

Scott Swainson

From: Scott Swainson
Sent: Monday, 16 January 2017 7:07 PM
To: 'dgnreid@gov.bm'
Cc: mstone@wq.bm; kgeorge@mglaw.bm; Lorren Wilson; 'tgmoniz@gov.bm'; 'smckee@bcec.bm'; dsummers@bcec.bm; dkuhn@brcl.bm; 'Sara Schroter Ross'; 'hkitson@clarienbank.com'; 'j.d.massa@hsbc.bm'; 'shaun.morris@butterfieldgroup.com'
Subject: FW: Land Title Registration Amendment Bill and Rules [APPLEBY-BM_LEGAL.FID1586144]
Attachments: LTR Amendment Bill 2016 - 16 December.pdf; Mark-up of LTR Amendment Bill 2016 - 16 December.pdf; LTR Rules 2016 - 16 December.pdf; Pamplin P ltr 19-2-14.PDF; Email ESS to D Reid 03.10.16.PDF; LTR Bills Lt from D Reid 05.12.16.DOCX

Dear Debbie,

Thank you for your email below, as well as for the amended legislation (attached).

Given that a few members of the conveyancing group are currently away, we will not be available to attend the meeting that you have proposed (as a group) until the 26th of January at the earliest. Once again it would be helpful if both the land (or boundary) surveyors and members of The Bermuda Bankers' Association were able to attend and provide input.

Please find below a number of comments and concerns regarding the proposed amendments to the Land Title Registration Act ("the Act"). Some of these comments/concerns were flagged in respect of the previous drafts. For ease of reference I attach copies of the conveyancing group's initial proposal letter dated 19th February, 2014 ("the 2014 Letter") that was directed to the then Minister of Public Works, the email dated 3rd October, 2016 ("the October Email") that I directed to you and the note/letter that you directed to me on the 5th December, 2016.

- (i) Having reviewed the Act and the rules, it would appear that greater clarity could be achieved if the Act were to comprise two distinct parts (as suggested in the 2014 Letter), namely a deeds registration, or transitional part commencing with the initial advertisement step and ending at the point when absolute title designations are achieved, followed by (as the second part) full blown land title registration that relies on absolute title designations and the form of electronic conveyancing contemplated in Part 18 of the Act. The transitional part could provide a comprehensive framework for addressing the potentially serious transactional challenges that are likely flow from the new advertisement requirements. It could also address (using the new Land Title Registration Tribunal facility coupled with current conveyancing documentation and procedures) the wider title related challenges that will need to be resolved as part of the process, especially the challenges associated with transactions involving multiple undivided shares, life interests and remainders, land trusts, mixed fee simple/possessory titles and subdivision difficulties. The transitional part could of course, also address as many of the "Existing Problems" (as described in the 2014 Letter) as possible. The bottom line is that we need transitional provisions that are comprehensively drafted for this jurisdiction so that we end up with an efficient and cost effective system.
- (ii) As stated in the October Email, the amendments to the Act **do not** adequately address the "Existing Problems," which (in fact) have yet to be properly discussed. The prospect of implementing a new system that fails to take the Existing Problems into account and to resolve them (to the extent possible) is wholly unacceptable. The continuing title uncertainty and the procedural time lags caused by the Existing Problems will jeopardise the success of any new system. The Existing Problems, including the problematical amendments that were effected to the Companies Act in 2014, need to be specifically

addressed through legislative reform as part of the transitional process. The recent ruling in *Burch -v- Westend Properties Limited*, Supreme Court Civil Jurisdiction 2011 No. 445 (dated 10th February, 2016), has elevated the level of title uncertainty. In this case provisions of the Conveyancing Act 1983 were construed in a manner that resulted in a 1969 root conveyance tendered by the defendant being primed (in title terms) by a 1939 registration memorandum tendered by the plaintiff (without the plaintiff actually deducing any title deeds).

- (iii) Ultimately, if the Exiting Problems are not addressed, the associated title uncertainty will increase the volume of claims or disputes that are referred to the Land Title Registration Tribunal. This will overburden or clog this facility (and possibly the Courts) and cause material delays in respect of the rendering of decisions. Clearly any disputed title (or property) that gets caught up in such a logjam is likely to be far less marketable while this state of affairs subsists. This could present financial and other challenges for the affected property owner(s), as well as any bank or lender holding title to the subject property as security.
- (iv) The liability and other issues surrounding the filing of title certificates at the LTRO still need to be properly discussed and **specifically addressed** in the Act, especially given the impact that wider title certificate disclosure will have on (inter-alia) existing insurance arrangements. The Act needs to make it clear that the filing of title certificates will not expose law firms to wider liability (over and above that which we already assume to our clients).
- (v) Having spoken to Shawn McKee (whom you will note I have copied) who chairs the land or boundary surveyors committee, I have been given to understand that the survey report requirements that are specified in the Act have yet to be discussed with them. Shawn also indicated that the surveyors are likely to have liability and insurance related concerns in respect of the filing of their reports and plans at the LTRO. Additionally, he stated that uniform surveying standards would need to be adopted by local surveyors in order for their survey reports (and plans) to be legitimately relied upon in the manner contemplated in the Act.
- (vi) Once again, the assumptions and reservations that are specified in section 3A(4)(b) and Schedule 10 to the Act, need to be properly discussed and agreed, especially taking into account the ruling in *Burch -v- Westend Properties Limited*. Further, the surveyors are likely to require their own menu of assumptions and reservations.
- (vii) Section 24 of the Act (as currently drafted) is (once again) unacceptable. We have proposed making title certificates available to the LTRO on a compulsory basis in circumstances where they would ordinarily be given to client purchasers and/or mortgagees (**only**). Both Section 24 and Schedule 3 to the Act should therefore, be amended accordingly. The prospect of a negative resolution procedure in this context is unacceptable.

It would be helpful if the above mentioned matters could be discussed during the meeting.

Regards,

Scott



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From: Reid, Debbie G.N. [mailto:dgnreid@gov.bm]
Sent: Friday, December 16, 2016 3:51 PM
To: Scott Swainson
Subject: FW: Land Title Registration Amendment Bill and Rules

Good Afternoon Scott

The Attorney General Chambers have made some slight amendments to the LTR Act and Rules which are now attached, Brian Eaton has also included an explanatory memorandum in the Act. Please can you Circulate the changes to the Land Title Registry Sub- Committee.

Please note that the Attorney General Chambers and I would welcome a meeting with the Sub- Committee to discuss the legislation prior to it being debated in February.

Kind regards

Debbie

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From: Eaton, Brian
Sent: Friday, December 16, 2016 3:34 PM
To: Reid, Debbie G.N.
Cc: Moniz, Trevor G.; Richardson, Francis; Balfour-Swain, Cathryn; Simmons, Myron E.
Subject: Land Title Registration Amendment Bill and Rules

Good afternoon Debbie,

The draft Bill and Rules are attached for review. As discussed, I've included a marked-up version of the Bill, showing the most recent changes, which will make the changes easy to follow, particularly for the conveyancing attorneys you sent the last draft to.

Regards,

Brian

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