

## MORCELLEMENT ACT

Act 28 of 1990 – 3 September 1990

### ARRANGEMENT OF SECTIONS

#### SECTION

- |   |   |
|---|---|
| 1. Short title                          | 7A. Issue of morcellement permit in connection with schemes under the Sugar Industry Efficiency Act |
| 2. Interpretation                       | 8. Prohibition on sale  |
| 3. Application of Act                   | 8A. Developer may sell or receive payment   |
| 4. Establishment of Board               | 9. Fee  |
| 5. Application for morcellement permit  | 10. Regulations   |
| 5A. —                                   | 11. Offences  |
| 6. Authority to develop                 | 12. – 14. —   |
| 6A. Monitoring of infrastructural works | FIRST SCHEDULE  |
| 6B. Enforcement notice                  | SECOND SCHEDULE   |
| 7. Issue of morcellement permit         |   |

---

## MORCELLEMENT ACT

### 1. Short title

This Act may be cited as the Morcellement Act.

### 2. Interpretation

In this Act—

“application” means an application under section 5;

“Board” means the Morcellement Board referred to in section 4;

“detailed scheme” has the same meaning as in the Town and Country Planning Act;

“developer” means an applicant for the issue of a morcellement permit;

“EIA licence” has the same meaning as in the Environment Protection Act;

“infrastructural works” means works relating to roads and the supply of water, electricity, water drains and facilities for sewerage disposal;

“Minister” means the Minister to whom responsibility for the subject of housing and land development is assigned;

“morcellement” means the division of a plot of land into 2 or more lots;

“morcellement permit” means a permit issued under section 7;

“outline scheme” has the same meaning as in the Town and Country Planning Act;

“preliminary environmental report” has the same meaning as in the Environment Protection Act.

[S. 2 amended by Act 31 of 1996; s. 15 (a) of Act 1 of 2009 w.e.f. 16 April 2009.]

### **3. Application of Act**

(1) Subject to subsection (2), this Act shall apply to every morcellement.

(2) Without prejudice to any planning requirements under any other enactment, this Act shall not apply in relation to any land which is divided for any purpose specified in the First Schedule.

[S. 3 amended by s. 19 (a) of Act 20 of 2002 w.e.f. 10 August 2002; s. 23 of Act 17 of 2007 w.e.f. 22 August 2007; repealed and replaced by s. 15 (b) of Act 1 of 2009 w.e.f. 16 April 2009.]

### **4. Establishment of Board**

(1) There is established for the purposes of this Act a Board to be known as the Morcellement Board.

(2) The Board shall be composed of—

- (a) the Permanent Secretary of the Ministry responsible for the subject of housing and lands, or his representative, as Chairperson;
- (aa) a representative of the Planning Division of the Ministry responsible for the subject of housing and lands;
- (b) a representative of the Ministry responsible for the subject of agriculture;
- (c) a representative of the Ministry responsible for the subject of environment;
- (d) a representative of the Ministry responsible for the subject of finance;
- (e) a representative of the Ministry responsible for the subject of health;
- (f) a representative of the Ministry responsible for the subject of local government;
- (g) a representative of the Ministry responsible for the subject of public infrastructure;
- (ga) a representative of the Survey Division of the Ministry responsible for the subject of land surveys;
- (h) a representative of the Central Electricity Board;
- (i) a representative of the Central Water Authority;
- (j) a representative of the local authority responsible for the area where the land to be divided is situated.

(3) At any meeting of the Board, the Chairperson and 4 other members shall constitute a quorum.

[S. 4 amended by Act 9 of 1991; Act 54 of 1992; Act 31 of 1996; s. 22 (4) (a) of Act 22 of 2011 w.e.f. 1 January 2012; s. 36 (a) of Act 9 of 2015 w.e.f. 14 May 2015.]

## 5. Application for morcellement permit

(1) Every developer shall make his application to the Board for a morcellement permit.

(2) No person shall make an application under subsection (1) unless—

- (a) the proposed morcellement is in conformity with the outline scheme or detailed scheme, in respect of the planning area where the proposed morcellement is to be carried out;
- (b) where applicable, an authority for land conversion under the Sugar Industry Efficiency Act has been obtained in respect of the proposed morcellement;
- (c) where applicable, it is accompanied by—
  - (i) a preliminary environmental report or an EIA licence, as the case may be; and
  - (ii) a morcellement plan prepared and signed by a land surveyor, delineating the external boundaries of the land to be divided in accordance with a memorandum of survey under the Cadastral Surveyors Act; and
- (d) the plan referred to in paragraph (c) (ii)—
  - (i) shows the roads required to give access directly or indirectly to any public road as well as any road required for the purpose of internal access to all the lots comprised in the proposed morcellement;
  - (ii) shows the constructional character of the works to be done as well as any connection with existing roads, sewers or other works and the lines and levels of such works, including the infrastructural works, to be done containing specifications of the foundation, form, thickness and dimensions of the works.

(3) Any error with regard to the external boundaries of the land shall be rectified by a fresh memorandum of survey and the land surveyor shall be liable for any claim for compensation which may arise from his error or the consequences of his error.

(4) The Board or any member of the Board shall not be liable for any defective plan or measurement of the land surveyor.

(5) An application under subsection (1) shall—

- (a) be in accordance with the guidelines published by the Board, in terms of the requirements and application of the law and the procedures to be adopted;
- (b) be made in such form as the Board may determine;
- (c) contain such other information and particulars as may be specified in the application form; and

(d) be made in one original and accompanied by the documents specified in the guidelines referred to in paragraph (a).

(5A) (a) The Secretary to the Board shall, on receipt of an application, forthwith examine the application and shall, where the application is—

- (i) complete and in accordance with the guidelines referred to in subsection (5) (a), give, within 3 working days of the date of receipt of the application, written notice to the applicant thereof; or
- (ii) not complete or not in accordance with the guidelines referred to in subsection (5) (a), give, within 3 working days of the date of receipt of the application, written notice to the applicant thereof, specifying the information or documents required.

(b) An applicant shall, within 8 working days of the notification under paragraph (a) (ii), submit the required information or documents.

(c) Where an application is complete, the Secretary to the Board shall forthwith refer the application to the Board and the Board shall examine the application in accordance with section 6.

(6) The guidelines referred to in subsection (5) (a) shall be posted on the website of the Ministry responsible for the subject of lands.

(6A) (a) The Board shall examine and consider an application made under subsection (1).

(b) In the course of the examination of an application under paragraph (a), the Board may request the developer to attend a meeting of the Board, within the period referred to in section 6 (1), for the purpose of giving such clarification or explanation relating to the application as the Board may determine.

(7) —

[S. 5 repealed and replaced by s. 15 (c) of Act 1 of 2009 w.e.f. 16 April 2009; amended by s. 22 (4) (b) of Act 22 of 2011 w.e.f. 1 July 2013; s. 36 (b) of Act 9 of 2015 w.e.f. 14 May 2015; s. 36 (a) of Act 18 of 2016 w.e.f. 15 November 2016.]

**5A.** —

[S. 5A inserted by s. 21 of Act 20 of 2011 w.e.f. 16 July 2011; repealed by s. 19 (a) of Act 4 of 2017 w.e.f. 20 May 2017.]

## **6. Authority to develop**

(1) Where, after consideration of an application, the Board is satisfied that—

- (a) the proposed morcellement satisfies all planning requirements; and
- (b) the plan submitted makes adequate provision for the infrastructural works,

the Board shall, subject to subsection (1B) (a), within a period of 6 weeks from its effective date, forward the application, with its recommendations, to the Minister.

(1A) Every member of the Board shall convey his stand on the application within 4 weeks of the effective date referred to in subsection (1), failing which he shall be deemed to have no objection to the issue of the letter of intent under subsection (2).

(1B) (a) Where an application is accompanied by a preliminary environmental report or an EIA licence, the Board shall forward the application within a period of 3 weeks from its effective date, to the Minister with its recommendations.

(b) Notwithstanding subsection (1A), where the application is accompanied by a preliminary environmental report or an EIA licence, every member of the Board shall convey his stand on the application within 2 weeks of the effective date referred to in subsection (1), failing which he shall be deemed to have no objection to the issue of the letter of intent under subsection (2).

(2) Where the Minister is satisfied with the recommendations of the Board, he shall issue a letter of intent to the developer within 8 weeks of the effective date referred to in subsection (1).

(3) The letter of intent shall entitle the developer to execute the infrastructural works.

(4) The Board may require the developer to cause to be altered or amended by a land surveyor any plan submitted with his application under section 5 and the land surveyor shall, where required by the Board, certify that the alteration or amendment is in line with the terms of the letter of intent.

(5) No infrastructural works shall be executed by a developer unless he holds a letter of intent referred to in subsection (3).

(6) The developer shall, within a period of 3 years from the date of issue of the letter of intent, complete the infrastructural works to the satisfaction of the Board.

(7) Notwithstanding subsection (6), where the proposed morcellement is for the purpose of a large investment project deemed by the Minister to be in the economic interest of Mauritius and approved as such by Cabinet, the period of 3 years referred to in that subsection shall, subject to the approval of Cabinet, be extended to such period as the Minister may determine.

(8) Where a person fails to comply with subsection (6) or (7) without any reasonable excuse or justification, the burden of proving which shall lie on him, he shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees for every calendar month of delay in the completion of the infrastructural works.

(9) For the purpose of this section—

“effective date”, in relation to section 5, means the date on which the application is complete and which date shall be communicated to the developer.

[S. 6 amended by s. 15 (d) of Act 1 of 2009 w.e.f. 16 April 2009; s. 36 (b) of Act 18 of 2016 w.e.f. 15 November 2016; s. 19 (b) of Act 4 of 2017 w.e.f. 20 May 2017.]

#### **6A. Monitoring of infrastructural works**

(1) The Board shall monitor the execution of the works, including infrastructural works, to be done in accordance with the terms and conditions specified in the letter of intent.

(2) For the purpose of subsection (1)—

- (a) the developer or transferor referred to in section 7A, as the case may be, shall submit to the Board a report on the progress of work in such form and manner and at such intervals as the Board may determine;
- (b) the Chairperson may authorise such officers as he considers necessary to inspect and report on the execution of the works, including infrastructural works.

[S. 6A inserted by s. 15 (e) of Act 1 of 2009 w.e.f. 16 April 2009.]

#### **6B. Enforcement notice**

(1) Where it appears to the Board that works have been or are being carried out in breach of the letter of intent or of any provision of this Act, the Board may serve an enforcement notice on the developer requiring the breach to be remedied.

(2) An enforcement notice shall specify—

- (a) the substance of the matters constituting the breach;
- (b) the steps required to be taken for remedying the breach or for removing or mitigating its effects; and
- (c) a reasonable period for compliance with the notice.

(3) An enforcement notice shall come into effect on the date of its service.

(4) Any person on whom an enforcement notice has been served shall comply with the notice.

(5) Any person who fails to comply with a notice under this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees for every calendar month of delay in the remedial of the breach.

[S. 6B inserted by s. 15 (e) of Act 1 of 2009 w.e.f. 16 April 2009.]

## 7. Issue of morcellement permit

(1) The developer to whom a letter of intent has been issued under section 6 shall, on completion of the infrastructural works, notify the Board thereof and submit the documents specified in the guidelines referred to in section 5 (5) (a).

(2) The Board may cause to be carried out such inspection as it thinks fit to determine whether the infrastructural works have been carried out properly.

(3) Where the Board is satisfied that the developer has carried out the infrastructural works properly and produced a revised morcellement plan incorporating any amendment recommended by the Board, it shall, within 3 weeks of the date of notification under subsection (1), so report to the Minister who shall thereupon issue to the developer a morcellement permit.

(4) Notwithstanding subsection (3), where, in the case of a large investment project referred to in section 6 (7), the Board is satisfied, on application being made by the developer, that infrastructural works have been completed on part of the land, the Board shall, within 2 weeks of the date of the application, so report to the Minister who shall thereupon issue a morcellement permit in respect of that part of the land.

(5) Any morcellement permit referred to in subsection (3) or (4) —

- (a) shall, subject to section 9, be issued by the Minister not later than 5 working days from the date reported to him by the Board; and
- (b) may be issued on such terms and conditions as the Minister may determine.

(6) Where the Board is not satisfied that the person has completed the infrastructural works properly, it shall inform the person accordingly.

[S. 7 amended by s. 15 (4) (a) of Act 3 of 2007 w.e.f. 1 March 2007; repealed and replaced by s. 15 (f) of Act 1 of 2009 w.e.f. 16 April 2009; amended by s. 22 (4) (c) of Act 22 of 2011 w.e.f. 1 July 2013; s. 36 (c) of Act 18 of 2016 w.e.f. 15 November 2016.]

## 7A. Issue of morcellement permit in connection with schemes under the Sugar Industry Efficiency Act

(1) Where land is to be transferred in relation to a VRS, ERS or factory closure referred to in section 26 (1) of the Sugar Industry Efficiency Act, the transferor shall make an application for a morcellement permit in respect of that land.

(2) The Board shall, within a period of 6 weeks from the effective date of an application under subsection (1), make a decision on whether to issue a letter of intent.

(3) Every member of the Board shall convey his stand on the application within one month of the effective date referred to in subsection (2), failing which he shall be deemed to have no objection to the issue of the letter of intent.

(4) The transferor shall, within a period of 15 months from the date of issue of the letter of intent, complete the infrastructural works properly to the satisfaction of the Board.

(5) Where the transferor fails to comply with subsection (4), without any reasonable excuse or justification, the burden of proving which shall lie on him, he shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees for every calendar month of delay in the completion of the infrastructural works.

*continued on page M67 – 5*



(6) (a) For the purpose of this section, the Board may, in addition to the members specified in section 4 (2), include a maximum of 3 co-opted members.

(b) A co-opted member shall have no right to vote.

(7) In this section—

“effective date” means the date by which the Board shall have obtained all the information, particulars and documents required from the transferor and which date shall be communicated to the transferor;

“transferor” has the meaning assigned to the word “developer” in this Act.

[S. 7A inserted by s. 15 (4) (b) of Act 3 of 2007 w.e.f. 1 March 2007.]

#### **7B. Appeals to Tribunal**

(1) Any person aggrieved by a decision of the Minister or of the Board, as the case may be, granting or refusing to issue a letter of intent or a morcellement permit, may appeal against the decision to the Tribunal.

(2) In this section—

“Tribunal” has the same meaning as in the Environment and Land Use Appeal Tribunal Act.

[S. 7B inserted by s. 8 (3) of Act 5 of 2012 w.e.f. 1 October 2012.]

#### **8. Prohibition on sale**

(1) Subject to section 14 (3) of the Sugar Industry Efficiency Act, a developer who has not been issued with a morcellement permit under section 7 shall not—

(a) sell or enter into any agreement to sell; or

(b) receive any payment or other consideration in respect of any sale or any agreement to sell,

any portion of land comprised in the morcellement in respect of which an application has been made.

(2) No person shall draw up any deed of sale or any document witnessing an agreement to sell land comprised in a morcellement unless the developer has obtained a morcellement permit.

(3) Every sale or agreement for sale made in contravention of subsection (1) shall be null and void.

[S. 8 amended by s. 35 (7) of Act 20 of 2001 w.e.f. 1 August 2001.]

#### **8A. Developer may sell or receive payment**

Any developer who has been issued with a letter of intent under section 6 may, after furnishing the Board with a bank guarantee equivalent to the estimated value of the infrastructural works to be executed, sell or enter into an agreement to sell, or receive any payment or other consideration, not exceeding the amount covered by the bank guarantee, in respect of any sale or any agreement to sell, any portion of land comprised in the morcellement in respect of which a letter of intent has been issued.

[S. 8A inserted by 20 (b) of Act 18 of 2008 w.e.f. 19 July 2008.]

## 9. Fee

(1) Every developer shall, on making an application under section 5, pay the processing fee specified in the Schedule.

(2) Subject to subsections (3), (4) and (5), where the Minister approves the issue of a morcellement permit, the developer shall pay—

- (a) the fee specified in Part 2 of the Schedule; and
- (b) the fee payable under section 5 of the Sugar Industry Efficiency Act, if applicable.

(3) The fee specified in Part 2 of the Schedule shall not be payable where the developer is a company holding a Housing Development Certificate referred to in section 34B of the Income Tax Act.

(4) The Minister may exempt any person from payment of the morcellement fee in respect of any excised plot where he is satisfied that the excised plot is to be used exclusively for the benefit of a *bona fide* charitable or religious body.

(5) Where a developer, in relation to a morcellement which is in respect of land exclusively for agricultural purposes, intends to take advantage of the exemption under section 10 of the Sugar Industry Efficiency Act, he shall submit a bank guarantee in the sum payable as fee under subsection (2) (a) in lieu and instead of the fee.

[S. 9 amended by Act 25 of 1994; s. 19 (b) of Act 20 of 2002.]

## 10. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) The Minister may, by regulations, amend the Schedules.

[S. 10 amended by s. 15 (h) of Act 1 of 2009 w.e.f. 16 April 2009.]

## 11. Offences

(1) Every person who fails to comply with section 8 shall commit an offence and shall, on conviction, be liable to a fine which shall not be less than twice nor more than three times the market value of the land together with imprisonment a term not exceeding one year.

(2) For the purpose of subsection (1), a certificate from the Government Valuer shall be deemed to be sufficient evidence of the market value of the land unless the contrary is proved.

(3) Notwithstanding section 114 of the Courts Act and section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act, a Magistrate shall have jurisdiction to try an offence under subsection (1) and may impose any penalty provided therein.

12. – 14. —

---

**FIRST SCHEDULE**

[Section 3 (2)]

**NON-APPLICATION OF ACT**

Any land which is divided for the purpose of—

- (a) a sale to Government;
- (b) a compulsory acquisition under the Land Acquisition Act;
- (c) a sale to the Rodrigues Regional Assembly;
- (d) a sale to a municipal council or district council;
- (e) an excision or a morcellement under the Real Estate Development Scheme prescribed under the Investment Promotion Act;
- (f) a division in kind between—
  - (i) co-heirs;
  - (ii) ascendants and descendants;
- (g) a sale or donation of not more than one lot, where that lot is excised from another lot for the purposes of the sale or the donation and—
  - (i) either lot is not further divided within 12 months of such sale or donation without a morcellement permit; and
  - (ii) not more than 3 excisions in all are made out of the original lot without a morcellement permit;
- (h) a mortgage or fixed charge.

[First Sch. inserted by s. 15 (i) of Act 1 of 2009 w.e.f. 16 April 2009.]

---

**SECOND SCHEDULE**

[Section 9]

**PART I – PROCESSING FEE**

	<b>(Rs)</b>
1. Where the morcellement is for residential, commercial or industrial purposes and—	
(a) of 8,500 square metres or less .....	250
(b) over 8,500 square metres, but less than 21,000 square metres .....	500
(c) of 21,000 square metres or more .....	1000
2. Where the morcellement is for any other purpose .....	250

**PART II – MORCELLEMENT FEE**

**(Rs)**

for every square metre of  
land or part thereof

Where the morcellement—

- (a) is for residential purposes and—
  - (i) does not exceed 7 lots 15
  - (ii) exceeds 7 lots 30

**SECOND SCHEDULE—continued**

- |   |   |
|---|---|
| (b) is for commercial or industrial purposes                      | 10  |
| (c) is for both residential and commercial or industrial purposes | the rates referred to in paragraphs (a) (ii) and (b) shall apply on a proportionate basis by reference to the land area allocated for residential purposes and that allocated for commercial or industrial purposes |
| (d) is exclusively for agriculture purposes                       | 5   |

**Note:**

Part II shall apply where an application under section 5 of the Act is made after 8 November 2013.

For the avoidance of doubt, where an application under section 5 of the Act has been made before 9 November 2013, the rates applicable before the commencement of Part II shall continue to apply.

[Second Sch. amended by GN 129 of 2000 w.e.f. 16 September 2000; renumbered by s. 15 (i) of Act 1 of 2009 w.e.f. 16 April 2009; repealed and replaced by GN 56 of 2011 w.e.f. 19 March 2011; GN 20 of 2013 w.e.f. 1 February 2013; s. 15 of Act 26 of 2013 w.e.f. 21 December 2013.]

---