

## **CHARGES (CO-OPERATIVE FINANCIAL INSTITUTIONS ACT OF 1976):**

In function, Deeds Registry "Charges" are very similar but more powerful than to bills of sale in that they may apply to land. They do have important distinctions, however. Under Guyanese law, charges are only available to institutions created under the "Cooperative Financial Institutions Act." These are specially privileged governmental institutions. In addition, 40(2) makes it clear that it can apply to "moveable or immovable property belonging to the borrower as the financial institution may approve..." Further, Article 47 lists criminal offenses for persons who divert monies borrowed (not simply a failure to pay) to purchase items other than those for which the funds were lent (ex. borrowing money to buy a home, and then buying a car with the same money). They must be advertised once in the Official Gazette and the Registrar must make due annotation of the charge on the Original Transport or in the Land Register in a registration area.

## **BUSINESS NAMES:**

Business names are recorded for individuals who wish to conduct business singly or together using a "business name." The individuals continue to be liable, and this form of business should not be confused with companies.

The process for recording a business name is as follows:

1. The applicant must purchase an approved form (on sale at local bookstores), costing about G\$10 to G\$20. The applicant then fills out the form.

2. The applicant brings the form to the Registry. If the applicant cannot fill out the form, registry staff often assist the applicant. Applications can include up to seven (7) individuals. All individuals included must sign the application.

3. Upon presentation of the application, the clerk will check the index to insure that the business name is not already taken. The applicant must then pay a tax of G\$25 (about US\$0.20) at the cashier, who then issues a receipt. The applicant is then told to return in three (3) weeks, to allow for processing.

4. The clerk proceeds to give the application a chronological control number. The application is then sent to the typist pool.

5. The typist will prepare a "Certificate of Registration." This is returned to the clerk.



6. The clerk verifies the information in the Certificate, comparing it with the application. If satisfied of the conformity, the clerk will forward the certificate to the Registrar, Deputy Registrar or Assistant Registrar for signing.

7. Once signed, the application is placed on file for the return of the applicant. The original application is kept at the office. The applicant receives the Certificate.

8. Applications are filed and indexed by the Business Name and by the control number. They are not indexed by the members' names.

A grave weakness of the Business Name Registry is its lack of relationship with the Companies Registry. Even if a company name is already in use, there is no cross check with the Business Name Registry. Consequently, given the current procedure employed at the Registry of Deeds, it is possible to inscribe as Business Name, a name already in use on the Companies Registry.

#### **COMPANIES (CHAPTER 89:01 OF THE LAWS OF GUYANA):**

The process for incorporation of a new company takes about three (3) weeks in practice. A major revision to the law was passed by Parliament in 1991, but has not yet come into force. Discouragingly, there are no indications that it is likely to in the near future. Consequently, the old law from Chapter 89:01 of the Laws of Guyana remains in force. That process is as follows:

1. A lawyer will draft all the documents needed to initiate the process. These will include a Memorandum of Association, Articles of Association, Notice of the Registered's Office (where the company will maintain its office), a Notice of Directors, a Notice of Secretary and a Declaration of Compliance.

2. At the Companies Registry, the applicant will pay a tax of 0.5% of the value of the stated share capital.

3. Upon application, the clerk will enter the particulars of the new company in the register, will assign a chronological control number and will index the application by company name.

4. The typist will then type up a certificate of incorporation.

5. The clerk verifies the work of the typist and, if satisfied, stamps the Certificate and sends it on to the Registrar for signing.

6. Once the Certificate is signed, it is issued to the Applicant.



### **TRADE UNION APPLICATIONS (UNDER THE TRADE UNIONS ACT):**

The registration of new trade unions is similar to other documents:

(1) The Trade Union Act provides a standard form for the application, and accompanying rules. Upon application, the clerk will compare the application form presented with the standard form. The applicant will present an original and at least one copy.

(2) If there is some problem in the form of the application, the clerk will return it to the applicant. Assuming it is in order, the applicant will pay a fee of G\$5, and the clerk will accept the document.

(3) The clerk will record the application in a Trade Union Register. The union will be assigned a number, and the application will be indexed alphabetically by the name of the union.

(4) The typing pool will type up a certificate, with the union application number, the name of the union and the date of application. This will then be signed by the Registrar or Deputy Registrar.

(5) The clerk returns the Certificate and a certified copy of the application and rules to the applicant.

(6) The clerk then files the original application and rules in numerical sequence in the Trade Union Registry.

All subsequent activities are also filed in the Registry. For example, each year the unions are required to file an audited financial report and membership list, prepared by the Auditor General. In practice, if this is not done for three or four years, the Registry of Deeds will mail a notice to the union requesting the information. If the union does not reply, the Registry will advertise in the Gazette that the union has not yet filed. If the union still does not file, its registration will be stricken from the Trade Union Registry.

There are very few applications for new trade unions, perhaps at most four or five a year.

### **NEWSPAPER BONDS:**

Very few of these applications are received by the Deeds Registry. They are used to guarantee compensation in the case of defamation by the press. They are recorded as follows:



(1) The applicant presents a bond (promise to pay), with sureties in the form of sworn affidavits from two guarantors.

(2) The clerk will check to ensure that the form of the bond is acceptable.

(3) If the bond is acceptable, the applicant must pay any fees, calculated as follows:

G\$50 Attestation or oath fee  
G\$20 Registration fee  
G\$100 Duty  
G\$10 for a copy of the bond.

(4) The application is recorded in the Registry of Miscellaneous Deeds, and numbered in sequential order with all other Miscellaneous Deeds.

(5) The Deeds Registry will prepare a copy of the bond, and deliver the copy duly certified to the applicant. The original will be kept for filing.

Miscellaneous Deeds are bound in volume form. There is no index to miscellaneous deeds. To find a particular document, the searcher must know the year filed and the sequential control number assigned to the document. The Registry of Miscellaneous Deeds begins renumbering after each year, unlike the Trade Union Registry, for example, which simply uses chronological, sequential numbering indefinitely.

#### **AUCTIONEERS REGISTRY:**

The Deeds Registry maintains a separate Auctioneers Registry of all licensed auctioneers. The Department of Inland Revenue issues the licenses, which are recorded at the Deeds Registry. There is no index at all for this registry, and in practice no fee is collected. The form of the Auctioneer Registry is similar to the Miscellaneous Deeds Registry.<sup>2</sup>

#### **AUCTIONEER'S RETURNS:**

At the end of an auction, the auctioneer is required to prepare a report of what was sold, the price and the date of sale. This report is filed in a separate Auctioneers' Returns

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<sup>2</sup> Interview of Steven Hendrix with Roger Morgan, Deeds Registry, Georgetown, June 17, 1994.



Registry. There is no index to this registry, and there is no fee for registration.<sup>3</sup>

#### **DEED OF GIFT:**

This is recorded in the Miscellaneous Deed Register, with the same process as a Newspaper Bond. The Deed of Gift may, however, be presented in a form already notarized by a private notary public. In this case, there would be no attestation fee.

Interestingly, the Deed of Gift does not pass title to land.

#### **SHIP'S PROTEST, ADMINISTRATION BONDS, SEPARATION DEEDS, AND WILLS**

These documents are no longer kept at the Deeds Registry. They are now considered part of the Supreme Court Registry.<sup>4</sup>

#### **DEED OF COVENANT:**

The deed of covenant utilizes the same procedure as the deed of gift. It is primarily used by individuals looking to make a contribution to a religious group or church. In short, it is a promise. Often, the deed of covenant is useful as one element of documentation in getting a tax deduction for charitable contributions.<sup>5</sup>

#### **TRUST DEED:**

The Trust Deed is recorded in the Miscellaneous Deeds Registry. It is used to record the trustees of a particular organization.<sup>6</sup>

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<sup>3</sup> Interview of Steven Hendrix with Roger Morgan, Deeds Registry, Georgetown, June 17, 1994.

<sup>4</sup> Interview by Steven Hendrix with Carolyn Ramroop, Deputy Registrar, June 17, 1994.

<sup>5</sup> Interview by Steven Hendrix with Carolyn Ramroop, Deputy Registrar, June 17, 1994.

<sup>6</sup> Interview by Steven Hendrix with Carolyn Ramroop, Deputy Registrar, June 17, 1994.



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This form of intellectual property is not recorded by the Deeds Registry.



**THE DEEDS REGISTRY AND TAXES ON LAND:**

By virtue of the Municipal and District Councils Act (Chapter 28:01 of the Laws of Guyana), all immovable property (land and buildings) and vacant land in a local government area is subject to a tax known as a general rate. In the City of Georgetown, a water rate is also collected by the municipality for payment to the Georgetown Sewage and Water Commissioners under the provisions of the Georgetown Sewerage and Water Act (Chapter 30:01 of the Laws of Guyana). Every title-holder to land is required to record that fact with the relevant municipality within one month of obtaining title.

There is also a property tax upon individuals under the Property Tax Act (Chapter 81:21 of the Laws of Guyana), managed by the Inland Revenue Department and paid over to the national treasury. For the purposes of this Act, land (immovable property) becomes taxable in the hands of individuals whose total net assets after certain basic allowances, exceeds G\$5 million at the end of every year.

Before the passing of a transport, lease or transfer of a lease at the Deeds Registry or a land registry transfer, the seller must present certificates from the Inland Revenue Department and the municipality respectively, that all annual income tax and municipal rates have been paid up to date.

On every transport, lease or transfer of lease under the Deeds Registry Act, and every transfer, lease and transfer of lease under the Land Registration Act, a duty of 2% is payable to the Inland Revenue Department, based on the sale price, or in the case of a gift, on the certified value of the land. The law provides for the submission of an affidavit by both seller and purchaser in a land transaction, proving the veracity of the stated sale price. The Registrar is empowered in cases of doubt, to demand a valuation by a neutral valuer, normally a Government Valuation Officer.



**PRIVATE FREEHOLD VS. LEASEHOLD OF PUBLIC LANDS  
AND THE ROLE OF THE LANDS AND SURVEYS DEPARTMENT**

Guyana has two basic land markets. One market consists of "freehold" estates. The other market involves the leasing of state-owned lands. The Guyanese Government owns about 90% of the national territory. However, with the population concentrated on the coast, this figure is very misleading. In the populated areas, roughly a half of farms are freehold estates. The remaining half is located on government-held property.

In the freehold market, a purchaser buys land outright from a seller. The transaction, called a "transport of property," is recorded at the Registry of Deeds. Transactions in the freehold market are very much like real estate transactions in developed countries for fee simple properties.

In contrast, the Lands and Surveys Office oversees transactions involving public lands. The office is under the direction of the Agriculture Ministry and was created in 1903. Under the State Lands Act, the executive is authorized to make absolute or provisional grants of any state lands. Alternatively, the President may authorize the lease of land. In either case, the executive can establish the terms and conditions of any such authorization, provided only that the terms do not contradict the Forest Act or other legislation. Similarly, the president may grant licenses to use land for agricultural or agro-forestry purposes.<sup>7</sup> Special legislation, the Mining Act, regulates mining.

Although not part of the property registry in Guyana, the Lands and Surveys Office is in a position to be a potential key player in any long-term efforts to improve titling and access to land.

State land can be given out in three forms: a license, a permit or a lease. The lands can also be sold, at which point they lose their character as state lands. Generally, leased land is found in the "first depth," that is the land closest to the sea defenses. The "second depth" lands, those located further inland, are generally given out as "licenses." The "third depth" land, further inland, is given out using a "permit." Although these three forms of tenure have historic differences, they are today equivalent. All function as leases.

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<sup>7</sup> Art 3, State Lands Act, Ch. 62:01.



To obtain land, every applicant must complete an application. This application includes name, address, acreage, a complete physical description of the land (survey) and the intended purpose of the land, plus a \$10 filing fee. The basic application includes personal data: salary history, work history, experience, and so on. Applications can be filed in Georgetown or in field offices. Field offices exist in Anna Regina (Region 2), Region 3, District of Mabaruma (along the border with Venezuela, along the coast), within Region 4 (Georgetown and other offices), Region 6, Region 7, Region 9 and Region 11.

Once the application is presented, the office creates a file on the request. A plan is attached to the file, and the file is assigned a unique, file application number. The office then studies the file to figure out if land is available. If land is available, there is a follow up inspection to insure no squatters are illegally occupying the land.

Every region has a "Land Selection Committee" which reviews applicants to insure that the applicant qualifies for land. The Committee will review the file and interview the candidate. Its judgment will be based in part on the applicant's ability to work the land, the needs of the individual and his family, and so on. From these facts, the Committee makes a recommendation to the Commissioner of Lands to grant or not grant a lease. This is a decentralized decision-making process.

Next, the main office in Georgetown reviews the application to insure the land has no other encumbrances upon it and is otherwise available to be distributed. This review is carried out by a member of the staff of the Commissioner of Lands. If all is in order, the Commission of Lands recommends to the Ministry of Agriculture to grant the lease. Assuming the Ministry of Agriculture approves the lease, the file returns to the Commissioner of Lands.

At this point, if there is no survey of the land, the Commissioner of Lands will issue a "temporary" lease. This will, in theory, allow the applicant additional time to have the survey work done. It is expected that once the survey is complete, the lease will become a final determination. During the "temporary" lease period, the applicant can pay the survey costs to the government, or the government can pay for the work immediately. In this case the applicant must repay the government.

In practice, however, many leases have remained "temporary." The applicants themselves do not have funds to pay for surveys. Until the new 1994 funding from the PL 480 Program, the government had no funds either. This caused indefinite delays in the system and meant that applicants received property without a physical description of the land. Consequently, the land is non-



transferable, non-mortgageable and unable to be subleased. This has caused many problems!

Perhaps even more grave is the problem of uncertain boundaries. Many disputes arise over time in the settlement of disputes because formal boundaries were never originally established. Conflict resolution consumes a great deal of staff time at the Lands and Surveys Office.

Within "land development schemes," land is surveyed before issuing leases. Areas of settlement not previously surveyed are those that present problems of boundaries and surveys. These are mainly in river areas. These river areas are very expensive to survey, as they entail expenses for boats, gasoline, engines, etc. And the heavy forest complicates the survey.

The "land development schemes" are found where the government owns the land by way of a grant or by a "transport" (purchase). Since the government owns the land, the Commissioner of Lands and Surveys holds the land on behalf of the government. And these lands are called "Government Lands." All other lands that were formerly called "Crown Lands" are now called "State Lands." This distinguishes "Government Land" from "State Land" at least from the legal perspective.

Lease terms are slightly different for "Government Lands" versus "State Lands." Government lands for whatever purposes are governed by the Deeds Registry Act and must accordingly be sold or leased under the transports system. The current practice is to lease state lands for twenty-five years.

State land leases by the President are not affected by the Deeds Registry Act.

The legislation authorizes the President to set lease terms and rates according to the executive's discretion. Order No. 60 of 1979 authorized the Minister of Agriculture to approve and fix rent for all state and government land. The term can be one year, or up to twenty or twenty-five years, as the case may be. Since then, rates have remained unchanged. Thus, lease terms depend on the application, what has been requested, what the Commissioner feels is justified, and so on. The present practice is one year, twenty years or twenty-five years. In other words, the lease term is discretionary and elastic, providing for the best term for all parties involved on a case-by-case basis.

Before the 1940's, the government used to issue "provisional grants" to land. When the land had been possessed and cultivated for five years, the government would convert the "provisional" grant to a definitive "absolute" freehold grant. Since the land was freehold, if the land was subsequently abandoned, the government did not have access to it. This was a major social



concern. In the 1940's, the Government policy was to give out ninety-nine year leases. This length of time was quite close to being the functional equivalent of a freehold title, but represented a slight withdrawal from "absolute" property rights. However problems with land abandonment continued and the government came under pressure to readdress the problem. Next, the government began shortening the terms, all the way down to one year leases. Now, most leases are back up to twenty-five years. Anyhow, renewals are nearly automatic if the farmer uses the land productively over time.

More specifically, from a legal perspective, persons with twenty-five year leases (on state lands) have a right to renewal, if the farmer has used the land. Those with twenty year leases (on government lands) do not have an automatic right to renewal because of the Deeds Registry Act. In practice, however, these are automatically renewed as well.

Public Lands: Recorded and Managed by the L&S Department.

Type of Land:	State	Government
Lease Period Maximum:	No maximum lease period. Right to lease renewal.	Maximum lease period of 20 years. No automatic right to renewal of lease.
Alienability:	Can be sold by the government	Cannot be sold by the government.

An index is used to record applications received by the office. In this "application registry," the following information is noted: the applicant's name, location of the plot solicited, the date, a receipt number and the signature of the registry supervisor receiving the application file. A second index is used at the time a lease is issued. Information in this index includes eleven columns of data: file application number; lease number; date of issue; holder's name; number of acres involved; locality of the lease; county; terms of the lease in number of years; expiry date of the lease; annual rental payable; and a listing of actual rental payments.

To locate a property within the system, users of the system must know the lot number, the lease number or must find the property on a map. There is no index by owner, land use, or any other variable.

Any modernization of the Deeds Registry should probably be coordinated with a similar effort to computerize the lease ownership documentation of the Lands and Surveys Department.



Annex G

**PERSONS CONSULTED IN THE COURSE OF INVESTIGATION**

Charles Greenwood, Horacio Jarquín, Juan Carlos Martínez, Hugo Villaroel, Morris Whittaker, Tim Greenhow, Kevin Barthel and Hugo Cohan of the Inter-American Development Bank

William Cox, Commissioner, Stanford County (VA) Planning Commission.

Kumar Datadin, Commissioner of Lands and Surveys, and R. Jagernauth, former Commissioner of Lands and Surveys and current consultant to the Department.

Ian Stewart (via telephone), Linda Brown, David Grey, ODA, British High Commission in Guyana.

Tom Whitney, AID, PL 480 Program in Guyana.

Neville Bhulai, Attorney at Law, former Deputy Registrar of Deeds.

Leon Stewart (Registrar), Carolyn Ramroop (Deputy Registrar), Joe Lynch, Volume Binder and Roger Morgan, Notarial Officer, Deeds Registry; and Floretta Hamilton (Supervisor) and Gloria Bowrey (Assistant Supervisor) of the Sub-Registry of Deeds at New Amsterdam.

Berkley Stewart, Department Head of Sociology, University of Guyana, former Deeds Registry Staff.

Sarah Purnell and Nigel Durrant, Ministry of Agriculture

Donna Simon, CCS (Guyana) Ltd. (via telephone).

Vibert de Souza, Minister of Amer-Indian Affairs.

Navin Chandarpal, Special Advisor to the President on Science, Technology, Energy, Natural Resources and the Environment, Office of the President

Clarence Profitt, Permanent Secretary, Ministry of Legal Affairs



M E M O R A N D U M

TO: STEVEN HENDRIX  
FROM: LEON ROCKCLIFFE  
DATE: 14th June, 1994  
SUBJECT: Fees - Deeds Registry/Land Registry

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The annotated photocopies from the Laws of Guyana, Caps. 5:01 and 5:02 resp. show the fees as they are today.

They were first amended in relation to the Deeds Registry after more than forty years and in respect of the Land Registry, since its institution in 1960. The amendments appeared in the Official Gazette of 16th July, 1992 (Deeds Registry) and 28th July, 1992 (Land Registry) and were themselves duly amended by Regulations published in the Official Gazette of 15th May, 1993. The amendments of 1993 affected only the fees payable on Transports, Mortgages and Long-term Leases (Deeds Registry) and on Transfers and Mortgages (Land Registry). See copy of letter dated 29th December, 1992 which gave rise to this.

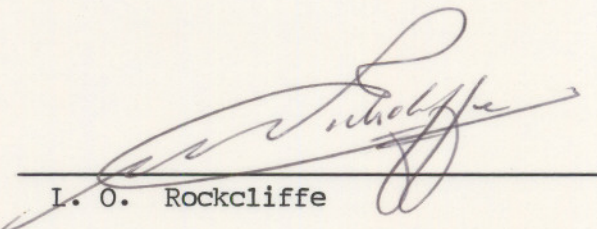
It is my view that the regime of fees charged by the Registrar in respect of other-than-land transactions ought to be re-visited to ensure that no activity on the part of a Registry officer/clerk earns a fee less than \$50 and that information from searches of the records attracts a fee more in line with its current and prospective value.

The above does not address the fees chargeable in respect of the two other significant areas of economic



implication namely companies Incorporation/registration and Trade Marks, Patents and Designs. Companies fees were not amended in 1992 or at any time in recent years and are in dire need of review. Trade Marks/Patents Fees were amended in 1992 but are still, in my view, abysmally low. Having regard to the significance of records relating to intellectual property both to the government and the commercial user. the latter must be prepared to pay a fee more in keeping with the cost of providing that service and its value to the user. These two categories will be dealt with separately. Copies of the current fees structure also attached, would illustrate the scope and need for urgent revision.;

NB A new Companies Act was passed by Parliament since 1991 but is not yet in force and there are no indications that this is likely to be so in the near future.; I accordingly propose treating with the old Companies Act, Cap. 89:01 of the Laws of Guyana until future notice.

  
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L. O. Rockcliffe