Scott Swainson

From: Reid, Debbie G.N. <dgnreid@gov.bm>
Sent: Wednesday, 8 March 2017 1:37 PM
To: Scott Swainson
Cc: mstone@wq.bm; kgeorge@mglaw.bm; 'Lorren Wilson'; Moniz, Trevor G.; 'Shawn A. McKee'; dsummers@bcec.bm; dkuhn@brcl.bm; 'Sara Schroter Ross'; hkitson@clarienbank.com; j.d.massa@hsbc.bm; Shaun Morris
Subject: RE: Land Title Registration Amendment Bill and Rules [APPLEBY-BM_LEGAL.FID1586144]
Attachments: LTR Amendment Bill 2017 - 8 March.pdf

Hi Scott

Brian Eaton has made the following amendments to the Bill:

Under s3A there is now a requirement that you provide a copy of your Certificate of Title.

s78A now states that the attorney's will certify the title for a period of ten years.

As requested, Brian has amended section 25 to include a penalty. He has not repealed, or amended, sections 26 or 27 on the assumption that they will not be brought into operation unless it proves necessary to do so.

The Assumption and Reservations Schedule has been removed

Note that, in Schedule 10 (judgments register), it has also been amended to include the provision that judgments must be registered within six years.

We had a meeting re the Conveyancing Act (sections 16, 17 and 47) with Mr Collieson yesterday, we will wait until we have feedback from the Conveyancing attorneys regarding exactly what amendments would best resolve the issues highlighted by the Burch v Westend Properties Limited judgment.

Regards,

D G N Reid
Land Registrar
Government of Bermuda | **Land Title Registry Office**
1st FL., Milner Place | 32 Victoria Street | Hamilton HM 12
☎: 441 294 9263 |Gov: 441 295 5151 Ext. 4653 | ✉: mailto: dgnreid@gov.bm
Ministry of Public Works |Department Of Land, Surveys & Registration

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From: Scott Swainson [mailto:SSwainson@applebyglobal.com]
Sent: Wednesday, February 15, 2017 3:13 PM
To: Reid, Debbie G.N.
Cc: mstone@wq.bm; kgeorge@mglaw.bm; 'Lorren Wilson'; Moniz, Trevor G.; 'Shawn A. McKee'; dsummers@bcec.bm; dkuhn@brcl.bm; 'Sara Schroter Ross'; hkitson@clarienbank.com; j.d.massa@hsbc.bm; 'shaun.morris@butterfieldgroup.com'
Subject: RE: Land Title Registration Amendment Bill and Rules [APPLEBY-BM_LEGAL.FID1586144]
Importance: High

Dear Debbie,

Further to my email earlier and to our telephone conversation on Friday of last week, please find below comments (in yellow) in respect of each of the points raised. The comments are offered within the context of the Conveyancing Committee's proposal letter dated 19th February 2014 ("the 2014

A BILL

entitled

LAND TITLE REGISTRATION AMENDMENT ACT 2017

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40 Commencement

WHEREAS it is expedient to amend the Land Title Registration Act 2011 to provide for surveyed rather than indicative boundaries, to provide for first registration with certified rather than absolute title, to provide for registration of an estate with absolute title where there has been no successful legal challenge for a period of at least six years after first registration, to remove the Government indemnity against loss of title, to provide for a register of judgments that affect land, to establish a Land Title Registration Tribunal to adjudicate objections to decisions of the Land Title Registrar, to provide for the publication of rules by deposit for public inspection, and for related matters;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Land Title Registration Act 2011 ("the principal Act"), may be cited as the Land Title Registration Amendment Act 2017.

Amends section 2

2 Section 2 of the principal Act is amended by repealing paragraph (e).

Amends section 3

3 Section 3(1) of the principal Act is amended—

(a) by repealing the definition of "certificate of legal effect" and substituting—

" "certificate of title" means a certificate of title referred to in section 3A(4); ";

(b) by deleting the definition of "Indemnity Fund";

(c) in the definition of "prescribed", by deleting "made by the Minister under this Act";

(d) in the definition of "register"—

(i) by deleting "and" at the end of paragraph (a);

(ii) by inserting "and" at the end of paragraph (b); and

(iii) by inserting after paragraph (b)—

"(c) in relation to a judgment registered under this Act, the judgment register;";

(e) in the definition of "threshold term"—

(i) by deleting "five" and substituting "21"; and

(ii) by deleting "of at least three years"; and

(f) by inserting the following definitions, each in its correct alphabetical place—

" "first registration" or "first registered" means first registration, or first registered, under this Act;

"judgment", in relation to the judgment register, means a final judgment or order of the Supreme Court, the Court of Appeal or the Judicial Committee of the Privy Council (on appeal from the Court of Appeal);

"judgment register" means the register established and maintained under section 18(1)(c), which consists of the individual registers described in section 20A;

"rules" means rules made by the Minister under this Act;

~~"Schedule 10 assumptions and reservations" means such assumptions, or reservations, or both, regarding the title to a registrable estate as are set out in Schedule 10;~~

"survey plan", in relation to an estate, means a plan prepared by a surveyor showing the exact boundaries of the estate;

"survey report", in relation to an estate, means a report prepared by a surveyor which identifies the surveyed boundary of the estate by reference to a survey plan;

"surveyed boundary", in relation to an estate, means the boundary of that estate as identified in a survey report by reference to a survey plan;

"surveyor" means a land surveyor who is registered as such under the Professional Surveyors Registration Act 1997;

"Tribunal" means the Land Title Registration Tribunal established under section 92A and, in relation to a panel appointed under section 92B(1) to adjudicate an objection, such panel;".

Inserts section 3A

4 The principal Act is amended by inserting after section 3—

"Attorney to provide certificate of title

3A (1) The following subsections apply where an application is made for the registration of any estate under this Act.

(2) The application shall be lodged with the registrar on the applicant's behalf by an attorney acting for him.

(3) The application shall be accompanied by a survey report and a survey plan.

(4) The attorney lodging the application shall provide to the registrar, in such form as the registrar may determine, a certificate of title signed by the attorney, in which the attorney—

(a) confirms that—

(i) the attorney has examined the deeds, documents and other evidence of title relating to the title to the estate sought to be registered; and

(ii) subject only to such qualifications as may be contained in the certificate, as a result of the examination carried out, the attorney is of the opinion that the applicant's title to the estate is such as a willing buyer could properly be advised by a competent professional adviser to accept; and

(b) certifies that title to the estate is good and marketable, in accordance with good conveyancing practice and in accordance with section 16 of the Conveyancing Act 1983, but subject to—

(i) ~~the~~such~~Schedule 10~~ assumptions and reservations regarding the title to the estate as are specified in the certificate as being assumptions and reservations upon which the certificate is based; and

(ii) any estate, right or interest which overrides the registration or is otherwise excepted from the effect of the registration.

(5) In deciding—

(a) whether to accept the applicant's title for registration; and

(b) the class of title (if any) to be granted under section 28,

the registrar shall rely upon the certificate of title given by the attorney.

(6) The registrar shall not be responsible for determining the accuracy of the certificate of title given by the attorney, and shall not be liable for any error or omission in it.

(7) In a case where the applicant's title is to be registered with provisional title, the registrar shall have regard to any assumptions, reservations or other qualifications included by the attorney in the certificate of title when deciding in

what terms any estate, right or interest is to be recorded in the register as being excepted from the effect of registration.

(8) A certificate of title, survey report or survey plan (as the case may be) made available by the LTRO for inspection by a third party shall be so available for information purposes only and, except at the instance of—

(a) the person who engaged the attorney or surveyor to produce the certificate of title, survey report or survey plan; or

(b) any other person expressly authorised by the person to rely on their work,

no action shall lie against the attorney or surveyor (as the case may be) in respect of the certificate of title, survey report or survey plan produced and filed in good faith with the registrar pursuant to this section and made available for inspection.".

Amends section 4

5 Section 4(1) of the principal Act is amended by deleting "a Government Department" and substituting "an Office".

Amends heading of Part 3

6 The heading of Part 3 of the principal Act is amended by deleting "AND INDEMNITY".

Amends section 9

7 Section 9 of the principal Act is amended by repealing paragraph (b).

Repeals sections 10, 11 and 12

8 Sections 10 (indemnity Fund), 11 (indemnities) and 12 (reinsurance arrangements) of the principal Act are repealed.

Amends section 15

9 Section 15(4)(b) of the principal Act is amended by deleting "subject to section 17(2),".

Repeals and replaces section 17

10 The principal Act is amended by repealing section 17 and substituting—

"Surveyed boundaries

17 (1) The boundary of a registered estate for the purposes of the register is a surveyed boundary indicated on a survey plan.

(2) Subject to subsection (3), a survey report shall be in such form as the registrar may determine.

(3) A survey report, and survey plan referred to in the report, shall meet such requirements as may be prescribed.".

Amends section 18

11 Section 18(1) of the principal Act is amended—

(a) by deleting "two" and substituting "three";

(b) by deleting "and" at the end of paragraph (a);

(c) by deleting the full stop at the end of paragraph (b) and substituting "; and"; and

(d) by inserting after paragraph (b)—

"(c) the judgment register which shall consist of the individual registers described in section 20A.".

Amends section 19

12 Section 19(2)(b)(v) of the principal Act is amended by inserting ", certified" after "absolute".

Inserts section 20A

13 The principal Act is amended by inserting after section 20—

"Judgment register

20A (1) The judgment register shall include an individual register for each judgment that affects land and is registered in accordance with Schedule ~~11~~10.

(2) Each individual register shall include the following particulars—

(a) a brief description of the judgment debt;

(b) the date of registration of the judgment;

(c) the date of the judgment;

(d) the person against whom the judgment is given ("the judgment debtor");

(e) the person in whose favour judgment is given ("the judgment creditor");

(f) the amount of the judgment debt;

(g) the amount paid in respect of the judgment debt; and

(h) such other details as may be prescribed by rules.

(3) The registrar may cancel any entry in the register on being satisfied that it has ceased to have any effect.".

Amends section 24

14 Section 24(1) of the principal Act is amended—

(a) in paragraph (a), by repealing subparagraph (vi) and substituting—

"(vi) giving effect to a partition of land held in co-tenancy—

(A) where equity money is paid; and

(B) in any such other case as may be prescribed;";

(b) by repealing paragraph (b) and substituting—

"(b) the grant out of a qualifying estate of an estate in land for a term of years absolute of more than the threshold term from the date of the grant—

(i) in pursuance of an order of the court;

(ii) at a premium;

(iii) for valuable or other consideration; or

(iv) by way of gift;"; and

(c) by repealing paragraph (d) and substituting—

"(d) the creation of a first legal mortgage of a qualifying estate that secures a principal sum of not less than—

(i) $750,000; or

(ii) such other amount (whether less or more than $750,000) as may be prescribed.".

Amends section 25

14A Section 25 of the principal Act is amended by inserting after subsection (4)—

"(4A) If an application for registration that is required to be made under section 25(1) or (2) is not made within the period for registration referred to in section 25(3), the person required to make the application shall pay, in addition to the fee prescribed for such application (the "prescribed fee"), a late penalty fee of an amount equal to the prescribed fee for every day or part thereof during which the application remains unmade.".

Amends section 28

15 Section 28 of the principal Act is amended—

(a) in subsection (1)(a), by deleting "absolute" and substituting "certified";

(b) by repealing subsection (2) and substituting—

"(2) A person may be registered with certified title if the registrar has been provided with a certificate of title, survey report, survey plan and such other information as may be required by rules, and is of the opinion that the registration of the person with certified title would be appropriate.";

(c) in subsection (4)(b), by deleting "absolute" and substituting "certified"; and

(d) in subsection (5)(a), by deleting "absolute" and substituting "certified".

Amends section 29

16 Section 29 of the principal Act is amended—

(a) in subsection (2), by deleting "absolute" and substituting "certified"; and

(b) in subsection (6), by deleting "absolute" and substituting "certified".

Amends section 30

17 Section 30 of the principal Act is amended—

(a) in the heading, by inserting "first" before "registration";

(b) in subsection (2), by deleting "absolute" and substituting "certified"; and

(c) in subsection (6), by deleting "absolute" and substituting "certified".

Inserts section 32A

18 The principal Act is amended by inserting after section 32—

"Notice of application for first registration to be published in Gazette

32A (1) The registrar shall as soon as practicable after receipt of an application for, or in anticipation of, first registration of an estate in land give notice by publication in the Gazette that the application has been made and that anyone who has an interest in the estate and wishes to object to the application (and declare his interest in the estate) must do so within 30 days after such publication in such form and manner as is specified in the notice.

(2) The notice under subsection (1) shall include a warning that, if no objection to the application is duly received by the registrar on or before 30 days after the date of publication of the notice in the Gazette, ~~the application will be completed and~~ the applicant ~~will~~may be registered as owner of the estate.

(3) Rules may make further provision about the giving of notice under subsection (1).".

Amends section 58

19 Section 58(3)(c) of the principal Act is amended by, after "court", inserting ", Tribunal".

Inserts section 78A

20 The principal Act is amended by inserting after section 78—

"Extinguishing of claimant's title to registered estate

78A (1) Immediately after the expiration of a period of ~~six~~ten years from the date of first registration of an estate ("the ~~six~~ten-year period"), any title to the registered estate that a claimant may have shall be extinguished if—

(a) no action in respect of the claimant's title to the registered estate has been brought within the ~~six~~ten-year period; or

(b) an action in respect of the claimant's title to the registered estate has been brought within the ~~six~~ten-year period but, before the expiration of the ~~six~~ten-year period, the action (or if taken on appeal, the appeal) is withdrawn, is terminated or is unsuccessful.

(2) Where, at the expiration the ~~six~~ten-year period, an action (or if taken on appeal, an appeal) in respect of the claimant's title to the registered estate is current, the claimant's title to the registered estate shall be extinguished if and when the action (or if taken on appeal, the appeal) is withdrawn, is terminated or is unsuccessful.

(3) If the registrar is satisfied that all title to the registered estate that any claimant may have is extinguished under subsection (1) or (2), the registrar may enter the title to the registered estate as absolute in accordance with section 81.

(4) In this section—

(a) "action" includes any proceedings in any court;

(b) "claimant", in respect of a registered estate, means a person (other than a person registered as the owner) who claims title to the estate;

(c) "the ~~six~~ten-year period" is the period of ~~six~~ten years from the date of first registration of an estate.".

Amends section 80

21 Section 80(1) of the principal Act is amended by deleting "indicative" and substituting "surveyed".

Amends section 81

22 Section 81 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting "Subject to subsection (2), where" and substituting "Where"; and

(ii) by deleting "absolute" and substituting "certified";

(b) by repealing subsection (2);

(c) in subsection (3), by deleting "absolute" and substituting "certified";

(d) in subsection (4), by deleting "subsections (1) to (3)" and substituting "subsections (1) and (3)";

(e) by inserting after subsection (4)—

"(4A) Where the title to a registered estate has been entered in the register for a period of at least ~~six~~ten years from the date of first registration of the estate (whether as certified or provisional), the registrar may enter it as absolute upon being satisfied that the title of any claimant, as defined in section 78A, has been extinguished in accordance with that section.";

(f) in subsection (5), by deleting "subsections (1) to (3)" and substituting "subsections (1), (3) and (4A);

(g) in subsection (6), by deleting "standards" and substituting "requirements"; and

(h) in subsection (7), by inserting "or certified" after "provisional".

Amends section 84

23 Section 84(1) of the principal Act is amended—

(a) by deleting "or" at the end of paragraph (c); and

(b) by inserting after paragraph (c)—

"(ca) the judgment register; or".

Amends section 85

24 Section 85(1) of the principal Act is amended—

(a) by deleting "or" at the end of paragraph (c); and

(b) by inserting after paragraph (c)—

"(ca) the judgment register; or".

Amends section 92

25 Section 92 of the principal Act is amended—

(a) by inserting after subsection (1)—

"(1A) An objection under this section shall be made in accordance with such rules as may be made in this regard.";

(b) in subsection (7)—

(i) in paragraph (a), by inserting "by the Tribunal" after "adjudication"; and

(ii) in paragraph (b), by deleting "section 94" and substituting "section 95"; and

(c) by repealing subsection (8).

Inserts sections 92A, 92B and 92C

26 The principal Act is amended by inserting after section 92—

"Establishment of Land Title Registration Tribunal

92A (1) There is established a tribunal to be known as the Land Title Registration Tribunal.

(2) The Tribunal shall comprise a pool of not less than five persons nor more than nine persons, appointed by the Minister, as follows—

(a) two attorneys with not less than five years' ~~conveyancing~~ experience practising as such in Bermuda~~—, one of whom shall be the Chairman and the other the Deputy Chairman;~~

(i) one, with not less than five years' conveyancing experience in Bermuda, to be the Chairman; and

(ii) the other (whether or not he has at least five years' conveyancing experience in Bermuda) to be the Deputy Chairman.

(b) two surveyors with not less than five years' land surveying experience in Bermuda; and

(c) other persons (whether or not attorneys or surveyors) with such experience or expertise as the Minister deems necessary from time to time.

(3) The Chairman and Deputy Chairman shall be appointed for terms not exceeding three years and are eligible for reappointment.

(4) The members of the Tribunal, other than the Chairman and the Deputy Chairman, shall be appointed for terms not exceeding two years and are eligible for reappointment.

(5) Where a member of the Tribunal dies, is unable to perform his duties or resigns, the Minister may appoint a person to fill the vacancy.

(6) The appointment of a person as a member of the Tribunal to fill the vacancy occurring under subsection (5), shall be for the unexpired portion of the term of the member to whose office that person has been appointed and such a person is eligible for reappointment.

(7) The quorum for a meeting of the Tribunal (other than for a panel of the Tribunal appointed under section 92B(1)) shall be five of the pool of members, and a decision may be reached by a majority of the members present at the meeting.

(8) Fees shall be paid to members of the Tribunal in accordance with the Government Authorities (Fees) Act 1971.

Duties of Chairman and Deputy Chairman

92B (1) The Chairman shall appoint a panel to adjudicate an objection to a decision of the registrar, and the panel shall consist of the Chairman or Deputy Chairman and two other members.

(2) The Deputy Chairman shall perform any duty assigned by the Chairman and shall act for the Chairman in his absence.

Conflict of interest

92C Where a member of the Tribunal has any direct or indirect interest in any matter before it, he shall—

(a) disclose his interest to the Tribunal immediately he is aware of it; and

(b) not take part in any, or any further, discussion of the matter, and have no vote in relation to the matter, unless the Tribunal has resolved that the interest does not give rise to a conflict of interest.".

Amends section 93

27 Section 93 of the principal Act is amended—

(a) in the heading, by inserting "by the Tribunal" after "Adjudication";

(b) in subsection (1), by inserting "by the Tribunal" after "adjudication";

(c) by repealing subsections (2), (3), (4) and (5); and

(d) in subsection (6)—

(i) by deleting "Subject to section 95(2), where the registrar has appointed an adjudicator under subsection (4) in relation to an objection, it is the function of the adjudicator to" and substituting "The Tribunal shall"; and

(ii) in paragraph (b), by deleting "his or her" and substituting "its".

Amends section 94

28 Section 94 of the principal Act is amended—

(a) in the heading, by deleting "Procedure" and substituting "Powers and procedure";

(b) in subsection (1)—

(i) by deleting "an adjudicator appointed to dispose of an objection under section 93(4)" and substituting "the Tribunal"; and

(ii) by deleting "the adjudicator" and substituting "the Tribunal";

(c) by inserting after subsection (1)—

"(1A) For the purpose of conducting a hearing, the Tribunal shall have all the powers of a court of summary jurisdiction in relation to the summoning of witnesses, their examination on oath or otherwise and compelling the production of any document or thing relevant to the subject matter of the proceedings.

(1B) A decision of the Tribunal may be reached by a majority of the members of that Tribunal but any question of law shall be decided by the Chairman of the Tribunal or in his absence, the Deputy Chairman.

(1C) The Tribunal may regulate its proceedings as it thinks fit and shall not be bound by the rules of evidence in civil or criminal proceedings.";

(d) in subsection (2), by deleting "an adjudicator" and substituting "the Tribunal";

(e) in subsection (3)(c), by deleting "adjudicator" and substituting "Tribunal"; and

(f) by inserting after subsection (3)—

"(4) Where, in the course of adjudicating any objection, one of the members of the Tribunal is unable to continue to act as a member for any reason, then, if all parties concerned agree, the Tribunal may proceed with the adjudication of that objection in the absence of that member and shall be deemed to be duly constituted in so doing.

(5) The registrar shall be a party to all proceedings before the Tribunal.

(6) The registrar may for the purposes of a hearing before the Tribunal designate an officer of the LTRO to attend and act on his behalf.".

Amends section 95

29 Section 95 of the principal Act is amended—

(a) in subsection (1)(b)—

(i) by deleting "him, an adjudicator appointed under section 93(4)—" and substituting "it, the Tribunal decides that the objection should be disposed of by reference to the court."; and

(ii) repealing subparagraphs (i) and (ii);

(b) by repealing subsection (2);

(c) in subsection (3), by deleting "adjudicator" both times it appears and, in each case, substituting "Tribunal"; and

(d) in subsection (4)—

(i) in paragraph (a), by deleting "any adjudicator" and substituting "the Tribunal"; and

(ii) in paragraph (b), by deleting "adjudicator" and substituting "Tribunal".

Amends section 96

30 Section 96 of the principal Act is amended—

(a) in subsection (1), by deleting "an adjudicator" and substituting "the Tribunal"; and

(b) in subsection (2), by deleting "Rules may" and substituting "Rules of court".

Amends section 97

31 Section 97 of the principal Act is amended by deleting "an adjudicator" and substituting "the Tribunal".

Amends section 108

32 Section 108(4) of the principal Act is amended by deleting "ten years" and substituting "six years".

Amends section 117

33 Section 117 of the principal Act is amended by deleting "five" and substituting "21".

Amends section 123

34 Section 123 of the principal Act is amended by inserting after subsection (1)—

"(1A) Rules shall, within one month after their filing with the Secretary to the Cabinet in accordance with section 2 of the Statutory Instruments Act 1977, be published by deposit for public inspection at the Land Title Registry Office, and shall have effect on the day that the Minister gives notice in the Gazette that the rules have been so deposited, or such later date as the Minister may in the notice appoint.".

Repeals Schedule 1

35 Schedule 1 (Indemnities) to the principal Act is repealed.

Amends Schedule 3

36 Schedule 3 to the principal Act is amended—

(a) in paragraph 1(c), by deleting "in such manner as the registrar considers appropriate" and substituting "by publication in the Gazette, and the notice shall be subject to the negative resolution procedure";

(b) in paragraph 2(c), by deleting "in such manner as the registrar considers appropriate" and substituting "by publication in the Gazette, and the notice shall be subject to the negative resolution procedure";

(c) in paragraph 2(d)(ii), by deleting "or paragraphs" and substituting ", paragraphs, sub-paragraphs or clauses";

(d) in paragraph 13(4), by deleting "section 94" and substituting "section 95"; and

(e) by repealing paragraph 15.

Amends Schedule 6

37 Paragraph 5(b) of Schedule 6 to the principal Act is amended by inserting "upgrading the title under section 81 or otherwise" before "bringing".

Amends Schedule 9

38 Schedule 9 to the principal Act is amended by inserting after paragraph 3—

"Amends First Schedule to Government Authorities (Fees) Act 1971

4 Part B of the First Schedule to the Government Authorities (Fees) Act 1971 is amended by inserting in its correct alphabetical place—

"Land Title Registration Tribunal - established by section 92A of the Land Title Registration Act 2011".

Amends section 29A of the Employment Act 2000

5 Section 29A(2) of the Employment Act 2000 is amended by inserting after paragraph (o)—

"(oa) the Land Title Registrar;".

Amends section 18 of the Financial Intelligence Agency Act 2007

6 Section 18(1) of the Financial Intelligence Agency Act 2007 is amended by inserting after paragraph (d)—

"(da) the Land Title Registrar to discharge his functions under any statutory provision;".

Amends section 3 of the Good Governance Act 2012

7 Section 3(3) of the Good Governance Act 2012 is amended by inserting after paragraph (n)—

"(na) the Land Title Registrar;".".

Inserts Schedule~~s~~ 10 ~~and 11~~

39 The principal Act is amended by inserting after Schedule 9—

"~~SCHEDULE 10~~

(~~section 3(1)~~)

~~ASSUMPTIONS AND RESERVATIONS~~

~~A certificate of title may be based on any or all of the following assumptions and reservations:~~

~~1. That the attorney giving the certificate has assumed that all documents produced to him have been validly executed, delivered by the parties thereto and are within the capacity of such parties.~~

~~2. That, although searches have been done of the mortgage register (kept pursuant to the Land Title Registrar (Recording of Documents) Act 2017) at the LTRO, and of the cause book (within the meaning of the Rules of the Supreme Court 1985) at the Supreme Court Registry in Bermuda (for judgments), such searches are not conclusive, and that the LTRO's records and the cause book would not reveal –~~

~~(a) details of matters which have been lodged for filing or registration which as a matter of best practice of the LTRO or the Supreme Court Registry would have or should have been disclosed on the mortgage register, or in the cause book, as the case may be, but for whatever reason have not actually been filed or registered or are not disclosed or which, notwithstanding filing or registration, at the date and time the search is concluded are for whatever reason not disclosed or do not appear therein;~~

~~(b) details of matters which should have been lodged for filing or registration with the LTRO or at the Supreme Court Registry but have not been lodged for filing or registration at the date the search is concluded;~~

~~(c) whether an application to the Supreme Court for a winding up petition or for the appointment of a receiver or manager has been prepared but not yet been presented or has been presented but does not appear in the cause book at the date and time the search is concluded;~~

~~(d) whether any arbitration or administrative proceedings involving the vendors are pending or whether any proceedings are threatened against them, or whether any arbitrator has been appointed.~~

SCHEDULE ~~1~~10

(section 20A)

REGISTRATION OF JUDGMENTS

No judgment to affect land, tenements or hereditaments until registered

1 (1) ~~No~~Subject to paragraph (1A), a judgment ~~obtained after the coming into operation of this Act~~ shall not affect any lands, tenements or hereditaments as to purchasers, mortgagees or judgment creditors unless and until—

(a) on application in accordance with rules, a memorandum, in such form as the registrar may determine, containing the names of the persons in whose favour and against whom judgment is given, the date of such judgment and the amount of the debt, damages, costs or money thereby recovered or secured is registered with the registrar; and

(b) a copy of such memorandum, certified as such by the registrar of the court, is lodged with the registrar, who shall issue a receipt, in such form as he may determine, in respect of each memorandum received,

notwithstanding anything to the contrary in the Real Estate Assets Act 1787, section 19 of the Supreme Court Act 1905, section 14 of this Act, any other provision of law, or any notice of any such judgment to any such purchaser, mortgagee or judgment creditor.

(1A) No judgment shall affect any lands, tenements or hereditaments as to purchasers, mortgagees or judgment creditors if the judgment is not registered in accordance with subparagraph (1) within—

(a) six years after the coming into operation of this Schedule; or

(b) if the judgment is granted on or after the coming into operation of this Schedule, six years after the date on which the judgment is granted,

notwithstanding anything to the contrary in the Real Estate Assets Act 1787, section 19 of the Supreme Court Act 1905, section 14 of this Act, any other provision of law, or any notice of any such judgment to any such purchaser, mortgagee or judgment creditor.

(2) The registrar shall enter the particulars in the judgment register in date order, by the name of the person against whom the judgment is given, and shall also insert in such register the year and the day of the month when the judgment is so registered.

(3) No stamp duty (within the meaning of the Stamp Duties Act 1976) is required in respect of a memorandum, or a copy of a judgment, that is required to be lodged with the registrar under this Schedule.

Fees of registration may be levied under execution

2 In every case of execution of a judgment, the party entitled to execution may levy fees paid for registering the judgment over and above the sum recovered.

Priority not affected by difference between dates of registration

3 The priority existing between different judgments by reason of the difference of the dates on which they were obtained shall not be affected by the difference between the dates of their registration.

Registration by one person to benefit all others interested in same judgment

4 The registration of a judgment by any person or persons entitled only to a part of the monies thereby secured shall enure for the benefit of every person entitled to the remainder of such monies, notwithstanding such last-mentioned person may not have registered the judgment.

Application to remove from register judgment on which judgment debt discharged

5 An application may be made to the registrar, in such form as the registrar may determine, to remove from the judgment register a judgment on which the judgment debt has been discharged. ".

Commencement

40 The provisions of this Act commence on such day as the Minister responsible for land title registration may be notice published in the Gazette appoint, and different days may be so appointed for different provisions or for different purposes.

LAND TITLE REGISTRATION AMENDMENT BILL 2017

EXPLANATORY MEMORANDUM

This Bill would amend the Land Title Registration Act 2011 ("the Act") to provide for surveyed rather than indicative boundaries, to provide for first registration with certified rather than absolute title, to provide for registration of an estate with absolute title where there has been no successful legal challenge for a period of at least six years after first registration, to remove the Government indemnity against loss of title, to provide for a register of judgments that affect land, to establish a Land Title Registration Tribunal to adjudicate objections to decisions of the Land Title Registrar, to provide for the publication of rules by deposit for public inspection, and for related matters. Clauses 2 to 37 and 39 amend the Act, and clause 38 amends Schedule 9 to add consequential amendments to other Acts.

Clause 1 is self-explanatory.

Clause 2 amends section 2 by repealing paragraph (e) as the payment of indemnities will not be provided for under the Act.

Clause 3 amends section 3 by amending certain definitions and inserting new definitions.

Clause 4 inserts section 3A which requires an application for registration of an estate to be lodged on behalf of the applicant by an attorney. The attorney is to provide the Land Title Registrar ("the registrar") with a certificate of title, certifying that the title is good and marketable subject to certain assumptions, reservations, and interests that are excepted from the effect of first registration. The application must also be accompanied by a survey report and a survey plan of the estate.

Clause 5 amends section 4(1) to reflect that the Land Title Registry Office ("LTRO") is not a Government Department, but rather an Office within a Government Department.

Clause 6 amends the heading of Part 3 by removing "AND INDEMNITY" because the provisions dealing with the establishment of an indemnity fund, the payment of indemnities, and reinsurance arrangements are being repealed. (See clause 8.)

Clause 7 amends section 9 by repealing paragraph (b) which would require the Minister of Finance, when prescribing fees in respect of the performance of functions under the Act, to include in the calculation the amount of income that he considers reasonable to establish and maintain an Indemnity Fund.

Clause 8 repeals section 10 (which provides for an Indemnity Fund), section 11 (which provides for the payment of indemnities) and section 12 (which provides for insuring the liability of the registrar to pay indemnities under the Act).

Clause 9 amends section 15(4)(b) by deleting the words "subject to section 17(2)" because section 17(2) of the Act is repealed and replaced, and the new section does not refer to "indicative boundary". The boundary of a registered estate is to be a surveyed boundary. (See clause 10.)

Clause 10 repeals and replaces section 17 to provide for surveyed boundaries rather than indicative boundaries. The surveyed boundary of an estate is the exact boundary of the estate identified in a survey report and shown on a survey plan prepared by a land surveyor.

Clause 11 amends section 18(1) to add a reference to another register, the judgment register. (See clauses 13 and 39.)

Clause 12 amends section 19(2)(b)(v) by including registration of an estate with "certified title". (See clause 15.)

Clause 13 inserts section 20A which provides for the registrar to keep a judgment register in which judgments that affect land are to be registered.

Clause 14 amends section 24(1) by splitting certain paragraphs into subparagraphs, and certain subparagraphs into clauses, so that each such subparagraph or clause is capable of being a "trigger" for compulsory registration. In this regard, see clause 36(c) which amends paragraph 2(d)(ii) of Schedule 3 to the Act.

Clause 14A amends section 25 by inserting subsection (4A) which provides that, if an application for registration that is required to be made is not made within the period for registration (two months or such longer period as the registrar may for good reason allow), the person required to make the application shall pay, in addition to the fee prescribed for such application, a late penalty fee of an amount equal to the prescribed fee for every day or part thereof during which the application remains unmade.

Clause 15 amends section 28 to provide for an owner of an estate to be registered with certified title, rather than absolute title, on first registration. Section 28(2) is repealed and replaced to provide that a person may be registered with certified title if the registrar has been provided with a certificate of title, survey report, survey plan and such other information as may be required by rules, and is of the opinion that the registration of the person with certified title would be appropriate.

Clause 16 amends section 29 (Effect of first registration - freehold estates) to reflect that a freehold estate will not be registered with absolute title on first registration. (On first registration a freehold estate is to be registered with either certified title or provisional title.)

Clause 17 amends section 30 (Effect of registration - leasehold estates) to reflect, similarly, that a leasehold estate will not be registered with absolute title on first registration. (On first registration a leasehold estate is to be registered with either certified title or provisional title.)

Clause 18 inserts section 32A which provides that the registrar must give notice of an application for first registration by publishing notice thereof in the Official Gazette and inviting anyone who has an interest in the estate and wishes to object to the application to do so within 30 days after such publication.

Clause 19 amends section 58(3)(c) to add a reference to the Land Title Registration Tribunal ("the Tribunal") to be established under the new section 92A. (See clause 26.)

Clause 20 inserts section 78A which provides that, after the expiration of six years from the date of first registration of an estate, any title that a claimant may have to the registered estate shall, in certain circumstances, be extinguished.

Clause 21 amends section 80(1) to change "indicative boundary" to "surveyed boundary". (As already stated, all boundaries will be surveyed, not indicative.)

Clause 22 amends section 81 (Power to upgrade title) to include the upgrading of title (from provisional title or certified title) to absolute title. Under the new subsection (4A), where the title to a registered estate has been entered in the register for a period of at least six years from the date of first registration of the estate (whether as certified or provisional), the registrar may enter it as absolute upon being satisfied that the title of any claimant, as defined in section 78A, has been extinguished in accordance with that section. (See clause 20.)

Clause 23 amends section 84 (Inspection of registers etc.) to include a reference to the judgment register.

Clause 24, similarly, amends section 85 (Official copies of registers etc.) to include a reference to the judgment register.

Clause 25 amends section 92 to reflect that the adjudication of objections will now be dealt with by the Tribunal, established under the new section 92A (see clause 26), and that there will not be an entitlement to indemnity under the Act.

Clause 26 inserts sections 92A (which establishes the Land Title Tribunal), 92B (which sets out the duties of the Chairman and Deputy Chairman) and 92C (which provides that a member of the Tribunal must disclose any interest he has in a matter before the Tribunal).

Clause 27 amends section 93 (Adjudication) in consequence of the Tribunal being made responsible for the adjudication of objections.

Clause 28 amends section 94 (Procedure) to set out in more detail the procedure to be followed by the Tribunal.

Clause 29 amends section 95 (Reference of objections to court) to reflect that the Tribunal may also refer a matter to the court. Subsection (2) is repealed because it requires automatic reference of a matter to the court if indemnity is payable, and the provisions requiring payment of indemnity are being repealed.

Clause 30 amends section 96 (Appeals) to provide that a person may, in accordance with rules of court (currently Order 55 of the Rules of the Supreme Court 1985), appeal to the Supreme Court against a decision of the Tribunal.

Clause 31 amends section 97 (Enforcement of orders, etc.) to reflect that it is the Tribunal's decisions that would be enforceable as orders of the Supreme Court.

Clause 32 amends section 108(4) to reduce the period during which an adverse possessor may apply for alteration of the register from ten to six years after the estate in land in question was first registered.

Clause 33 amends section 117 (Reduction in threshold term) as the "threshold term" for the registration of an estate in land is increased from five years to 21 years. (See clause 3(e).)

Clause 34 inserts a new subsection (1A) into section 123 so that rules made under the Act do not have to be published in the Gazette. The rules are to be published by deposit for public inspection at the Land Title Registry Office and shall come into effect by notice published in the Official Gazette.

Clause 35 repeals Schedule 1 (Indemnities).

Clause 36 amends Schedule 3 (First registration - ancillary matters). Clause 36(a) provides for the phased introduction of voluntary registration to be triggered (by category) by notice published in the Official Gazette. The notice is subject to parliamentary scrutiny by the negative resolution procedure. Similarly, clause 36(b) and (c) provides for the phased introduction of compulsory registration to be triggered (by category) by notice published in the Official Gazette. The notice is also subject to parliamentary scrutiny by the negative resolution procedure. Clause 36(d) corrects an incorrect reference to section 94 - the correct reference is to section 95. Clause 36(e) repeals paragraph 15 (Certificates of legal effect) of Schedule 3 as a certificate of legal effect has been replaced by a certificate of title. (See clause 4.)

Clause 37 amends Schedule 6 (Alteration of the Register) in paragraph 5(b) to include altering the register for the purpose of bringing the register up to date if a title is upgraded under section 81.

Clause 38 amends Schedule 9 to add consequential amendments to other Acts.

Clause 39~~inserts Schedule 10 (Assumptions and Reservations). This lists the assumptions and reservations upon which a certificate of title may be based. It also~~ inserts Schedule ~~11~~10 (Registration of Judgments). This provides that no judgment ~~obtained after the coming into operation of the Act~~ shall affect land unless and until the judgment is registered in the manner set out in paragraph 1(1) of the Schedule~~by the registrar~~., and that no judgment shall affect land if the judgment is not registered in accordance with paragraph 1(1) within six years after the date of the judgment or the coming into operation of this Schedule, whichever is the later.

Clause 40 is self-explanatory.