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By Hand

19 February 2014

Dear Madam

Land Title Registration Act 2011 ("the Act")

We refer to our meeting on the 5 February 2014, during which you kindly permitted us to voice our concerns regarding the Act (as currently drafted). We would like to thank you once again for giving us this opportunity.

As discussed, our key concerns as summarized in our letter dated the 24 January 2014 include:

- (i) the indicative (as opposed to fixed) boundary system that the Act stands to introduce;
- (ii) the potentially inequitable and unconstitutional title classification system that the Act incorporates; and
- (iii) the Act's guarantee or indemnity components that are (based on the surrounding facts), likely to expose Government and ultimately the public purse to unnecessary liability.

In addition to the above-mentioned concerns, we also expressed concerns in respect of wider inherent problems that materially affect the existing conveyancing system on a day to day basis. While we are currently liaising with Government with a view to resolving some of these problems, such as those relating to corporate land holding, as well as the negative effects of the Bermuda Immigration and Protection Amendment Act 2007, other problems have yet to be discussed at all such as:

- (a) the inadequate system of recording judgments, mortgages, matrimonial Court orders and other encumbrances affecting land (together "Encumbrances");

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- (b) the glaring absence of legislation that governs priority positions as between Encumbrances;
- (c) the glaring absence of legislation that could assist in definitively resolving title and boundary disputes between property owners in an economical and timely manner, while fully taking into account current conveyancing practices and procedures, as well as the fixed boundary principles that underpin the existing system;
- (d) the unnecessary mortgage registration/perfection time lags that are experienced, which are directly attributable to protracted adjudication and other Governmental procedures;
- (e) the glaring absence of legislation that governs information disclosure, within the context of land now or formerly held in trust, being a problem that is giving rise to title difficulties that are often incapable of being resolved.

The above mentioned problems (the "Existing Problems"), which all raise unnecessary liability issues and cast our jurisdiction in a negative light, ought to be addressed as a matter of urgency. This is because allowing the Existing Problems to subsist will continue to hamper transactional and development activity and negatively affect any land registration system that is implemented in Bermuda, in the same manner as the current system is being negatively affected. Thankfully, most of the Existing Problems can be resolved by way of relatively minor or limited legislative steps that can be completed on an expedited basis. Some of the Existing Problems can even be addressed by way of amendments to the Act.

In our view the most cost effective, time effective and generally beneficial approach would be to consider land registration within the context of wider legislative reform and to amend the Act in a manner that specifically addresses as many of the Existing Problems as possible, rather than intentionally ignoring them. The Act should also be amended in a manner that introduces a deeds registration component (based on fixed boundary principles) as a first step, or transitional step toward full blown title registration. The latter ought to then take a form that retains as many of the Act's current characteristics as reasonably possible, while taking into account the overriding need to incorporate fixed boundary principles and fair and reasonable adjudication/appeals procedures into the final product. A hybrid approach of this nature could enable the recording and mapping provisions of the Act, as well as the related facilities and expertise that has already been established at the Land Title Registration Office ("LTRO") to be fully utilised, while simultaneously integrating historical title and surveying information in a full and proper manner.

A hybrid system of this nature could also enable law firms to continue to perform the title certification role that we currently perform based on historical title information and up to date surveying information and to remain liable to our individual clients, as they proceed with the registration of their deeds. Our liability obligations and insurance arrangements could essentially continue in substantially the same form and to the same extent as they always have (subject to the liability time frame adjustment that is suggested in item 6 below). Such an approach would enable Government to avoid providing indemnities or guarantees during the first registration period, being the period that is likely to attract the highest level of liability. It would also enable Government to avoid the associated insurance/reinsurance costs, as well as the additional staffing requirements that the Act (as currently drafted) will necessitate for the purpose of completing due diligence steps.

Ultimately a hybrid approach would enable the indicative boundary difficulties, the title classification difficulties and the Government guarantee difficulties that we have identified in earlier correspondence to effectively fall away.

Please find below a number of preliminary proposals that we would like to suggest for discussion purposes within the context of a potential hybrid registration system and also within the context of wider land law reform.

1. A hybrid system could initially require any transfer or conveyance for valuable consideration (only) to be registered on a compulsory basis, while still providing for the voluntary registration of other deeds and transactions, on the basis of considerations and requirements such as those that are already included in sections 21 to 23 of the Act, as well as in Schedule 3 thereto. In this regard the systematic geographical registration requirements that are contemplated in Schedule 3, could (by way of example) enable the registration in higher volume, of residential estates that form the subject matter of large scale subdivision plans and zoning orders. Such estates ought to possess relatively consistent boundary lines as between the building lots that they operated to create and this should in turn assist in making the registration process in respect of these lots relatively straight forward.
2. Any initial registration step, whether compulsory or voluntary, could be preceded by a public notice period (of say 30 days duration) that requires the key particulars of the proposed transaction to be advertised in a far reaching manner, such as (for example) in the daily newspapers. Notices could also be required to be directed by registered post to the parties who are most likely to be affected by the subject transaction. Such notice requirements could be implemented with a view to inviting any credible challenges and resolving any historical title or boundary difficulties that may exist as part of the first registration step.

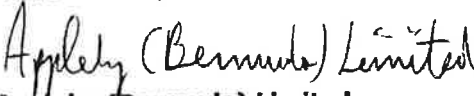
3. The registration application could be required to include (in addition to the subject transfer or conveyance deed), the following documents (together "the Documents"):
 - (i) a copy of the relevant attorney's title certificate confirming good and marketable title (if applicable) in the form presented to the applicant and based on established conveyancing practice, (inclusive of standard assumptions and reservations) (a "Title Certificate") ;
 - (ii) an accurate and up to date deed plan showing the metes and bounds of the subject property, any rights or easements that may affect the property and also showing the metes and bounds of any abutting properties;
 - (iii) a copy of the relevant survey report; and
 - (iv) the original title deeds (inclusive of any other supporting documentation).
4. In the event that the Documents are registered on the basis of a Title Certificate , title could remain capable of being challenged as it the normally would, but for a more limited period of time. In this regard perhaps 6 years (in each case), following the date of first registration (the "Transitional Period"), as opposed to the standard 20 year period that is currently specified in section 16 of the Limitation Act 1984, would be more appropriate. Any arising title or surveying challenge or appeal could be referred to a land tribunal established for this purpose for determination in the first instance and ultimately directed on appeal to the Courts (if necessary). The tribunal could comprise attorneys, surveyors, valuers and LTRO staff members and it could also be chaired by the Registrar (of the LTRO).
5. In the event that an attorney is not in a position to confirm good and marketable title to all or part of the subject property at the time when the Documents are filed, then a "provisional" title designation could be made available to the applicant (in a manner similar to that currently contemplated in the Act). This provisional designation could then remain capable of being reviewed, appealed, challenged or upgraded thereafter by the applicant, or by any other interested party, especially on the basis of new information or developments that clearly stand to improve this designation.
6. It would be helpful if law firms and surveying firms could remain liable to an applicant for a finite period of time following first registration, such as for the duration of the Transitional Period (only).

7. Following the expiration of the Transitional Period, title could be deemed to become "absolute" (in a manner that is largely consistent with that currently contemplated the Act) and title could also come to be guaranteed by Government at this point (to the extent that this is deemed to be necessary).
8. A hybrid system could also be geared in a manner whereby any transfer in respect of a registered parcel during the Transitional Period could be effected on the basis of a Title Certificate. However, following the expiration of the Transitional Period, the need for such certification would be likely to largely fall away and come to be required in limited instances (only), such as where boundary adjustments or subdivision steps are being effected in respect of a registered parcel, or where rights are being granted or released.
9. The system could also provide for title to be transferred following first registration, on the basis of simplified documents that are substantially in the form of the documents that are already appended to the rules (that have been made pursuant to the Act).
10. The whole due diligence process could be simplified and streamlined if all historical mortgage, voluntary conveyance, alien registration, corporate land holding, judgement and other recording facilities relating to land that are currently housed at the Office of the Registry General, as well as at other Government Registries, were to be relocated to the LTRO. The Act would obviously need to be amended to accommodate this approach and any resulting amendments could also be extended to address recording facilities for new transactions and Encumbrances, as well as priority issues as between Encumbrances affecting land. Of course consequential amendments to other pieces of legislation would also be required.
11. In terms of judgements specifically, (which currently present a number of unique challenges) the Act, as well as the Real Estate Assets Act 1787 and the Supreme Court Act 1905 could all be amended (as necessary) to require any historical judgments that are thought to attach to land, to be recorded at the LTRO within a finite period of time following the implementation of the Act. This step could (subject to any Constitutional considerations), be absolutely required in order to enable such judgments to continue to encumber the subject parcels of land.

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We look forward to discussing the concepts outlined above in more detail at your earliest convenience and would also welcome the opportunity to discuss them with members of the LTRO, as well as with surveyors, valuers and other interested stakeholders.

Yours faithfully


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cc: Kevin George, Moniz & George
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