the House or as to who is the Leader in the House of such Party, shall be determined by the Speaker whose decision is final.

(3) The Leader of the Opposition shall be paid a salary of not less than fifteen hundred naira a year in addition to his salary as a member of the House and to any allowances lawfully receivable by him as such member.

6. Broadcasting debates

The President or Speaker may permit the broadcasting of the debates of the House.

PART 2

Privileges, Immunities and Powers

7. Members not liable to action in certain cases

A member is not liable to any civil or criminal proceedings, arrest, imprisonment or damages—

(*a*) in respect of words spoken before a Legislative House;

(*b*) in respect of any matter or thing which he may have said in the House; or

(*c*) by reason of any matter or thing which he may have brought before the House by petition, bill, resolution, motion or otherwise.

8. Freedom from arrest in civil proceedings

Except for a contravention of this Law, a member is not liable to arrest, detention, or molestation in respect of—

(*a*) a debt or matter which may be the subject of civil proceedings; or

(*b*) contempt of court (other than criminal contempt),

while proceeding to, or in attendance at, or returning from a meeting or sitting of a Legislative House.

9. Arrest of members on a criminal charge

Notwithstanding anything in any written law a member of a Legislative House shall not be arrested on a criminal charge within the Chamber or precincts of the House while the House is sitting without the leave of the House being first obtained.

10. Restrictions in service of process in House or precincts

Notwithstanding anything in any written law—

(*a*) process issued by a court in the exercise of its civil jurisdiction shall not be served or executed within the Chamber or precincts of the House whilst the House is sitting or through the Speaker or an officer of the House;

(*b*) a process issued by a court in the exercise of its criminal jurisdiction shall not be executed or served within the Chamber or precincts of the House whilst it is sitting without the leave of the House being first obtained.

11. Immunities to be enjoyed

The Legislative House and the members thereof shall hold, enjoy and exercise the privileges, immunities and powers conferred by this Law, the Constitution of the Federal Republic of Nigeria and any other Law in force.

12. Commons Journals to be *prima facie* evidence in inquiry touching privileges

Subject to the provisions of this Law a copy of the proceedings of that House or of a report of any committee of that House, which has been or purports to have been printed by the order of or by the printer of the said House shall be recovered as *prima facie* evidence without proof of its being such copy upon an inquiry touching the privileges, immunities and powers of the House or members thereof.

13. Persons not liable in damages for acts done under authority of the House

A person shall not be liable in damages or otherwise for an act done under the authority of the House within its legal powers.

14. Exclusion of courts, jurisdiction over acts of Speaker or officer

The Speaker or an officer of the House is not subject to the jurisdiction of a court in respect of the exercise of a power conferred upon or vested in him by or under this Law or by Standing Orders or by the Constitution of the State.

15. Powers of Speaker to be supplementary to other powers

The powers of the Speaker conferred by this Law are supplementary to any powers conferred on him by the Constitution of the State or by Standing Orders.

16. Privileges to be judicially noticed

All privileges, immunities and powers of the Legislative House are part of the general and public law of State and shall be judicially noticed in all courts of the State.

PART 3

Evidence before the House and Committees

17. Power to order attendance of witnesses

The House or Committee authorised by Standing Orders or by order of the House to send for persons, papers and records, may order a person to attend before it and—

(*a*) to give evidence; or

(*b*) to produce any paper, book, record or other document in his possession or control.

18. Issue and service of summons to attend

(1) An order to attend to give evidence or to produce documents before the House or Committee in accordance with section 17, shall be given to the person required to attend or to produce documents by a summons under the hand of the Clerk issued by the direction of the Speaker, or Chairman of the Committee.

(2) A summons issued under this section shall state the time when and the place where the person summoned is required to attend and in the case of an order made in accordance with paragraph (*b*) of section 17, the documents he is required to produce.

(3) Subject to subsection (5) a summons shall be served on the person mentioned therein by delivering to him a copy thereof and there shall be paid or tendered to him such sum for expenses as may be authorised by Standing Orders.

(4) A summons may be served by an officer of a Legislative House or by a police officer.

(5) The Speaker may, if he is satisfied that for any reason the personal service of a summons cannot be effected, order that service be effected by exhibiting a notice of the summons at the usual or last known place of abode or business of the person to be served.

19. Warrant to compel attendance

(1) If a person to whom a summons under section 17 is directed does not attend before the House or Committee (as the case may be) at the time and place mentioned therein, the Speaker may, upon being satisfied that the summons was duly served or that the person to whom the summons is directed wilfully avoids service, issue a warrant to apprehend him and bring him, at a time and place to be stated in the warrant before the House or Committee.

(2) A warrant issued under this section shall be executed by a police officer.

(3) The Speaker on issuing a warrant for the arrest of a person under this section may, if he thinks fit, by endorsement on the warrant, direct that the person named in the warrant be released after arrest on his entering into such a recognisance before a magistrate for his appearance before the House or Committee as may be required in the endorsement.

20. Examination of witnesses

The House may, or a Committee if authorised by Standing Orders or by a resolution of the House, send for persons, papers and records, may require that any facts, matters and things relating to the subject of the enquiry before the House or Committee be verified or ascertained by the oral examination of witnesses, and may cause any such witness to be examined on oath, which the Speaker or the Chairman of the Committee (as the case may be) is hereby authorised to administer.

21. Privileges of witnesses

(1) Subject to the provisions of this section, a person summoned to attend, to give evidence or to produce any paper, book, record or other document before the House or a Committee shall be entitled in respect of such evidence or the disclosure of any communication or the production of any such paper, book, record or other document to the same privilege as before the High Court.

(2) Except with the consent of the Speaker a public officer shall not be required—

(*a*) to produce before the House or a Committee any paper, book, record or other document; or

(*b*) to give before the House or a Committee evidence on a matter,

if such paper, book, record or other document or such evidence is stated by the public officer to form part of or relate to the unpublished official records of any department of the Government of the Federation or to relate to any affairs of State within the authority of the Government of the Federation.

(3) Except with the consent of the Governor of the State concerned a public officer shall not be required—

(*a*) to produce before the House or a Committee any paper, book, record or other document; or

(*b*) to give before the House or a Committee evidence on any matter,

if such paper, book, record or other document or such evidence is stated by the public officer to form part of or relate to the unpublished official records of any department of the Government of a State or to relate to any affairs of State within the authority of the Government of a State.

(4) If a person ordered to attend or produce any paper, book, record or document before the House or a Committee refuses to answer any question that may be put to him or to produce any such paper, book, record or document on the ground that the same is of a private nature and does not affect the subject matter of the inquiry, the Speaker or the Chairman of the Committee or the presiding member (as the case may be) may excuse the answering of such question or the production of such paper, book, record or document, or may order the answering or production thereof.

22. Answers not admissible in proceedings

Except in the case of criminal proceedings for an offence against section 101 of the Criminal Code or an offence against this Law, an answer given by a person to a question put by the House or a committee shall not in any proceedings, civil or criminal, be admissible in evidence against him.

23. False evidence

(1) A person who knowingly gives false evidence before the House or a Committee during the course of his examination shall in addition to any offence under Part 6 of which he may be guilty—

(*a*) if the answer was given on oath, be deemed to be guilty of an offence against section 117 of the Criminal Code and shall be liable to the punishment prescribed therefor by that Code;

(*b*) if the answer was given otherwise than on oath, be guilty of an offence:

Penalty: imprisonment for twelve months.

(2) A prosecution for an offence under this section shall not be instituted except by or with the consent of the Attorney-General.

24. Evidence of proceedings in the House or Committee not to be given without leave

(1) A member or officer of the House or a shorthand writer employed to take minutes of evidence before the House or any committee shall not give evidence elsewhere in respect of the contents of such evidence of or the contents of any manuscript or document laid before the House or any committee in respect of any proceedings or examination had at the Bar or before any committee of the House without the special leave of the House first had and obtained.

(2) Notwithstanding anything contained in any other section or in any other law, only a copy of the minutes or record of the votes or proceedings of the House purporting to be printed by the Government Printer and certified by the Clerk shall be admitted as evidence of the minutes or votes or proceedings of the House and such a copy shall be conclusive evidence of the minutes or votes or proceedings of the House, but it shall not be produced in any court of law unless with the special leave of the House first had and obtained.

PART 4

Publications

25. Matter printed by order of the House to be admitted as evidence

Upon an inquiry touching on the privileges, immunities and powers of the House or of any member, a copy of the minutes or proceedings of the House purporting to be printed by the Government Printer shall be admitted as evidence of those minutes or proceedings in all courts and places without any proof being given that the copy was so printed.

26. Protection of persons responsible for publications authorised by the House

A person, being a defendant in any civil or criminal proceedings instituted for or on account or in respect of the publication by that person or by his servant, by order or under the authority of the House or a committee, of any reports, papers, minutes, votes or proceedings, may, on giving to the plaintiff or prosecutor (as the case may be) twenty-four hours written notice of his intention, bring before the court in which the civil or criminal proceedings are being held a certificate under the hand of the Speaker or of the Clerk stating that the report, papers, minutes, votes or proceedings in respect whereof the civil or criminal proceedings have been instituted were published by such person or by his servants by order or under the authority of the House or a committee, and the court shall thereupon immediately stay the civil or criminal proceedings and the same and every process issued therein shall be deemed to be finally determined.

27. Publication of extracts of proceedings without malice

In any civil or criminal proceedings for printing an extract from or an abstract of any report, paper, votes or proceedings published by or under the authority of the House, if the court or jury as the case may be, is satisfied that the extract or abstract was published *bona fide* and without malice, judgment or verdict as the case may be, shall be entered for the defendant or accused.

PART 5

Maintenance of Order in the House and Precincts

28. Regulation of admittance of strangers

(1) A stranger shall not be entitled, as of right, to enter or to remain within the House or its precincts.

(2) The Speaker may issue orders for the regulation of the admittance of strangers to the house or its precincts and for the maintenance of order and decorum therein.

(3) Copies of orders made by the Speaker under this section shall be duly authenticated by the Clerk and exhibited in conspicuous positions within the precincts of the House and such copies when so authenticated and exhibited, shall be deemed to be sufficient notice to all persons affected thereby.

(4) The Speaker may at any time order a stranger to withdraw from the House or its precincts.

29. Person disturbing proceedings may be arrested without warrant

(1) A person creating or joining in any disturbance in the House or in the precincts during its actual sitting may be arrested without warrant on the verbal or written order of the Speaker, and may be kept in the custody of an officer of the House pending the determination by the House whether or not he should be punished for an offence under Part 6, but such a person shall not be kept in custody after the termination of the sitting.

(2) All police officers and other persons are hereby required to assist in the apprehension and detention of any person in pursuance of an order given under subsection (1).

PART 6

Offences and Contempt of the Legislature

30. Breaches of privileges

(1) Each of the acts and omissions specified in the Schedule to this Law (whether in Part A or Part B thereof) shall be an offence under this Part punishable by the High Court under the provisions hereinafter contained in that behalf.

[The Schedule.]

(2) Each of the acts or omissions specified in Part B of the Schedule is hereby declared to be contempt of the Legislature.

(3) Every contempt of the Legislature which is specified in Part B of the Schedule to this Law and which is committed in respect of or in relation to any House shall be an offence under this Part punishable by that House under the provisions hereinafter contained in that behalf.

31. Jurisdiction of High Court

(1) Upon application made to the High Court in that behalf by the Attorney-General and supported by evidence on affidavit, the court—

(*a*) may, if satisfied after perusal of the application and such evidence that any member or other person appears to have committed any offence under this Part, cause notice to be served on such member or person calling upon him to show cause why he should not be punished for that offence; and

(*b*) may, if no cause or no sufficient cause as aforesaid is shown to the satisfaction of the court, after such inquiry as the court may consider necessary, convict him of the offence and sentence him to imprisonment for a term of two years or to a fine of four hundred naira or to both such imprisonment and fine.

(2) The jurisdiction conferred on the High Court by subsection (1) of this section may be exercised by the Chief Judge or any judge of the High Court nominated for the purpose by him.

32. Procedure in the High Court

(1) The proceedings and the procedure to be followed upon an application to the High Court under section 31 shall, subject to any rules of court which are made for the purpose, be such as may be determined by the Chief Judge or the Judge of the High Court hearing the application; and in relation to and for the purposes of such proceedings, the High Court shall have the same powers, whether of compelling the attendance of persons and the production of documents or otherwise, as the court may in the exercise of its ordinary jurisdiction.

(2) The powers to make rules of court conferred by section 84 of the High Court Law shall extend to the making and approval of rules of court prescribing the practice and procedure of the court in proceedings under this Part.

33. Conditions for application to High Court

(1) An application under section 31 may be made to the High Court by the Attorney-General, in the case of any alleged offence under this Part committed in respect of or in relation to any House, only if—

(*a*) the Attorney-General has furnished a report to the Speaker of that House stating that, in the opinion of the Attorney-General, there is sufficient evidence to warrant the taking of further steps under this Law in that case; and

(*b*) that House, after consideration of such report, has by order requested the Attorney-General to make the application.

(2) The making of an application under section 31 by the Attorney-General in any case shall constitute conclusive evidence that the application has been duly made in accordance with the preceding provisions of this section.

34. Reference of cases to Attorney-General with statements

(1) For purpose of enabling the Attorney-General to furnish a report in relation to any case of an alleged offence under this Part, the Speaker, as the case may be, may—

(*a*) on complaint of the alleged offence being made to him in chambers by any member; or

(*b*) if required so to do by order of the House,

refer the case to the Attorney-General for report.

(2) Where a case is to be referred to the Attorney-General under subsection (1) the Speaker, or any other member, if authorised in writing so to do by the Speaker, or the Clerk of the House if so authorised—

(*a*) shall record on oath or affirmation the statement of the member making the complaint of the alleged offence; and

(*b*) may record on oath or affirmation the statement of any other person whose evidence is or may be in the opinion of the Speaker relevant.

The statement of any person may be recorded under the preceding provisions of this section any time after the case has been referred to the Attorney-General, if the Speaker considers it necessary, whether of his own motion or at the request of the Attorney-General.

(3) The provisions of sections 17 to 20 inclusive shall apply in all respects for the purpose of enabling statements to be recorded under subsection (2) in like manner as they apply for the purpose of enabling evidence to be taken by a committee, and for the purpose aforesaid the person authorised by or under subsection (2) to take such statement shall have the same powers as are conferred by those sections on a committee or the chairman thereof.

(4) The provisions of sections 21 to 23 inclusive shall apply to and in relation to any evidence given for the purposes of subsection (2).

(5) Notwithstanding anything in the preceding provisions of this section, a person who is alleged to have committed an offence under this Part shall not be bound or compelled without his consent to make any statement under subsection (2) in relation to that offence.

(6) Where a case is referred under subsection (1) to the Attorney-General for report, the record of all statements taken under subsection (2) shall be transmitted to the Attorney-General, and the Attorney-General shall, after consideration of those statements, report to the Speaker stating whether, there is, in the opinion of the Attorney-General, sufficient evidence, to warrant the taking of further steps under this Law in respect of an alleged offence under this Part; and such report shall contain, for the information of the House, a summary of the facts which in the opinion of the Attorney-General, are capable of being proved upon the evidence contained in the statements.

35. House's jurisdiction over offences specified in Part B of First Schedule

(1) Subject to the provisions of this section, the House shall have power and jurisdiction to punish summarily any contempt of the Legislature specified in Part B of the First Schedule which is committed in respect of or in relation to the House by any member or any other person.

(2) The House shall not punish any offence under this Part in any case which has been referred to the Attorney-General as hereinbefore provided, unless a report has been furnished by the Attorney-General under section 34 to the effect that in his opinion there is sufficient evidence to warrant the taking of further steps under this Law in respect of the alleged offence.

(3) The House shall not take cognisance of or punish any offence under this Part in any case in which an application has been made to the High Court under section 31.

36. Punishment which the House may impose

(1) Subject to the provisions of this section, the punishment which may be imposed by the House for an offence under this Part shall be the administration by the President or the Speaker of a reprimand at the Bar of the House or removal from the precincts of the House or both.

(2) In the case of an offence committed by a member of the House, the House may, in addition to or instead of any punishment specified in subsection (1) order his suspension from the service of the House for which period as it may determine:

Provided that such period shall not extend beyond the last day of the meeting next following that in which the order is passed, or of the session in which the order is passed, whichever shall first occur.

(3) In the case of an offence committed by a person who is not a member, the House may, in addition to the punishment specified in subsection (1) of this section, order that such person shall be prohibited from entering the House or its precincts for a period not exceeding six months.

37. Suspended member excluded from Chamber and precincts

(1) A member of the House who has been suspended from the service of the House shall not enter or remain within the Chamber or precincts of the House while such suspension remains in force, and, if any such member is found within the Chamber or precincts of the House in contravention of this section, he may be forcibly removed therefrom by any officer of the House and no proceedings shall lie in any court against such officer in respect of such removal.

(2) No salary or allowance payable to a member of the House for his service as such shall be paid in respect of any period during which he is suspended from the service of the House under the provisions of this section.

38. Powers of arrest for carrying out punishment

For the purpose of securing the attendance of any person at the Bar of the House for reprimand under section 36 or of removing from the precincts of the House any person whose removal has been ordered under that section or whose entry has been prohibited under that section, it shall be lawful for the Sergeant-at-Arms or any other officer of the House or police officer, if ordered so to do by the Speaker, to arrest such person without warrant at any place within the precincts of the House and to use such reasonable force as may be necessary for the purpose aforesaid.

39. Saving for civil actions

Notwithstanding that any act or omission constitutes an offence under this Part, nothing in this Law shall be construed to prevent or restrict the institution or maintenance against any person or any civil action or proceeding for damages or for any other remedy which may be available in respect of or by reason of such act or omission.

40. Limitation of power of punishment of person by House

Nothing in this Law shall confer or be construed to confer on the House any power to impose any punishment on any person other than the power to impose, for any offence specified in Part B of the Schedule, any punishment authorised by section 36 of this Law.

PART 7

Salaries and Allowances

41. Salaries of the Speaker and certain members of the House

The salaries and allowances of members of the House shall be paid as specified in the Public Officers Remuneration Package Law.

42. Charging of certain salaries on Consolidated Revenue Fund and provision against duplication of salaries

(1) The salaries payable to the members of the House are—

(*a*) a charge on the Consolidated Revenue Fund; and

(*b*) payable by the Accountant-General on receipt of a warrant, under the hand of the Commissioner of Finance, directing payment.

(2) Save as provided in section 5, a person to whom a salary is payable under this Law shall receive only one salary under this Law.

43. Allowances

It shall be lawful for a person entitled to a salary under this Law to receive such allowances as shall be granted from time to time by the House to such a person.

44. Persons to whom salary payable not precluded from sitting for that reason

A person to whom a salary is payable under this Law shall not, by reason of his being the holder of the office in respect of which such a salary is payable, be incapable of being elected or of sitting and voting as a member of the House.

PART 8

Miscellaneous

45. Powers of Speaker to be supplementary to powers otherwise conferred

The powers of the Speaker conferred by this Law shall be supplementary to any powers conferred on him by the constitution or by Standing Orders.

46. Notification of arrest of members

Where a member of the House is—

(*a*) arrested or detained in custody upon the warrant or order of a court; or

(*b*) sentenced by a court to a term of imprisonment,

the court shall, as soon as practicable, inform the Speaker accordingly.

47. Courts not to exercise jurisdiction over acts of Speaker or officer

Neither the Speaker nor any officer of the House shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in him by or under this Law or the Standing Orders of the House or by the Constitution.

48. Interpretation

In this Law—

"Chamber" in relation to a Legislative House, means the place in which the Legislative House sits in session for the transaction of business;

"Clerk" means the Clerk to the State House of Assembly;

"Committee" means a standing, select or special committee of the House of Assembly;

"Legislative House" or **"House"** means the State House of Assembly;

"meeting" means any sitting or sittings of the House commencing upon the time the House first meets after being summoned at any time and terminating when it was first adjourned *sine die* or at the conclusion of a session;

"member" means a member of a Legislative House;

"officer" in relation to a Legislative House, means the Clerk or any other office or person acting within the Chamber of the Legislative House or the precincts thereof under the orders of the President or Speaker and any public officer on duty within the precincts of the House;

"precincts" means the offices of a Legislative House and the galleries and places provided for the use of accommodation of strangers, members of the public and representatives of press and, while a Legislative House is sitting and subject to any exceptions made by the Speaker, the entire building in which the Chamber of the House is situated and any forecourt, yard, garden, enclosure or open space adjoining or appertaining to that building and used or provided for the purposes of the House;

"Speaker" means the Speaker of the House of Assembly;

"Standing Orders" means the Standing Orders of a Legislative House;

"stranger" in relation to a Legislative House, means a person who is not a member or officer of that House.

49. Short title

This Law may be cited as the Legislative House Law.

SCHEDULE

[Part 6.]

PART A

Offences to be punishable only by the High Court

1. Assaulting, insulting or wilfully obstructing any member coming to or going from the House or on account of his conduct in the House or any committee, or endeavouring to compel any member by force, insult or menace to declare himself in favour of or against any proposition or matter pending or expected to be brought before the House or any committee.

2. Making any oral or written threats to a member or challenging a member to fight on account of his conduct in the House or committee.

3. Tampering with, deterring, threatening, beguiling or in any way unduly influencing any witness in regard to evidence to be given by him before the House or any committee.

4. Presenting to the House or to any committee any false, untrue, fabricated or falsified document with intent to deceive the House or any committee.

5. Wilfully publishing any false or perverted report of any debate or proceedings of the House or a committee or wilfully misrepresenting any speech made by a member in the House or committee.

6. Wilfully publishing any report of any debate or proceedings of the House or a committee conducted behind closed doors or the publication of which has been prohibited by the House or committee.

7. The publication of any defamatory statement reflecting on the proceedings or the character of the House.

8. The publication of any defamatory statement concerning any member in respect of his conduct as a member.

9. The offering to or acceptance by any member or officer of the House of a bribe to influence him in his conduct as such member or officer, or the offering to or acceptance by any member or officer of the House of any fee, compensation, gift or reward for or in respect of the promotion of or opposition to any Bill, Resolution, matter, rule or thing submitted to or intended to be submitted to the House or any committee.

10. Molesting officers of the House on their way to and from the House or on account of their conduct as such officers.

11. Molesting witnesses on account of evidence given by them before the House or a committee of the House.

12. Destroying documents which a person has been ordered to produce for the House or a committee of the House.

13. The printing of a copy of any Law or of any report, paper, minutes, or notes or proceedings of the House or any committee, which purports to have been printed by the Government Printer or by or under the authority of the House or any committee but which in fact has not been so printed or the tendering in evidence of any such copy as aforesaid.

14. The abetment of any act or omission specified in any of the preceding paragraphs.

PART B

Offences to be punishable either by the House or the High Court

1. The wilful failure or refusal to obey any order or resolution of the House under this Law, or any order of the President or Speaker or any member which is duly made under this Law.

2. Wilful disobedience to any order for attendance or for production of papers, books, records, or documents made by the House or any committee duly authorised in that behalf unless such attendance or production be excused as provided in section 21.

3. Refusing to be examined before or to answer any lawful and relevant question put by the House or any such committee, unless such refusal be excused as provided in section 21.

4. Assaulting, insulting or wilfully interfering with any member in the House or in committee or in the precincts of the House.

5. Assaulting or resisting or wilfully interfering with an officer of the House in the execution of his duty.

6. Creating or joining in any disturbance in the Chamber or in committee or in the vicinity of the House while the House or any committee is sitting, knowing or having reasonable grounds to believe that proceedings of the House or committee are or are likely to be interrupted.

7. Disrespectful conduct in the precincts of the House.

8. Prevarication or other misconduct as a witness before the House or in committee.

9. The abetment of any act or omission specified in any of the proceeding paragraphs.

CHAPTER L11

LEGISLATIVE HOUSE LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER L12

LEGITIMACY LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Legitimation by subsequent marriage of parents.
2. Decrees of legitimacy.
3. Rights of legitimated persons and others to take interests in property.
4. Succession on intestacy of legitimated persons and their issue.
5. Application to illegitimate person dying before marriage of parents.
6. Rights and obligations of legitimated persons.
7. Persons legitimated by extraneous law.
8. Right of illegitimate child and mother to succeed on intestacy of the other saving as to customary law.
9. Saving.
10. Interpretation.
11. Short title.

CHAPTER L12

LEGITIMACY LAW

A Law to amend the Law relating to children born out of Wedlock.

(17*th October*, 1920)

[Commencement.]

1. Legitimation by subsequent marriage of parents

(1) Subject to the provisions of this section, where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Law, the marriage shall, if the father of the illegitimate person was or is at the date of the marriage domiciled in Nigeria render that person, if living, legitimate from the commencement of this Law, or from the date of the marriage, whichever last happens.

(2) The legitimation of a person under this Law does not enable him or his spouse, children or remoter issue to take any interest in real or personal property save as is hereinafter in this Law expressly provided.

2. Decrees of legitimacy

(1) A person claiming that he or his parent or any remoter ancestor became or has become a legitimated person may apply by petition to the High Court for a decree declaring that the petitioner is the legitimated child of his parents.

(2) The Chief Judge, with the approval of the Governor, may make rules of court to regulate the procedure with regard to applications under subsection (1) and in particular with regard to the evidence which shall be deemed to establish the claim of the petitioner to such decree as aforesaid mentioned.

(3) On any such application as in subsection (1) of this section mentioned the court shall make such decree as the court thinks just:

Provided that the decree of the court shall not prejudice any person—

(*a*) if it is subsequently proved to have been obtained by fraud or collusion; or

(*b*) unless that person has been cited or made a party to the proceedings or is the heir-at-law, next of kin, or other real or personal representative of, or derives title under or through, a person so cited or made a party.

3. Rights of legitimated persons and others to take interests in property

(1) Subject to the provisions of this Law, a legitimated person, and his spouse, children or more remote issue shall be entitled to take any interest—

(*a*) in the state of an intestate dying after the date of Legitimation;

(*b*) under any disposition coming into operation after the date of Legitimation,

in like manner as if the legitimated person had been born legitimate.

(2) Where the right to any property, real or personal, depends on the relative seniority of the children of any person, and those children include one or more legitimated persons, the legitimated person or persons shall rank as if he or they had been home when he or they become legitimated by virtue of this Law and if more than one such legitimated person became legitimated at the same time, they shall rank as between themselves in order of seniority:

Provided that nothing in this subsection shall confer preferential rights on legitimated children when succession to property depends on customary law.

(3) This section applies only if and so far as a contrary intention is not expressed in the disposition and shall have effect subject to the terms of such disposition and to the provisions therein contained.

4. Succession on intestacy of legitimated persons and their issue

Where a legitimated person or a child or remoter issue of a legitimated person dies intestate in respect of all or any of his real or personal property, the same persons shall be entitled to take the same interests therein as they would have been entitled to take if the legitimated person had been born legitimate.

5. Application to illegitimate person dying before marriage of parents

Where an illegitimate person dies after the commencement of this Law and before the marriage of his parents leaving any spouse, children or remoter issue living at the date of such marriage, then, if that person would, if living at the time of the marriage of his parents, have become a legitimated person, the provisions of this Law with respect to the taking of interests in property by, or in succession to, the spouse, children and remoter issue of a legitimated person shall apply as if such person as aforesaid had been a legitimated person and the date of the marriage of his parents had been the date of Legitimation.

6. Rights and obligations of legitimated persons

A legitimated person shall have the same rights, and shall be under the same obligations in respect of the maintenance and support of himself or of any other person as if he had been born legitimate, and, subject to the provisions of this Law, the provisions of any Act or Law relating to claims for damages, compensation, allowance, benefit, or otherwise by or in respect of a legitimate child shall apply in like manner in the case of a legitimated person.

7. Persons legitimated by extraneous law

(1) Where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Law, the father of the illegitimate person was or is, at the time of the marriage, domiciled in a country other than Nigeria by the law of which the illegitimate person became legitimated by virtue of such subsequent marriage, that person, if living, shall in the State be recognised as having been so legitimated from the commencement of this Law or from the date of the marriage, whichever last happends, notwithstanding that his father was not at the time of the birth of such person domiciled in a place in which Legitimation by subsequent marriage was permitted by law.

(2) All the provisions of this Law relating to legitimated persons and to the taking of interests in property by or in succession to a legitimated person and the spouse, children and remoter issue of a legitimated person (including those relating to the rate of death duties) shall apply in the case of a person recognised as having been legitimated under this section, or who would, had he survived the marriage of his parents, have been so recognised; and, accordingly, this Law shall have effect as if references therein to a legitimated person included a person so recognised as having been legitimated.

8. Right of illegitimate child and mother to succeed on intestacy of the other saving as to customary law

(1) Save as provided in subsection (3), where, after the commencement of this Law, the mother of an illegitimate child, such child not being a legitimated person, dies intestate as respects all or any of her real or personal property, and does not leave any legitimate issue her surviving, the illegitimate child, or, if he is dead, his issue, shall be entitled to take any interest therein to which he or such issue would have been entitled if he had been born legitimate.

(2) Save as provided in subsection (3), where, after the commencement of this Law, an illegitimate child, not being a legitimated person, dies intestate in respect of all or any of his real or personal property, his mother if surviving shall be entitled to take any interest therein to which she would have been entitled if the child had been born legitimate and she had been the only surviving parent.

(3) Nothing in this section shall affect inheritance or succession under customary law when the mother of the illegitimate child is a native.

9. Saving

Nothing in this Law shall affect the operation or construction of any disposition coming into operation before the commencement of this Law, or affect any rights under the intestacy of a person dying before the commencement of this Law.

10. Interpretation

In this Law—

"Christian marriage" means a marriage which is recognised by the law of the place where it is contracted as the voluntary union for life of one man and one woman to the exclusion of all others;

"date of Legitimation" means the date of the marriage leading to the Legitimation or, where the marriage occurred before the commencement of this Law, the commencement of this Law;

"disposition" means an assurance of any interest in property by any instrument whether *inter vivos* or by will;

"intestate" includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate;

"legitimated person" means a person legitimated by this Law;

"marry", **"married"** and **"marriage"** refer to Christian marriages only.

11. Short title

This Law may be cited as the Legitimacy Law.

CHAPTER L12

LEGITIMACY LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation under this Law

CHAPTER L13

LICENSING OF BUSINESS PREMISES LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Licence to be obtained to carry on a business to which this Law applies.
2. Licensing authority.
3. Application for licence.
4. Form and duration of licences.
5. Licensing fees.
6. Licensing fee to form part of revenue of the State.
7. Power to refuse to issue, renew a licence or to revoke a licence already issued.
8. Classification of business.
9. Offences.
10. Power to make regulations.
11. Ministry of Local Government to administer this Law.
12. Interpretation.
13. Citation.

SCHEDULES

SCHEDULE 1

Fees Payable

SCHEDULE 2

Forms

SCHEDULE 3

Range of Fees

CHAPTER L13

LICENSING OF BUSINESS PREMISES LAW

A Law to provide for the licensing of premises on which certain kinds of business are carried on.

(1*st April*, 1973)

[Commencement.]

1. Licence to be obtained to carry on a business to which this Law applies

(1) Subject as hereinafter appearing, no person shall carry on a business to which this Law applies unless he obtains a licence in respect of the premises or a set of premises on which he carried on such business.

(2) A business to which this Law applies is one relating to or connected with the matters specified in Schedule 1 hereto.

(3) A person required under the provisions of this Law to obtain a licence, shall, within thirty days of the publication in the *Gazette* of this Law, obtain licence in the form specified in Schedule 2 hereto.

2. Licensing authority

(1) The Secretary to the Local Government is hereby appointed a licensing authority for the purposes of this Law in respect of the area of authority of the Local Government; and he may delegate any or all of his functions under this Law to such persons not below the rank of Development Officer as in his opinion are capable of satisfactorily discharging any or all of those functions.

(2) Without prejudice to a delegation under subsection (1) of this section, a licensing authority may himself perform any or all of those functions.

(3) A licensing authority may grant a licence specifying the name of the applicant, his residence and place of business, which shall have effect in respect of the business specified therein and shall be in the form specified in section 4 below.

(4) A person may carry on his business at one or more premises but a separate licence shall be obtained in respect of each of such premises.

3. Application for a licence

Application for a licence shall be made in duplicate to the licensing authority of the area in which the premises of the applicant are situated and shall be in the Form A in Schedule 2.

4. Form and duration of licences

(1) A licence shall be in the Form B in Schedule 2.

(2) A licence obtained under the provisions of this Law shall, unless revoked or forfeited, be valid for one year:

Provided that no such licence shall be valid after the 31st day of December in each year.

5. Licensing fees

The fee for the issue of a licence for the first time or of each renewal thereof shall be as shown in Schedule 1 to this Law.

6. Licensing fee to form part of revenue of the State

Licence fees payable under this Law shall accrue to and form part of the revenue of the State.

7. Power to refuse to issue, renew a licence or to revoke a licence already issued

(1) A licensing authority may refuse to issue a licence or renew a licence that has expired and may revoke a licence that has been issued or renewed:

Provided that reasons therefor are given in writing to the applicant or, as the case may be, to the licensee.

(2) Any person aggrieved by such refusal or revocation may appeal to a magistrate's court.

8. Classification of business

(1) Where fees payable under Schedule 1 to this Law fall within any particular range shown in that Schedule, then, for the purpose of ascertaining the actual fee payable in each such case, a business to which this Law applies shall be in category I, II or III, and the table in Schedule 3 to this Law shall apply and the fees therein specified shall become payable.

(2) For the purposes of subsection (1) above, a business shall be—

(*a*) in category I, if it is being carried on by not more than two persons;

(*b*) in category II, if it is being carried on by three persons;

(*c*) in category III, if it is being carried on by more than three persons.

9. Offences

(1) Any person carrying on any business to which this Law applies without a licence or contravening any provision of this Law shall be guilty of an offence under this Law and liable on summary conviction by a magistrate's court to a fine not exceeding fifty naira or to a term of imprisonment not exceeding three months or to both.

(2) Any applicant for a licence under this Law who with intent to pay a lower licence fee than is otherwise payable understates the number of persons carrying on any business to which this Law applies shall be deemed to be guilty of contravening a provision of this Law within the meaning of subsection (1) above and shall be liable to be proceeded against and punished accordingly; and shall in addition be liable to pay the licence fee due.

10. Power to make regulations

(1) The Governor may make regulations for the general purposes of this Law and may in particular—

(*a*) alter any or all of the provisions of the Schedules hereto;

(*b*) provide for further control of business premises;

(*c*) add to, or delete from, the relevant Schedule the name of any particular business premises;

(*d*) prescribe penalties not inconsistent with the provisions of this Law for offences against any regulation made thereunder; and

(*e*) remit, reduce or increase the fees specified in this Law.

(2) The Governor may delegate any or all of his functions under this Law to such person or persons as he thinks fit, and without prejudice to such delegation he may himself perform any or all of those functions.

11. Ministry of Local Government to administer this Law

The due administration of this Law is hereby vested in the Ministry of Local Government.

12. Interpretation

In this Law unless the context otherwise provides—

"businessman" means a person carrying on a business to which this Law applies;

"licensing authority" means a secretary to a local government appointed by section 2 (1) of this Law to be a licensing authority;

"licence" means a licence issued or renewed in the form specified in section 4 of this Law;

"premises" includes a house or building or any part thereof together with its grounds or other appurtenances, and land without any building thereon on which a person carries on his business;

"the State" means Cross River State of Nigeria.

13. Citation

This Law may be cited as the Licensing of Business Premises Law.

SCHEDULES

SCHEDULE 1

[Sections 1 and 5.]

	Description of Premises to be licensed	*Fees for Issue or Renewal of Annual Licence*
1.	Premises used as a motor mechanic's workshop	₦10.00
2.	Premises used as a tinker's workshop	₦2.00
3.	Premises used a bicycle repair workshop	₦2.00
4.	Premises used as a radio mechanic's workshop	₦2.00 to ₦5
5.	Premises used as an electrical mechanic's workshop	₦10.00
6.	Premises used as a blacksmith's workshop	₦2.00
7.	Premises used as a barber's saloon or workshop (howsoever described)	₦2.00
8.	Premises used as a tailor's workshop	₦2 to ₦10
9.	Premises used as a carpenter's workshop	₦2.00
10.	Premises used as a carpenter's workshop (furniture makers)	₦10.00
11.	Premises used as a clock or watch repair workshop	₦2.00
12.	Premises used as s welder's workshop	₦2.00
13.	Premises used as typewriter repair workshop	₦2.00
14.	Premises used as an artist's workshop	₦2.00
15.	Premises used for the storing, purchasing and/or treating of produce	₦5 to ₦20
16.	Premises used as a hairdresser's saloon or workshop (howsoever described)	₦10.00
17.	Premises used as printing workshop	₦2 to ₦20
18.	Premises used as a shoe repair workshop or cobbler's workshop (howsoever described)	₦10.00
19.	Premises used as a shoe manufacturer's workshop	₦10.00
20.	Premises (other than a market stall) used as a timber merchant's workshop	₦2 to ₦10
21.	Premises used as ironworks workshop	₦10.00
22.	Premises used as a sawyer's workshop	₦2.00
23.	Premises used as a builder's workshop or office	₦10 to ₦50
24.	Premises used as a painter's workshop	₦2.00

SCHEDULE 1—*continued*

	Description of Premises to be licensed	*Fees for Issue or Renewal of Annual Licence*
25.	Premises used as poultry or a piggery	₦2.00
26.	Premises used as a Block Moulding workshop	₦10 to ₦20
27.	Premises used as a Bakery	₦2 to ₦10
28.	Premises used as a Petrol filling Station	₦10.00
29.	Premises used as a Supermarket	₦5 to ₦20
30.	Premises used as an Oil Mill	₦2 to ₦10
31.	Premises used as a Cinema House	₦10.00
32.	Premises used as a Mercantile House	₦10 to ₦25
33.	Premises used as a Shop	₦2 to ₦10
34.	Premises used for business other than those herein contained	₦2 to ₦10

SCHEDULE 2

[Section 3.]

FORM A

CROSS RIVER STATE OF NIGERIA

LICENSING OF BUSINESS PREMISES LAW

Application for the Issue or renewal of a Licence

1. Full name of applicant .....
2. Age of applicant .....
3. (*a*) Full address of the premises for which licence is desired .....
   (*b*) Full address of resident of applicant .....
4. (*a*) Whether applicant has previously made an application for licence .....
   (*b*) If so, whether any such application was refused .....
5. If the application is for renewal, the number of the existing licence .....
6. Number of persons carrying on the business .....
7. The full names and addresses of all:
   (*a*) Indentured apprentices .....
   (*b*) Employees at the time of application .....
8. (*a*) Has the applicant been convicted? .....
   (*b*) If so, where? .....
   (*c*) Place of conviction .....
   (*d*) Nature of the offence committed .....
   (*e*) Penalty imposed .....

Date ..... , 20 .....

.....

Signature of applicant

FORM B

[Section 4.]

CROSS RIVER STATE OF NIGERIA

LICENSING OF BUSINESS PREMISES LAW

Business Premises Licence

Licence No. .....

Licence is hereby granted/renewed to .....

(Full name)

of .....

(Full address of residence)

in respect of .....

(Type of business)

carried on at .....

(*indicate and describe premises in full giving particulars of name, situation or other means of identification*)

Dated at ..... this ..... day of ..... , 20.....

This licence will expire on the ..... day of ..... , 20 .....

Fee - Issue/Renewal ..... ₦ k

.....

Licensing Authority for

..... *Local Government Area.*

SCHEDULE 3

Fees Payable in respect of each Category of Business

[Section 8.]

Range of Fees specified in Schedule 1	Category I	Category II	Category III
₦2.00 to ₦5.00	₦2.00	₦3.50	₦5.00
₦2.00 to ₦10.00	₦2.00	₦6.00	₦10.00
₦2.00 to ₦20.00	₦2.00	₦11.00	₦20.00
₦5.00 to ₦20.00	₦5.00	₦12.50	₦20.00
₦10.00 to ₦20.00	₦10.00	₦15.00	₦20.00
₦10.00 to ₦25.00	₦10.00	₦17.50	₦25.00
₦10.00 to ₦50.00	₦10.00	₦30.00	₦50.00

CHAPTER L13

LICENSING OF BUSINESS PREMISES LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

CHAPTER L14

LIMITATION LAW

ARRANGEMENT OF SECTIONS

PART I

Period of Limitation in Respect of Land

SECTION

1. Time limit for action to recover land.
2. Accrual of right of action in case of present interests in land.
3. Accrual of right of action in cases of future interests.
4. Provisions in case of land held in trust.
5. Accrual of right of action in case of forfeiture or breach of condition.
6. Accrual of right of action in case of certain tenancies.
7. Right of action not to accrue or continue unless there is adverse possession.
8. Limitation of redemption actions.
9. Limitation applying as between joint owners.
10. Administration to date back to death.
11. Transfer of interest in land after expiration of period.
12. The limit for actions to recover money secured by mortgage or to recover proceeds of the sale of land.

PART II

Period of Limitation in Respect of Judgments, Trust Property and the Estate of Deceased Persons

13. Time limit for actions founded on judgment.
14. Time limit for actions in respect of trust property.
15. Time limit for actions claiming estate of a deceased person.

PART III

Limitation Period in Respect of Contract, Tort and Other Actions

16. Time limit for actions founded on contract, tort, etc.
17. Special provision for action in respect of personal injuries.
18. Special provisions for actions in respect of fatal accident.
19. Definition of date of knowledge for the purpose of sections 17 and 18.
20. Limitation of action in case of successive conversions and extinction of title.

PART IV

Extension or Exclusion of Ordinary Time Limits

21. Application of this Part to Parts I – III.

SECTION

22. Interpretation of Part IV.
23. Pension under a disability.
24. Extension of limitation period in case of disability.
25. Person under confinement.
26. Extension of limitation period in case of confinement.
27. Absence abroad.
28. Fresh accrual of action on acknowledgment or part payment.
29. Formal provisions as to acknowledgment and part payments.
30. Effect of acknowledgment or part payment on persons other than the maker or recipient.
31. Postponement of limitation period in case of fraud, concealment or mistake.

PART V

Application of this Law to Arbitrations

32. Interpretation of Part V.
33. Commencement of arbitration.
34. Application of law to arbitrations.
35. Power of court to extend time.
36. Application of Part V to arbitration under other enactment.
37. Saving for other enactments.
38. Arbitration pending.

PART VI

Miscellaneous

39. Special limit for claiming contribution.
40. Time limit for actions against the State and public authorities and officers.
41. Application.
42. Interpretation.
43. Enactments ceasing to apply.
44. Actions pending.
45. Short title.

CHAPTER L14

LIMITATION LAW

(20*th December*, 1991)

[Commencement.]

BE IT ENACTED by the Cross River State House of Assembly as follows—

PART I

Period of Limitation in Respect of Land

1. Time limit for action to recover land

No action shall be brought by any person to recover any land after the expiration of ten years from the date on which the right of action accrued to him, or if it first accrued to some person through whom he claims, to that person.

2. Accrual of right of action in case of present interests in land

(1) Where the person bringing an action to recover land, or some person through whom he claims, has been in possession thereof, and has while entitled thereto been dispossessed or discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance.

(2) Where any person brings an action to recover land of a deceased person, whether under a will or on intestacy, and the deceased person was on the date of his death in possession of the land, and was the last person entitled to the land to be in possession thereof, the right of action shall be deemed to have accrued on the date of his death.

(3) Where any person brings an action to recover land, being an interest in possession assured otherwise by will to him, or to some person through whom he claims, by a person who, at the date when the assurance took effect, was in possession of the land, and no person has been in possession of the land by virtue of the assurance, the right of action shall be deemed to have accrued on the date when the assurance took effect.

3. Accrual of right of action in cases of future interests

(1) Subject as hereafter in this section provided, the right of action to recover any land shall, in a case where the interest claimed was an interest in reversion or remainder or any other future interest and no person has taken possession of the land by virtue of the interest claimed, be deemed to have accrued on the date on which the interest fell into possession by the determination of the preceding interest.

(2) If the person entitled to the preceding interest was not in possession of the land on the date of the determination thereof no action shall be brought by the person entitled to the succeeding interest after the expiration of ten years from the date on which the right of action accrued to the person entitled to the succeeding interest, or ten years from the date on which the right of action accrued to the person entitled to the succeeding interest, or ten years from the date on which the right of action accrued to the person entitled to the succeeding interest, which ever period last expires.

(3) No person shall bring an action to recover any interest in land under an assurance taking effect after the right of action to recover the land had accrued to the person by whom the assurance was made or some person through whom he claimed or some person entitled to a preceding interest, unless the action is brought within the period during which the person by whom the assurance was made could have brought such an action.

(4) Where any person is entitled to any interest in land in possession and, while so entitled is also entitled to any future interest in that land, and his right to recover the interest in possession is barred under this Law, no action shall be brought by that person or by any person claiming through him, in respect of the future interest, unless in the meantime possession of the land has been recovered by a person entitled to an intermediate interest.

4. Provisions in case of land held in trust

(1) Subject to the provisions of subsection (1) of section 27 of this Law, the provisions of this Law shall apply to equitable interests in land, including interest in the proceeds of the sale of land held upon trust for sale, in like manner as to legal interests, and accordingly a right of action to recover the land shall, for the purposes of this Law but not otherwise, be deemed to accrue to a person entitled in possession to such an equitable interest in the like manner and circumstances and on the same date as it would accrue if his interest were a legal interest in the land.

(2) Where any land is held by any trustee upon trust, including a trust for sale, and the period prescribed by this Law for the bringing of an action to recover the land by the trustee had expired, the interest of the trustee shall not be extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or in the proceeds of sale either has not accrued or has not been barred by this Law, but if and when every such right has been so barred, the interest of the trustee shall be extinguished.

(3) Where any land is held upon trust, including a trust for sale, an action to recover the land may be brought by the trustee on behalf of any person entitled to a beneficial interest in possession in the land or in proceeds of all whose right of action has not been barred by this Law, notwithstanding that the right of action of the trustee would, apart from this provision, have been barred by this Law.

(4) Where any land held upon trust for sale is in the possession of a person entitled to beneficial interest in the land or in the proceeds of sale, not being a person solely absolutely entitled thereto, no right of action to recover the land shall be deemed for the purposes of this Law to accrue during such possession to any person in whom the land is vested as trustee, or to any person entitled to a beneficial interest in the land or in the proceeds of sale.

5. Accrual of right of action in case of forfeiture or breach of condition

A right of action to recover land by virtue of a forfeiture or breach of condition shall be deemed to have accrued on the date on which the forfeiture was incurred or the condition broken:

Provided that, if such a right has accrued a person entitled to an interest in reversion or remainder and the land was not recovered by virtue thereof, the right of action to recover the land shall not be deemed to have accrued to that person until his interest fell into possession, as if no such forfeiture or breach of condition has occurred.

6. Accrual of right of action in case of certain tenancies

(1) A tenancy at will shall, for the purpose of this Law, be deemed to be determined at the expiration of a period of one year from the commencement thereof, unless it has previously been determined, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued on the date of such determination.

(2) A tenancy from year to year or other period, without a sublease in writing shall, for the purposes of this Law, be deemed to be determined at the expiration of the first year or other period, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued at the date of such determination:

Provided that, where any rent has subsequently been received in respect of the tenancy, the right of action shall be deemed to have accrued on the date of the last receipt of rent.

(3) Where any person is in possession of land by virtue of a sublease in writing by which a rent of not less than two naira per annum is reserved, and the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the

determination of the sublease, and no rent is subsequently received by the person rightfully so entitled, the right of action of the last-named person to recover the rent shall be deemed to have accrued at the date when the rent was first received by the person wrongfully claiming as aforesaid and not at the date of the determination of the lease.

7. Right of action not to accrue or continue unless there is adverse possession

(1) No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereinafter in this section referred to as "adverse possession") and where under the foregoing provisions of this Law any such right of action is deemed to accrued on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue unless and until adverse possession is taken of the land.

(2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be deemed to accrue unless and until the land is again taken into adverse possession.

(3) For the purpose of this section, receipt of rent under a sublease by a person wrongfully claiming in accordance with subsection (3) of section 6 of this Law, the land in reversion shall be deemed to be adverse possession of the land.

8. Limitation of redemption actions

When a mortgagee of land has been in possession of any of the mortgage land for a period of ten years, after the expiration of the time fixed for redemption, no action to redeem the land of which the mortgagee has been so in possession shall be brought to recover it by the mortgagor or any person claiming through him.

9. Limitation applying as between joint owners

When any one or more of several persons entitled to any land or rent as joint tenants or tenants in common shall have been in possession or receipt of the entirety or more than his or their undivided share or shares of such land or of the profits thereof or of such rent for his or their own benefits thereof or of such for his or their own benefit or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons or any of them.

10. Administration to date back to death

For the purposes of the provisions of section 8 of this Law relating to actions to redeem land, an administrator of the estate of a deceased person shall be deemed to claim as if there had been no interval of time between the death of the deceased person and the grant of the letters administration.

11. Transfer of interest in land after expiration of period

At the expiration of the period prescribed by this Law for any person to bring an action to redeem land, the interest of that person in land shall vest in, and subject to the requisite consent under the Land Use Act, shall be transferred to the mortgagee.

12. The limit for actions to recover money secured by mortgage or to recover proceeds of the sale of land

(1) No action shall be brought to recover—

(*a*) any principal sum of money secured by a mortgage or other charge on property; or

(*b*) proceeds of the sale of land,

after the expiration of ten years from the date on which the right to receive the money accrued.

(2) No foreclosure action in respect of mortgaged property shall be brought after the expiration of ten years from the date on which the right to foreclose accrued:

Provided that if, the mortgagee was in possession of the mortgaged property after that date, the right to foreclose on the property which was in his possession shall not be treated as having accrued for the purposes of this subsection until the date on which his possession discontinued.

(3) The right to receive any principal sum of money secured by a mortgage or other charge and the right to foreclose on the property subject to the mortgage or charge shall not be deemed to accrue so long as that property comprises any future interest or any life insurance policy which has not matured or been determined.

(4) Subject to subsection (5) and (6) of this section no action for—

(*a*) money payable in respect of proceeds of the sale of land; or

(*b*) arrears of interest payable in respect of any sum of money secured by a mortgage or other charge; or

(*c*) damages in respect of such arrears,

shall be brought after the expiration of ten years from the date on which such money becomes payable or interest becomes due.

(5) Where—

(*a*) a prior mortgagee or other incumbrancer has been in possession of the property charged; and

(*b*) an action is brought within one year of the discontinuance of that possession by a subsequent incumbrancer,

the subsequent incumbrancer may recover by that action all the arrears of interest which fell due during the period of possession by the prior incumbrancer or damages in respect to those arrears notwithstanding that the period exceeds ten years.

(6) Where—

(*a*) the property subject to the mortgage or charge comprises any future interest or life insurance policy; and

(*b*) it is a term of the mortgage or charge that arrears of interest shall be treated as part of the principal sum of money secured by the mortgage or charge,

the interest shall be treated as becoming due before the right to recover the principal sum of money has accrued or is treated as having accrued.

(7) This section shall not apply to any mortgage or charge on a ship.

PART II

Period of Limitation in Respect of Judgments, Trust Property and the Estate of Deceased Persons

13. Time limit for actions founded on judgment

(1) Action shall not be brought upon any judgment or on the interest of any judgment debt after the expiration of ten years from the date on which the judgment becomes enforceable or the interest becomes due, as the case may be.

(2) For the purpose of subsection (1) of this section the term "judgment" shall apply to any final judgment for payment of a specific sum of money whether at law or in equity and shall include a judgment on a charge on land.

14. Time limit for actions in respect of trust property

(1) An action by a beneficiary under a trust, being an action—

(*a*) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(*b*) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use,

shall not be brought after the expiration of ten years from the date on which the right of action accrued:

Provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property until the interest fell into possession.

(2) No beneficiary as against whom there would be a good defence under this Law shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Law had not been pleaded in defence.

15. Time limit for actions claiming estate of a deceased person

Subject to section 14 of this Law—

(*a*) no action in respect of any claim to the estate of a deceased person or to any share or interest in any such estate (whether under a will or on intestacy) shall be brought after the expiration of ten years from the date on which the right to receive the share or interest accrued; and

(*b*) no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of ten years from the date on which the interest became due.

PART III

Limitation Period in Respect of Contract, Tort and Other Actions

16. Time limit for actions founded on contract, tort, etc.

No action founded on contract, tort or any other action not specifically provided for in Part I and II of this Law shall be brought after the expiration of five years from the date on which the cause of action accrued.

17. Special provision for action in respect of personal injuries

(1) This section applies, notwithstanding anything contained in any other enactment to the contrary, to actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under an enactment or independently of any contract or any such provisions) where the damages claimed by the person for negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

(2) Except where subsection (3) of this section applies, the period of limitation applicable under section 16 in respect of actions to which this section applies shall be reckoned from—

(*a*) the date of death; or

(*b*) the date of the personal representative's knowledge,

whichever is the later.

(3) For the purposes of this section "personal representative" includes any person who is or has been a personal representative of the deceased, including an executor who has not proved the will (whether or not he has renounced probate) but not anyone appointed only as a special personal representative in relation to settled land, and regard shall be had to knowledge acquired by such person while a personal representative.

(4) If there is more than one personal representative and their date of knowledge are different, subsection (3) (*b*) shall be read as if referring to the earlier of those dates.

18. Special provisions for actions in respect of fatal accident

(1) No action claiming damages in respect of a fatal accident shall be brought after the expiration of five years from—

(*a*) the date of death; or

(*b*) the date of knowledge of the person for whose benefit the action is brought,

whichever is later.

(2) Where there is more than one person for whose benefit an action is brought under subsection (1) of this section, paragraph (*b*) of that subsection shall be applied separately to each one of them.

(3) Where an action would be outside the limit given by subsection (1) of this section as regards one or more, but not all the dependants for whose benefit it is brought, the court shall direct that any person as regards whom the action would be outside that limit shall be excluded from those for whom the action is brought.

(4) The court shall not give such directions if it is shown that if the action was brought exclusively for the benefit of the person in question it would not be defeated by a defence of limitation whether in consequence of any provision dealing with extension of the time limit in case of disability under Part IV of this Law or agreement between the parties nor to raise the defence or otherwise.

19. Definition of date of knowledge for the purpose of sections 17 and 18

(1) In sections 17 and 18 of this Law any reference to a person's date of knowledge is a reference to the date on which he first had knowledge of the following facts—

(*a*) that the injury in question was significant;

(*b*) that the injury was attributed in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty;

(*c*) the identity of the defendant; and

(*d*) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant,

and knowledge that the act or omission did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.

(2) For the purposes of this section an injury is significant if the person whose date of knowledge is in question would reasonably have considered it sufficiently serious to justify his instituting proceeding for damages against the defendant who did not dispute liability and was able to satisfy a judgment.

(3) For the purposes of this section a person's knowledge includes knowledge which he might reasonably be expected to acquire—

(*a*) from facts observable or ascertainable by him; or

(*b*) from facts ascertainable by him with the help of medical or other appropriate expert advice which is reasonable for him to seek,

but a person shall not be fixed under this subsection with knowledge of a fact ascertainable only with the help of expert advice so long as he had taken all reasonable steps to obtain (and, where appropriate, to act on) that advice, but did not obtain it.

20. Limitation of action in case of successive conversions and extinction of title

(1) Where—

(*a*) any cause of action in respect of the conversion or wrongful detention of a chattel has accrued to any person; and

(*b*) before he recovers possession of the chattel, a further conversion or wrongful detention takes place,

no action shall be brought in respect of the further conversion or wrongful detention after the expiration of five years from the accrual of the cause of action in respect of the original conversion or wrongful detention.

(2) Where—

(*a*) any cause of action in respect of the conversion or wrongful detention of a chattel has accrued to any person; and

(*b*) the period fixed for bringing that action or for bringing any action in respect of such a further conversion or unlawful detention as is mentioned in subsection (1) of this section has expired; and

(*c*) the person to whom the right of action accrued has not during that period recovered possession of the chattel,

the title of that person to the ownership of the chattel shall be extinguished.

PART IV

Extension or Exclusion of Ordinary Time Limits

21. Application of this Part to Parts I – III

Parts I – III of this Law shall have effect subject to the provisions of this Part.

22. Interpretation of Part IV

In this Part of this Law—

(1) **"debt"** includes any liquidated pecuniary claim;

"statute-barred debt" means a debt in respect of which the period fixed by this Law for the bringing of an action to recover it has expired;

"successor" means—

(*a*) in relation to a mortgage, his personal representatives and any other persons on whom the rights under the mortgage devolve, whether on death or bankruptcy or the disposition of the property or the determination of a limited interest in settled property or otherwise;

(*b*) in relation to a person liable in respect of a debt, his personal representatives and any other persons on whom the liability in respect of the debt devolves, whether on death or bankruptcy or the disposition of the property or the determination of a limited interest in settled property or otherwise;

(2) references to **"a right of action"** shall include references to—

(*a*) a cause of action;

(*b*) a right to receive money secured by a mortgage or charge on any property or to recover proceeds of the sale of land;

(*c*) a right to receive a share or interest in the estate of a deceased person;

(3) reference to the **"date of the accrual of a right of action"** shall—

(*a*) in the case of an action for an account, be construed as references on the date on which the matter arose in respect of which an account is claimed;

(*b*) in the case of action on a judgment, be construed as references to the date on which the judgment became enforceable;

(*c*) in the case of any action to recover arrears of rent, be construed as references to the date on which the arrears became due;

(4) reference to **"a debt"** shall—

(i) in the case of rent, be construed as references to an assignment of the rent;

(ii) in the case of interest, be construed as reference to an instalment of the interest;

(5) references to a mortgagee who is by virtue of the mortgage in possession of any mortgaged land shall include references to a mortgagee who has obtained possession of the mortgaged land by virtue of an order of the court.

23. Pension under a disability

(1) For the purposes of this Law, a person shall be under a disability while he is an infant or of unsound mind.

(2) For the purposes of subsection (1) of this section but without prejudice to the generality thereof, a person shall be conclusively assumed to be of unsound mind while he is detained in pursuance of any enactment authorising the detention of persons of unsound mind or criminal lunatics.

24. Extension of limitation period in case of disability

(1) Subject to the following provisions of this section, if on the date when any right of action accrued for which a period of limitation is prescribed by this Law, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of five years from the date when he ceases to be under a disability or dies (whichever event first occurs), notwithstanding that the period of limitation has expired.

(2) This section shall not affect any case where the right of action first accrued to some person (not under a disability) through whom the person under a disability claims.

(3) When a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability, to another person under a disability, no further extension of time shall be allowed by reason of the disability of the second person.

(4) This section shall not apply to any action to recover a penalty or forfeiture, or sum by way of penalty or forfeiture, by virtue of any enactment, except where the action is brought by an aggrieved party.

25. Person under confinement

For the purposes of this Law a person shall be deemed to be under confinement while he is in detention, or serving a prison sentence or where by reason of an outbreak of hostilities he is unable to commence legal proceedings.

26. Extension of limitation period in case of confinement

If, on the date when any right of action for which a period of limitation in prescribed by this Law accrued, any person in whose favour it accrues is under confinement the action may be brought at any time before the expiration of a period of five years after the date when the person ceases to be under confinement.

27. Absence abroad

(1) Where a person is outside Nigeria when a cause of action accrues in his favour, the relevant period of limitation prescribed under this Law shall not begin to run until he returns to Nigeria.

(2) The provisions of subsection (1) of this section shall not apply in the case of a person whose stay outside Nigeria is due to a flight from justice or self-imposed exile.

28. Fresh accrual of action on acknowledgment or part payment

(1) Subsections (2) and (3) apply where any right of action (including a foreclosure action) to recover any right of a mortgagee of property to bring a foreclosure action in respect of the property has accrued.

(2) If the person in possession of the property in question acknowledges the interest of the person to whom the right of action has accrued, the right shall be treated as having accrued on and not before the date of the acknowledgment.

(3) In the case of a foreclosure or other action by a mortgagee, if the person in possession of the property in question or the person liable for the mortgage debt makes any payment in respect of the debt (whether of principal or interest) the right shall be treated as having accrued on and not before the date of the payment.

(4) Where a mortgagee is by virtue of the mortgage in possession of any mortgaged land and either—

(*a*) receives any sum in respect of the principal or interest of the mortgage debt; or

(*b*) acknowledges the interest of the mortgagor, or his equity of redemption,

an action to redeem the land in his possession may be brought at any time before the expiration of ten years from the date of the payment or acknowledgment.

(5) Subject to subsection (6), where any right of action has accrued to recover—

(*a*) any debt or other liquidated pecuniary claim; or

(*b*) any claim to the estate of a deceased person or to any share or interest in any such estate,

and the person liable or accountable for the claim acknowledges the claim or makes any payment in respect of it, the right shall be treated as having accrued on and not before the date of the acknowledgment or payment.

(6) A payment of a part of the rent or interest due at any time shall not extend the period for claiming the remainder then due, but any payment of interest shall be treated as a payment in respect of the principal debt.

(7) Subject to subsection (6), a current period of limitation may be repeatedly extended under this section by further acknowledgments or payments, but a right of action, once barred by this Law, shall not be revived by any subsequent acknowledgment or payment.

29. Formal provisions as to acknowledgment and part payments

(1) To be effective for the purposes of section 28 of this Law, an acknowledgment must be in writing and signed by the person making it.

(2) For the purposes of section 28, any acknowledgment or payment—

(*a*) may be made by the agent of the person by whom it is required to be made under that action; and

(*b*) shall be made to the person, or to an agent of the person, whose interest or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.

30. Effect of acknowledgment or part payment on persons other than the maker or recipient

(1) An acknowledgment of an interest in any mortgaged property by any person in possession of it shall bind all other persons in possession during the ensuing period of limitation.

(2) A payment in respect of a mortgage debt by the mortgagor or by any other person liable for the debt, or by any person in possession of the mortgaged property, shall, so far as any right of the mortgagee to foreclose or otherwise to recover the property is concerned, bind all other persons in possession of the mortgaged property during the ensuing period of limitation.

(3) Where two or more mortgagees are by virtue of the mortgage in possession of the mortgaged land, an acknowledgment of the mortgagor's title or of his equity of redemption by one of the mortgagees shall only bind him and his successors and shall not bind any other mortgagee or his successors.

(4) Where in a case within subsection (3) the mortgagee by whom the acknowledgment is given is entitled to a part of the mortgaged land and not to any ascertained part of the mortgage debt, the mortgagor shall be entitled to redeem that part of the land on payment with interest of the part of the mortgage debt which bears the same proportion to the whole of the debt as the value of the part of the land bears to the whole of the mortgaged land.

(5) Where there are two or more mortgagors, and the title or equity of redemption of one of the mortgagors is acknowledged as mentioned above in this section, the acknowledgment shall be treated as having been made to all the mortgagees.

(6) An acknowledgment of any debt or other liquidated pecuniary claim shall bind the acknowledger.

(7) A payment made in respect of any debt or other liquidated pecuniary claim shall bind all persons liable in respect of the debt or claim.

(8) An acknowledgment by one of several personal representatives of any claim to the estate of a deceased person or to any share or interest in any such estate, or a payment by one of several personal representatives in respect of any such claim, shall bind the estate of the deceased person.

(9) In this section **"successor"**, in relation to any mortgagee or person liable in respect of any debt or claim, means his personal representatives and any other person on whom the rights under the mortgage or, as the case may be, the liability in respect of the debt or claim devolves, whether on death or bankruptcy or the transfer of property or the determination of a limited right or interest in settled property or otherwise.

31. Postponement of limitation period in case of fraud, concealment or mistake

(1) Subject to subsection (*d*), where in the case of any action for which a period of limitation is prescribed by this Law, either—

(*a*) the action is based upon the fraud of the defendant; or

(*b*) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or

(*c*) the action is for relief from the consequences of a mistake,

the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.

(2) References in subsection (1) to the defendant include references to the defendant's agent and to any person through whom the defendant claims and his agent.

(3) For the purposes of subsection (1), deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty.

(4) Nothing in this section shall enable any action—

(*a*) to recover, or recover the value of, any property; or

(*b*) to enforce any charge against, or set aside any transaction affecting any property,

to be brought against the purchaser of the property or any person claiming through him in any case where the property has been purchased for valuable consideration by an innocent third party since the fraud or concealment of (as the case may be) the transaction in which the mistake was made took place.

(5) A purchaser is an innocent third party for the purposes of this action—

(*a*) in the case of fraud or concealment of any fact relevant to the plaintiff's right of action, if he was not a party to the fraud or (as the case may be) to the concealment of that fact and did not at the time of the purchase know or have reason to believe that the fraud or concealment had taken place; and

(*b*) in the case of mistake, if he did not at the time of the purchase know or have reason to believe that the mistake had been made.

PART V

Application of this Law to Arbitrations

32. Interpretation of Part V

In this Part of this Law—

"arbitration" means an arbitration to which the Arbitration Law applies;

"award" means an award to which the Arbitration Law applies;

"court" includes the High Court;

"submission" means a written agreement to submit, present all future differences to arbitration, whether an arbitrator is named therein or not.

33. Commencement of arbitration

(1) For the purpose of this Law an arbitration shall be deemed to have commenced when one party to the submission serves on the other party a written notice requiring him to appoint

or concur in appointing an arbitrator, or where the submission provides that the reference by to a person named or designated therein, requiring him or them to submit the dispute to the person so named or designated.

(2) A notice under subsection (1) of this section may be served—

(*a*) by delivering it to the person on whom it is to be served;

(*b*) by leaving it at the place in Nigeria at which that person ordinarily resides or carries on business;

(*c*) by sending it by registered post in an envelope addressed to that person at the place in Nigeria at which he ordinarily resides or carries on business;

(*d*) in any other manner ordered by the court or provided for in the submission.

(3) For the purposes of this section a company registered under the law for the time being in force relating to registered companies shall be deemed to carry on business at its registered office in Nigeria and every other body corporate and every unincorporated body shall be deemed to carry on business at its principal office or place of business in Nigeria.

34. Application of law to arbitrations

This Law shall apply to arbitrations as it applies to actions in court.

35. Power of court to extend time

Where the court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration shall cease to have effect with respect to the dispute referred, the Court may further order that the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time fixed by this Law or any other limitation enactment for the commencement of proceedings (including arbitration) with respect to the dispute referred.

36. Application of Part V to arbitration under other enactment

This Part of this Law shall apply to an arbitration under an enactment as well as to an arbitration pursuant to a submission, and section 33 of this Law shall have effect, in relation to an arbitration under an enactment as if for the references to a submission, there were substituted references to such of the provisions of the enactment or any order, scheme, rules, regulations or bye-laws made thereunder as relate to the arbitration.

37. Saving for other enactments

This Law shall not apply to an arbitration—

(*a*) for which a period of limitation is fixed by any other enactment; or

(*b*) to which the State is a party and for which if the State were a private individual, a period of limitation would be fixed by any other enactment.

38. Arbitration pending

Nothing in this Law shall affect an arbitration commenced before the commencement of this Law or the title to any property which is the subject of such arbitration.

PART VI

Miscellaneous

39. Special limit for claiming contribution

(1) Where under any enactment any person becomes entitled to a right to recover contribution in respect of any damage from any other person, no action to recover contribution by virtue of that right shall be brought after the expirations of five years from the date on which that right accrued.

(2) For the purposes of this section the date on which a right to recover contribution in respect of any damage accrues to any person (referred to in this section as "the relevant date") shall be ascertained as provided in subsections (3) and (4) of this section.

(3) If the person in question is held liable in respect of that damage—

(*a*) by a judgment given in any civil proceedings; or

(*b*) by an award made on any arbitration,

the relevant date shall be the date on which the judgment is given, or the date of the award (as the case may be):

Provided that for the purpose of this subsection no account shall be taken of any judgment or award given or made on appeal in so far as it varies the amount of damages awarded against the person in question.

(4) If, in any case not within subsection (3) of this section, the person in question makes or agrees to make any payment to one or more person in compensation for that damage (or not), the relevant date shall be the earliest date on which the amount to be paid by him is agreed between him (or his representative) and the person (or each or the persons, as the case may be) to whom the payment is made.

40. Time limit for actions against the State and public authorities and officers

Notwithstanding anything contained in any other enactment or rule of law to the contrary, all actions to which this Law applies howsoever arising against the State or against any State public authority, or officer thereof or any person acting in the stead of such public authority or officer thereof, for anything done or intended or omitted to be done in pursuance or execution of any such act, duty or authority or in respect of any neglect or default in the execution of any such act, duty or authority shall be commenced within the same period of time after the cause of action arose as if such action were brought by or against a private individual.

41. Application

(1) This Law shall not apply to—

(*a*) any proceedings for the recovery of any sum due in respect of a tax which is payable to the State Board of Internal Revenue; or

(*b*) any proceedings for the recovery of any fine or penalty incurred in connection with any such tax; or

(*c*) any proceedings by or on behalf of the State Governor for the recovery of possession of land vested in him by virtue of the provisions of the Land Use Act; or

(*d*) any proceedings for the recovery of any rent due under any grant made under the provisions of the Land Use Act; or

(*e*) any matter which is subject to the jurisdiction of a customary court relating to marriage, family status, guardianship of children, inheritance or disposition of property on death;

(*f*) any proceedings in respect of easement and profits a prendre.

(2) Nothing in this Law shall affect any equitable jurisdiction to refuse on the ground of acquiescence or any other equitable defence.

(3) For the purpose of this Law, any claim by way of set-off or counterclaim shall be deemed to be a separate action and to have been commenced on the date on which the set-off or counterclaim is made.

42. Interpretation

In this Law unless the context otherwise requires—

"action" includes any proceeding (other than a criminal proceeding) in a court established by law;

"land" includes land held under a right of occupancy or any other tenure;

"mortgage" includes an equitable mortgage;

"other limitation enactment" means any enactment (other than this Law) relating to the limitation of actions;

"personal injuries" includes any disease and any impairment of a person's physical or mental condition;

"personal representative" means the executor, original or by representation, or the administrator of the estate of a deceased person;

"rent" means rent payable under a lease or other contract of tenancy (whether in writing or not and whether express or implied) and includes a rent payable under any enactment;

"State" means Cross River State of Nigeria;

"sublease" means a legal interest created by a transfer in writing of a right of occupancy for a specific period of time; also the right so transferred or the document containing such transfer;

"tenancy" means the holding or possession of land or buildings thereon for any term.

43. Enactments ceasing to apply

Any enactment relating to the limitation of actions which were in force in the State immediately before the commencement of this Law shall cease to apply.

44. Actions pending

Nothing in this Law shall affect any action commenced before the commencement of this Law.

45. Short title

This Law may be cited as the Limitation Law.

CHAPTER L14

LIMITATION LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation