



BERMUDA

LAND TITLE REGISTRATION (ADJUDICATION) RULES 2018

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The Minister responsible for land title registration, in exercise of the powers conferred by section 123 of the Land Title Registration Act 2011, and all other powers in the Act enabling him to do so, makes the following Rules:

PART 1

INTRODUCTION

Citation

1 These Rules may be cited as the Land Title Registration (Adjudication) Rules 2018.

Interpretation

- 2 (1) In these Rules, unless the context otherwise requires—
- “the Act” means the Land Title Registration Act 2011;
 - “adjudicator” has the meaning given in section 93(3) of the Act;
 - “applicant” means the party whom the adjudicator designates as such under rule 5 or under rule 20;
 - “attorney” has the meaning given in section 3(1) of the Act;
 - “authorized representative” in respect of a party to proceedings, means the party’s attorney or such other person as the party duly authorizes in writing to act on his behalf;
 - “business day” has the meaning given in rule 2(1) of the Land Title Registration Rules 2018;
 - “hearing” means a sitting of the adjudicator for the purpose of enabling the adjudicator to reach or announce a substantive decision, but does not include a sitting of the adjudicator solely in the exercise of one or more of the following powers—
 - (a) to consider an application, representation or objection made in the interim part of the proceedings;
 - (b) to reach a substantive decision without an oral hearing; or

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(c) to consider whether to grant permission to appeal a decision or to stay the implementation of a decision pending the outcome of an appeal;

“LTRO” means the Land Title Registry Office established under section 4(1) of the Act;

“matter” means the subject of a reference;

“official copy” means an official copy of a document held or issued by a public authority;

“original application” means the application originally made to the registrar that resulted in a reference;

“proceedings” means, except in the expression “court proceedings”, the proceedings of the matter before the adjudicator but does not include any negotiations, communications or proceedings that occurred prior to the reference;

“record of matters” means a record of references and certain other applications and decisions, kept in accordance with these Rules and in particular in accordance with rule 42;

“reference” means a reference from the registrar to the adjudicator appointed under section 93(4) of the Act for determination of the matter by the adjudicator;

“respondent” means the party or parties whom the adjudicator designates as such under rule 5 or rule 20;

“substantive decision” means a decision of the adjudicator on the matter or on any substantive issue that arises in it but does not include any direction in interim parts of the proceedings or any order as to costs or any order as to costs thrown away;

“substantive order” means an order or direction that records and gives effect to a substantive decision;

“witness statement” means a written statement signed by a witness containing the evidence that the witness intends to give.

(2) In these Rules, a person has a document or other material in his possession or control if—

- (a) it is in his physical possession;
- (b) he has a right to possession of it; or
- (c) he has a right to inspect or take copies of it.

Overriding objective

3 (1) The overriding objective of these Rules is to enable the adjudicator to deal with matters justly.

(2) Dealing with a matter justly includes, so far as is practicable—

- (a) ensuring that the parties are on an equal footing;

- (b) saving expense;
 - (c) dealing with the matter in ways that are proportionate—
 - (i) to the value of the land or other interests involved;
 - (ii) to the importance of the matter;
 - (iii) to the complexity of the issues in the matter;
 - (iv) to the financial position of each party; and
 - (d) ensuring that the matter is dealt with expeditiously and fairly.
- (3) The adjudicator must seek to give effect to the overriding objective when he—
- (a) exercises any power given to him by these Rules; or
 - (b) interprets these Rules.
- (4) The parties are required to help the adjudicator to further the overriding objective.

PART 2

REFERENCES TO THE ADJUDICATOR

Scope of this Part

4 The rules in this Part apply to references.

Notice of receipt by adjudicator of a reference

- 5 Following receipt by the adjudicator of a reference, the adjudicator must—
- (a) enter the particulars of the reference in the record of matters; and
 - (b) serve on the parties notice in writing of—
 - (i) the fact that the reference has been received by the adjudicator;
 - (ii) the date when the adjudicator received the reference;
 - (iii) the matter number allocated to the reference;
 - (iv) the name and any known address and address for service of each of the parties to the proceedings; and
 - (v) which party will be the applicant for the purposes of the proceedings and which party or parties will be the respondent.

Directions to commence court proceedings under section 95

6 Where the adjudicator intends to direct a party to commence court proceedings under section 95 of the Act, the parties may make representations or objections but any representations or objections must be concerned with one or more of the following—

- (a) whether the adjudicator should make such a direction;
- (b) which party should be directed to commence court proceedings;
- (c) the time within which court proceedings should commence; and
- (d) the questions the court should determine.

Notification to the adjudicator of court proceedings following a direction to commence court proceedings under section 95

7 (1) In this Part—

“the date that the matter before the court is finally disposed of” means the earliest date by which the court proceedings relating to the matter or on the relevant part (including any court proceedings on or in consequence of an appeal) have been determined and any time for appealing or further appealing has expired;

“the final court order” means the order made by the court that records the court’s final determination (on appeal or otherwise);

“the relevant part” means the part of the matter in relation to which the adjudicator has directed a party under section 95 of the Act to commence court proceedings.

(2) A party who has been directed to commence court proceedings under section 95 of the Act must serve on the adjudicator—

- (a) within 14 days of the commencement of the court proceedings, a written notice stating—
 - (i) that court proceedings have been issued in accordance with directions given by the adjudicator;
 - (ii) the date of issue of the court proceedings;
 - (iii) the names and any known addresses of the parties to the court proceedings;
 - (iv) the name of the court at which the court proceedings will be heard; and
 - (v) the case number allocated to the court proceedings;
- (b) within 14 days of the date of the court’s decision on any application for an extension of time, a copy of that decision; and
- (c) within 14 days of the date that the matter before the court is finally disposed of, a copy of the final court order.

Adjournment of proceedings before the adjudicator following a direction to commence court proceedings on the whole of the matter under section 95

8 (1) This rule applies where the adjudicator has directed a party under section 95 of the Act to commence court proceedings for the court’s decision on the whole of the matter.

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(2) Once he has received notice under rule 7(2)(a) that court proceedings have been issued, the adjudicator must adjourn all of the proceedings before him pending the outcome of the court proceedings.

(3) Once he has received a copy of the final court order and unless the court directs otherwise, the adjudicator must close the proceedings before him without making a substantive decision.

Adjournment of proceedings before the adjudicator following a direction to commence court proceedings on part of the matter under section 95

9 (1) This rule applies where the adjudicator has directed a party under section 95 of the Act to commence court proceedings for the court's decision on the relevant part.

(2) Once he has received notice under rule 7(2)(a) that court proceedings have been issued in relation to the relevant part, the adjudicator—

- (a) must adjourn the proceedings before him in relation to the relevant part, pending the outcome of the court proceedings; and
- (b) unless the court directs otherwise, must not make a substantive decision on the relevant part.

(3) Once he has received a copy of the final court order on the relevant part and unless the court directs otherwise, the adjudicator must close the proceedings before him in relation to the relevant part without making a substantive decision on that relevant part.

(4) The adjudicator may adjourn the proceedings in relation to any other part of the matter before him pending the outcome of the court proceedings.

(5) While the court proceedings are still ongoing, the party directed to commence court proceedings must notify the court of any substantive decision made by the adjudicator within 14 days of service on that party of the substantive decision.

Notification where court proceedings are commenced otherwise than following a direction to commence court proceedings under section 95

10 Where a party commences or has commenced court proceedings otherwise than following a direction under section 95 of the Act and those court proceedings concern or relate to the matter before the adjudicator, that party must serve—

- (a) on the adjudicator within 14 days of the commencement of the court proceedings or, if later, within seven days of service on that party of notification of the reference under rule 5(b), a written notice stating—
 - (i) that court proceedings have been issued;
 - (ii) the way and the extent to which the court proceedings concern or relate to the matter before the adjudicator;
 - (iii) the date of issue of the court proceedings;
 - (iv) the names and any known addresses of the parties to the court proceedings;

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- (v) the name of the court at which the court proceedings will be heard; and
- (vi) the case number allocated to the court proceedings;
- (b) on the adjudicator within 14 days of the date that the matter before the court is finally disposed of, a copy of the final court order; and
- (c) on the court within 14 days of service on that party of such a decision, a copy of any substantive decision made by the adjudicator on the matter.

Adjournment of proceedings before the adjudicator where court proceedings are commenced otherwise than following a direction to commence court proceedings under section 95

11 Where court proceedings are commenced otherwise than following a direction to commence court proceedings under section 95 of the Act, the adjudicator may adjourn the whole or part of the proceedings before him pending the outcome of the court proceedings.

Applicant's statement of case and documents

12 Unless otherwise directed by the adjudicator, the applicant must serve on the adjudicator and each of the other parties within 28 days of service of the notification of the reference under rule 5(b)—

- (a) his statement of case which must be in accordance with rule 14; and
- (b) a copy of all of the documents listed in the list of documents contained in his statement of case in accordance with rule 43.

Respondent's statement of case and documents

13 The respondent must serve on the adjudicator and each of the other parties within 28 days of service of the applicant's statement of case—

- (a) his statement of case, which must be in accordance with rule 14; and
- (b) a copy of all of the documents listed in the list of documents contained in his statement of case in accordance with rule 43.

Statement of case

14 (1) Where under these Rules a party is required to provide a statement of case, that statement of case must be in writing and must include—

- (a) the name of the party and confirmation of the party's address for service;
- (b) the party's reasons for supporting or objecting to the original application;
- (c) the facts on which the party intends to rely in the proceedings;
- (d) a list of documents in accordance with rule 43 on which the party intends to rely in the proceedings; and
- (e) a list of witnesses that the party intends to call to give evidence in support of the party's case.

(2) If in relation to part only of the matter—

- (a) a party has been directed to commence or has commenced court proceedings; or
- (b) the adjudicator has adjourned proceedings before him,

the adjudicator may direct that the statement of case should contain the information specified in paragraphs (1)(b) to (1)(e) inclusive only in relation to the part of the matter that is not before the court for the court's decision or has not been adjourned before the adjudicator.

PART 3

PREPARATION FOR DETERMINATION OF REFERENCES

Scope of this Part

15 This Part sets out the procedure for the preparation for the determination of references.

Directions

16 The adjudicator may at any time, on the application of a party or otherwise, give directions, including (but not limited to) such as are provided for in these Rules, to enable the parties to prepare for the hearing or to assist the adjudicator to conduct the proceedings or to determine the whole or part of the matter or any question of dispute in the proceedings without a hearing.

Form of directions

17 (1) Any direction made by the adjudicator must be—

- (a) in writing;
- (b) dated; and
- (c) except in the case of requirement notices under rule 24, served by him on—
 - (i) every party to the proceedings;
 - (ii) where the person who made the application, representation or objection that resulted in the direction was not a party, that person; and
 - (iii) where the direction requires the registrar to take action, the registrar.

(2) Directions containing a requirement must include a statement of the possible consequences of failure to comply with the requirement within any time limit specified by these Rules, or imposed by the adjudicator.

(3) Directions requiring a party to provide or produce a document or any other material may require the party to provide or produce it to the adjudicator or to another party or both.

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Consolidating proceedings

18 Where a reference is related to another reference and in the opinion of the adjudicator it is appropriate or practicable to do so, the adjudicator may direct that any or all of those related references be dealt with together.

Intention to appear

19 The adjudicator may give directions requiring a party to state whether that party intends to—

- (a) attend or be represented at the hearing; and
- (b) call witnesses.

Addition and substitution of parties

20 (1) The adjudicator may give one or more of the following directions—

- (a) that any person be added as a new party to the proceedings, if it appears to the adjudicator desirable for that person to be made a party;
- (b) that any person cease to be a party to the proceedings, if it appears to the adjudicator that it is not desirable for that person to remain a party; and
- (c) that a new party be substituted for an existing party, if—
 - (i) the existing party's interest or liability has passed to the new party; and
 - (ii) it appears to the adjudicator desirable to do this to enable him to resolve the whole or part of the matter or any question of dispute in the proceedings.

(2) If the adjudicator directs that a new party is to be added to the proceedings, the adjudicator must specify—

- (a) whether the new party is added as an applicant or a respondent; and
- (b) how the new party is to be referred to.

(3) Each new party must be given a single identification that should be in accordance with the order in which they joined the proceedings, for example "second applicant" or "second respondent".

(4) If the adjudicator directs that a new party is to be substituted for an existing party, the adjudicator must specify which party the new party is to substitute, for example "respondent" or "second applicant".

(5) The adjudicator must serve on each new party a copy of each of the following—

- (a) the applicant's statement of case and copy documents served on the adjudicator under rule 12; and
- (b) the respondent's statement of case and copy documents served on the adjudicator under rule 13.

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(6) If the new party is added to or substituted for parties to proceedings on a reference, the new party must serve on the adjudicator and each of the other parties within 28 days of service on him of the documents specified in paragraph (5)—

- (a) his statement of case, which must be in accordance with rule 14; and
- (b) copies of documents contained in his list of documents, which must be in accordance with rule 43.

(7) If a continuing party wishes to respond to the documents specified in paragraph (6), he may apply to the adjudicator for leave to do so.

(8) If the adjudicator grants the requested leave to respond, the adjudicator must require the party requesting leave to respond to serve a copy of his response on the adjudicator and all other parties.

(9) Following the addition or substitution of parties and if it is necessary to do so, the adjudicator may give consequential directions, including for—

- (a) the preparation and updating of a list of parties;
- (b) the delivery and service of documents; and
- (c) the waiver of the requirement to supply copies of documents listed in the new party's list of documents where copies have already been served on the adjudicator in the course of the proceedings.

Further information, supplementary statements and further responses to statements of case

21 The adjudicator may give directions requiring a party to provide one or more of the following—

- (a) a statement of the facts in dispute or issues to be decided;
- (b) a statement of the facts on which that party intends to rely and the allegations he intends to make;
- (c) a summary of the arguments on which that party intends to rely; and
- (d) such further information, responses to statements of case or supplementary statements as may reasonably be required for the determination of the whole or part of the matter or any question in dispute in the proceedings.

Witness statements

22 The adjudicator may give directions requiring a party to provide a witness statement made by any witness on whose evidence that party intends to rely in the proceedings.

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Disclosure and inspection of documents

23 (1) Any document or other material supplied to the adjudicator or to a party under this rule or under rule 24 may only be used for the purposes of the proceedings in which it was disclosed.

(2) The adjudicator may give directions requiring a party who has a document or other material in his possession or control—

- (a) to deliver to the adjudicator the original or a copy of that document or other material and, if the adjudicator thinks necessary, to supply copies of that document or material to another party; or
- (b) to permit another party to inspect and take copies of that document or other material and specifying the time and place for disclosure and inspection of that document or other material.

Requirement notices

24 (1) The adjudicator may, at any time, require the attendance of any person to give evidence or to produce any document or other material specified by the adjudicator which is in that person's possession or control.

(2) The adjudicator must make any such requirement in a requirement notice.

(3) The requirement notice must be in the form specified by the adjudicator provided that the requirement notice—

- (a) is in writing;
- (b) identifies the person who must comply with the requirement;
- (c) identifies the matter to which the requirement relates;
- (d) states the nature of the requirement being imposed by the adjudicator;
- (e) specifies the time and place at which the adjudicator requires the person to attend and, if appropriate, produce any document or other material; and
- (f) includes a statement of the possible consequences of failure to comply with the requirement notice.

(4) The party on whose behalf it is issued must serve the requirement notice.

(5) Subject to paragraph (6), a requirement notice will be binding only if, not less than seven business days before the time that the person is required to attend—

- (a) the requirement notice is served on that person; and
- (b) except in the case where that person is a party to the proceedings, the necessary expenses of his attendance are offered and (unless he has refused the offer of payment of his expenses) paid to him.

(6) At any time before the time that the person is required to attend, that person and the party on whose behalf the requirement notice is issued may substitute a shorter period for the period of seven business days specified in paragraph (5) by—

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- (a) agreeing in writing such shorter period; and
- (b) before the time that the person is required to attend, serving a copy of that agreement on the adjudicator.

(7) Where a requirement has been imposed on a person under paragraph (1), that person may apply to the adjudicator for the requirement to be varied or set aside.

(8) Any application made under paragraph (7) must be made to the adjudicator before the time when the person is to comply with the requirement to which the application under paragraph (7) relates.

Estimate of length of hearing

25 The adjudicator may require the parties to provide an estimate of the length of the hearing.

Site inspections

26 (1) In this rule—

“the appropriate party” is the party who is in occupation or has ownership or control of the property;

“the property” is the land or premises that the adjudicator wishes to inspect for the purposes of determining the whole or part of the matter;

“a request for entry” is a written request from the adjudicator to the appropriate party, requesting permission for the adjudicator to enter onto and inspect the property and such a request may include a request to be accompanied by one or more of—

- (a) another party; and
- (b) such other advisors or individuals as the adjudicator considers necessary or appropriate.

(2) The adjudicator, at any time for the purpose of determining the whole or part of the matter, may serve a request for entry on an appropriate party.

(3) The request for entry must specify a time for the entry that, unless otherwise agreed in writing by the appropriate party, must be not earlier than seven days after the date of service of the request for entry.

(4) The adjudicator must serve a copy of the request for entry on any party (other than the appropriate party) and, if reasonably practicable to do so in the circumstances, must notify any such party of any change in the time specified.

(5) If the adjudicator makes a request for entry and the appropriate party withholds or refuses his consent to the whole or part of the request without reasonable excuse, the adjudicator may take such refusal into account when making his substantive decision.

Preliminary issues

27 (1) At any time and on the application of a party or of his own motion, the adjudicator may dispose of any matter or matters that are in dispute as a preliminary issue.

(2) If in the opinion of the adjudicator the decision on the preliminary issue will dispose of the whole of the matter, then the decision on the preliminary issue must be—

- (a) made in accordance with the provisions in these Rules on substantive decisions; and
- (b) treated as a substantive decision.

PART 4

HEARINGS AND SUBSTANTIVE DECISIONS

Scope of this Part

28 This Part sets out the procedure for determination of references, the format of substantive decisions and substantive orders and rules on costs.

Summary disposal

29 (1) The adjudicator may summarily dispose of the proceedings or any particular issue in the proceedings on an application by a party or of his own motion if—

- (a) the adjudicator considers that the applicant or respondent has no real prospect of succeeding in the proceedings or on the issue; and
- (b) there is no other compelling reason why the proceedings or issue should not be disposed of summarily.

(2) Except with the permission of the adjudicator, an applicant may not apply for summary disposal until the respondent has served a statement of case or lodged an objection (as appropriate), or the respondent's time to do so has expired.

(3) A respondent may apply for summary disposal at any time after the applicant has served a statement of case, or the applicant's time to do so has expired.

(4) Paragraph (5) applies where—

- (a) a respondent applies for summary disposal before serving a statement of case or lodging an objection (as appropriate) and before the time to do so has expired; and
- (b) that application does not result in the disposal of the entire proceedings.

(5) In the circumstances described in paragraph (4), the respondent's time for serving a statement of case or lodging an objection is extended to—

- (a) 28 days after service on the respondent of the adjudicator's decision in relation to the application for summary disposal; or
- (b) such other time as the adjudicator directs.

(6) An application for summary disposal must include a witness statement in support of the application, and that witness statement must state that the party making the application—

- (a) believes that the other party has no real prospect of succeeding on the proceedings or on the issue to which the application relates; and
- (b) knows of no other reason why the proceedings or issue should not be disposed of summarily.

(7) When serving a notice under rule 47(5) or (7), or directing the party making the application to serve a notice under rule 47(5), and such notice relates in whole or in part to summary disposal, the adjudicator must give directions for the service of evidence by the parties and for the determination of the issue of summary disposal.

(8) When the adjudicator determines the issue of summary disposal, the adjudicator may make an order—

- (a) disposing of the proceedings or of any issue; or
- (b) dismissing the application for or intention to consider summary disposal.

(9) Where an order made under paragraph (8) does not dispose of the entire proceedings, the adjudicator must give case management directions as to the future conduct of the proceedings.

Substantive decision without hearing

30 (1) There is a presumption that a substantive decision is made following a hearing.

(2) Subject to paragraph (1), the adjudicator may make a substantive decision without a hearing if—

- (a) he is satisfied that there is no important public interest consideration that requires a hearing in public; and
- (b) unless paragraph (3) applies, he has served written notice on the parties in accordance with these Rules that he intends to make a substantive decision without a hearing or that he has received an application requesting that the substantive decision be made without a hearing and—
 - (i) the parties agree to the substantive decision being made without a hearing; or
 - (ii) the parties fail to object within the specified period for objection to the substantive decision being made without a hearing.

(3) The adjudicator is not required to serve notice under paragraph (2)(b) if all parties have requested the adjudicator to make the substantive decision without a hearing.

Notice of hearing

31 (1) Where the adjudicator is to hold a hearing, he must serve written notice of his intention to hear on such parties as he considers necessary.

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(2) The adjudicator must specify, in the notice under paragraph (1), the date, time and location of the hearing.

(3) The adjudicator must serve the notice under paragraph (1)—

- (a) no later than 28 days before the hearing; or
- (b) before the expiry of such shorter notice period as agreed by all the parties on whom he intends to serve notice under paragraph (1).

Representation at the hearing

32 (1) At the hearing, a party may conduct his case himself or, subject to paragraph (2), be represented or assisted by any person, whether or not legally qualified.

(2) If, in any particular case, the adjudicator is satisfied that there is sufficient reason for doing so, he may refuse to permit a particular person to represent or assist a party at the hearing.

Publication of hearings

33 The adjudicator must publish details of all listed hearings at the office of the adjudicator and, if different, the venue at which the hearing is to take place.

Absence of parties

34 (1) If any party does not attend and is not represented at any hearing of which notice has been served on him in accordance with these Rules, the adjudicator—

- (a) may proceed with the hearing and reach a substantive decision in that party's absence if—
 - (i) the adjudicator is not satisfied that any reasons given for the absence are justified;
 - (ii) the absent party consents; or
 - (iii) it would be unjust to adjourn the hearing; or
- (b) must otherwise adjourn the hearing.

(2) Following a decision by the adjudicator under paragraph (1) to proceed with or adjourn the hearing, the adjudicator may make such consequential directions as he sees fit.

Substantive decision of the adjudicator

35 (1) Where there is a hearing, the substantive decision of the adjudicator may be given orally at the end of the hearing or reserved.

(2) A substantive decision of the adjudicator, whether made at a hearing or without a hearing, must be recorded in a substantive order.

(3) The adjudicator may not vary or set aside a substantive decision.

Substantive orders and written reasons

- 36 (1) A substantive order must—
- (a) be in writing;
 - (b) be dated;
 - (c) be signed by the adjudicator;
 - (d) state the substantive decision that has been reached;
 - (e) state any steps that must be taken to give effect to that substantive decision; and
 - (f) state the possible consequences of a party's failure to comply with the substantive order within any specified time limits.
- (2) The substantive order must be served by the adjudicator on—
- (a) every party to the proceedings; and
 - (b) where the substantive order requires the registrar to take action, the registrar.
- (3) A substantive order requiring a party to provide or produce a document or any other material may require the party to provide or produce it to any or all of the adjudicator, the registrar or another party.
- (4) Unless the adjudicator directs otherwise, the substantive order must be publicly available.
- (5) Where the substantive order is publicly available, the adjudicator may provide copies of it to the public on request.
- (6) The adjudicator must give in writing to all parties his reasons for—
- (a) his substantive decision; and
 - (b) any steps that must be taken to give effect to that substantive decision.
- (7) The adjudicator's reasons referred to in paragraph (6) need not be given in the substantive order.

Substantive orders on a reference that include requirements on the registrar

- 37 (1) Where the adjudicator has made a substantive decision on a reference, the substantive order giving effect to that substantive decision may include a requirement on the registrar to—
- (a) give effect to the original application in whole or in part as if the objection to that original application had not been made; or
 - (b) cancel the original application in whole or in part.
- (2) A requirement on the registrar under this rule may include—

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- (a) a condition that a specified entry be made on the register of any title affected; or
- (b) a requirement to reject any future application of a specified kind by a named party to the proceedings—
 - (i) unconditionally; or
 - (ii) unless that party satisfies specified conditions.

Costs

- 38 (1) In this rule—
- (a) “all the circumstances” are all the circumstances of the proceedings and include—
 - (i) the conduct of the parties during (but not prior to) the proceedings;
 - (ii) whether a party has succeeded on part of his case, even if he has not been wholly successful; and
 - (iii) any representations made to the adjudicator by the parties; and
 - (b) the conduct of the parties during the proceedings includes—
 - (i) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
 - (ii) the manner in which a party has pursued or defended his case or a particular allegation or issue; and
 - (iii) whether a party who has succeeded in his case in whole or in part exaggerated his case.
- (2) The adjudicator may, on the application of a party or of his own motion, make an order as to costs.
- (3) In deciding what order as to costs (if any) to make, the adjudicator must have regard to all the circumstances.
- (4) An order as to costs may—
- (a) require a party to pay the whole or such part of the costs of another party and—
 - (i) specify a fixed sum or proportion to be paid; or
 - (ii) specify that the costs are to be assessed by the adjudicator if not agreed; and
 - (b) specify the time within which the costs are to be paid.
- (5) An order as to costs must be recorded in a costs order.
- (6) A costs order must—

- (a) be in writing;
- (b) be dated;
- (c) be signed by the adjudicator;
- (d) state the order as to costs; and
- (e) be served by the adjudicator on the parties.

(7) Where the costs are to be assessed by the adjudicator, he may assess the costs—

- (a) on the standard basis; or
- (b) on the indemnity basis,

but in either case the adjudicator will not allow costs that have been unreasonably incurred or are unreasonable in amount.

(8) The adjudicator must inform the parties of the basis on which he will be assessing the costs.

(9) Where the amount of the costs is to be assessed on the standard basis, the adjudicator must—

- (a) only allow costs which are proportionate to the matters in issue; and
- (b) resolve any doubt that he may have as to whether costs were reasonably incurred or reasonable and proportionate in favour of the paying party.

(10) In deciding whether costs assessed on the standard basis were either proportionately and reasonably incurred or proportionate and reasonable in amount, the adjudicator must have regard to all the circumstances.

(11) Where the amount of the costs are to be assessed on the indemnity basis, the adjudicator must resolve any doubt that he may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the paying party.

(12) In deciding whether costs assessed on the indemnity basis were either reasonably incurred or reasonable in amount, the adjudicator must have regard to all the circumstances.

(13) Once the adjudicator has assessed the costs, he must serve on the parties written notice—

- (a) of the amount which must be paid;
- (b) by whom and to whom the amount must be paid; and
- (c) if appropriate, the time by when the amount must be paid.

Costs thrown away

39 (1) In this rule—

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“costs thrown away” means costs of the proceedings resulting from any neglect or delay of the attorney during (but not prior to) the proceedings and which—

- (a) have been incurred by a party; or
- (b) have been—
 - (i) paid by a party to another party; or
 - (ii) awarded to a party,under an order made under rule 38;

“an order as to costs thrown away” means an order requiring the attorney concerned to meet the whole or part of the costs thrown away;

“the attorney” means the attorney of a party.

(2) The adjudicator may, on the application of a party or otherwise, make an order as to costs thrown away provided the adjudicator is satisfied that—

- (a) a party has incurred costs of the proceedings unnecessarily as a result of the neglect or delay of the attorney; and
- (b) it is just in all the circumstances for the attorney to compensate the party who has incurred or paid the costs thrown away, for the whole or part of those costs.

(3) If the adjudicator has received an application for or proposes to make an order as to costs thrown away, he may give directions to the parties and the attorney about the procedure to be followed to ensure that the issues are dealt with in a way that is fair and as simple and summary as the circumstances permit.

(4) An order as to costs thrown away may—

- (a) specify the amount of costs to be paid by the attorney; and
- (b) if the adjudicator considers it appropriate, specify the time within which the costs are to be paid.

(5) An order as to costs thrown away must be recorded in a costs thrown away order.

(6) A costs thrown away order must—

- (a) be in writing;
- (b) be dated;
- (c) be signed by the adjudicator;
- (d) state the order as to costs thrown away; and
- (e) be served by the adjudicator on the parties and the attorney.

PART 5
APPEALS FROM ADJUDICATOR

Scope of this Part

40 This Part contains provisions in relation to appeals to the Supreme Court of decisions by the adjudicator and includes provisions about the adjudicator staying implementation of his decision pending the outcome of an appeal.

Appeals to Supreme Court

41 (1) Where a party is granted permission to appeal, the adjudicator may, of his own motion or on the application of a party, stay the implementation of the whole or part of his decision pending the outcome of the appeal.

(2) A party who wishes to apply to the adjudicator to stay the implementation of the whole or part of a decision pending the outcome of the appeal must make such an application to the adjudicator at the same time that he applies to the adjudicator for permission to appeal.

(3) Where a party applies under paragraph (2) to the adjudicator to stay implementation of the whole or part of a decision, that party must at the same time provide reasons for the application.

(4) Before reaching a decision as to whether to grant permission to appeal a decision or to stay implementation of a decision, the adjudicator must allow the parties the opportunity to make representations or objections.

(5) The adjudicator must serve written notice on the parties of any decision that he makes as to whether to grant permission to appeal or to stay the implementation of the whole or part of his decision pending the outcome of the appeal.

(6) Where the adjudicator's decision to grant permission to appeal or to stay implementation of a decision relates to a decision contained in a substantive order, the adjudicator must serve on the registrar a copy of the notice under paragraph (5).

(7) The notice under paragraph (5) must—

- (a) be in writing;
- (b) be dated;
- (c) specify the decision made by the adjudicator;
- (d) include the adjudicator's reasons for his decision; and
- (e) be signed by the adjudicator.

PART 6
GENERAL

Record of matters

42 (1) The adjudicator must keep at the LTRO a record of matters that records the particulars of all—

- (a) references;
- (b) substantive decisions; and
- (c) applications and decisions made under rule 41.

(2) Subject to paragraph (3), the record of matters must be open to the inspection of any person without charge at all reasonable hours on business days.

(3) Where the adjudicator is satisfied that it is just and reasonable to do so, the adjudicator may exclude from inspection any information contained in the record of matters.

(4) Depending on all the circumstances, it may be just and reasonable for the adjudicator to exclude from inspection any information contained in the record of matters if it is in the interest of morals, public order, national security, minors or the protection of the private lives of the parties to the proceedings, or where the adjudicator considers that publicity would prejudice the interests of justice.

Documents and list of documents

43 (1) For the purposes of these Rules, a list of documents must be in writing and must contain the following information where available in relation to each document—

- (a) a brief description of the nature of the document;
- (b) whether the document is in the possession or control of the party;
- (c) whether the document is an original, a copy certified to be a true copy of the original, an official copy or another type of copy;
- (d) the date of the document;
- (e) the document parties or the original author and recipient of the document; and
- (f) the version number or similar identification number or code of the document.

(2) Unless the adjudicator otherwise permits, where a document provided for the purposes of the proceedings is or contains a coloured map, plan or drawing, any copy provided of that map, plan or drawing must be in the same colours as the map, plan or drawing of which it is a copy (so for example, where a plan shows the boundary of a property in red, a copy of the plan must also show the boundary in red).

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Evidence

44 (1) The adjudicator may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

(2) No person may be compelled to give any evidence or produce any document or other material that that person could not be compelled to give or produce on a trial of an action in a court of law in Bermuda.

Expert evidence

45 No party may call an expert, or submit an expert's report as evidence, without the adjudicator's permission.

Service of documents

46 (1) A party's address for service must be a postal address in Bermuda.

(2) The address for service in paragraph (1) must be either that of the party or of the party's authorized representative.

(3) A party's address for service remains that party's address for service for the purposes of these Rules unless and until he serves on the adjudicator and the other parties notice of a different address for service.

(4) Any document to be served on or delivered to any person (other than the adjudicator) under these Rules may only be served—

- (a) by registered post to his postal address given as his address for service;
- (b) by leaving it at his address for service;
- (c) subject to paragraph (5), by fax;
- (d) subject to paragraph (6), by email; or
- (e) where no address for service has been given, by post to or leaving it at his registered office, principal place of business, head or main office or last known address, as appropriate.

(5) A document may be served by fax on any person (other than the adjudicator) to a fax number at the address for service for that person if, in advance, the recipient has informed the adjudicator and all parties in writing—

- (a) that the recipient is willing to accept service by fax; and
- (b) of the fax number to which the documents should be sent.

(6) A document may be served by email on any person (other than the adjudicator) if, in advance, the recipient has informed the adjudicator and all parties in writing—

- (a) that the recipient is willing to accept service by email;
- (b) of the email address to which documents should be sent, which shall be deemed to be at the recipient's address for service; and

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- (c) if the recipient wishes to so specify, the format in which documents must be sent.
- (7) Any document addressed to the adjudicator must be sent—
 - (a) by registered post to an address specified by the adjudicator; or
 - (b) by hand delivered to the LTRO.
- (8) Any document served on an unincorporated body may be sent to its secretary, manager or similar officer duly authorized to accept such service.
- (9) Any document which is served in accordance with this rule shall be regarded as having been served on the day shown in the table below—

<i>Method of service</i>	<i>Day of service</i>
Post to a postal address within Bermuda	The second business day after it was posted.
Leaving it at a postal address within Bermuda	The business day after it was left.
Fax	The business day after it was transmitted.
Email	The business day after it was transmitted.

- (10) The adjudicator may direct that service under these Rules of any document may be dispensed with and in those circumstances may make such consequential directions as he deems appropriate.
- (11) In this rule, “postal address” means any address to which the Post Office delivers mail including, for the avoidance of doubt, a post office box as defined in section 2 of the Post Office Act 1900.

Applications, actions by the adjudicator of his own motion, notification, representations and objections

- 47
- (1) This rule does not apply to rule 41.
 - (2) An application to the adjudicator must—
 - (a) be in writing;
 - (b) state the name of the person applying or on whose behalf the application is made;
 - (c) be addressed to the adjudicator;
 - (d) state the nature of the application;
 - (e) state the reason or reasons for the application; and
 - (f) if any of the parties or persons who would be affected by the application consent to it, either—
 - (i) be signed by all the parties or persons who consent or their authorized representatives; or

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(ii) have attached to it a copy of their written consent.

(3) The adjudicator may dispense with any or all of the requirements under paragraph (2)—

- (a) in relation to an application made to the adjudicator at a time when all persons who would be affected by the application are present before the adjudicator; or
- (b) if the adjudicator otherwise considers it appropriate or practicable to do so.

(4) For the purposes of paragraph (2)(f), the written consent referred to in that paragraph may be in the form of a letter.

(5) If an application is not consented to by all persons who will be affected by the application then, subject to paragraph (10), the adjudicator must serve written notice on persons who have not consented to the application but who would be affected by it.

(6) In the notice under paragraph (5), the adjudicator must state—

- (a) that the application has been made;
- (b) details of the application;
- (c) that the person has a right to make written objections to or representations about the application; and
- (d) the period within which such objections or representations must be lodged with the adjudicator.

(7) If the adjudicator intends to act of his own motion under these Rules, then, subject to paragraph (10), he must serve written notice of his intention on all persons who will be affected by the action.

(8) In the notice under paragraph (7), the adjudicator must state—

- (a) that the adjudicator intends to take action of his own motion;
- (b) the action the adjudicator intends to take;
- (c) that a person has a right to make written objections or representations to the action that the adjudicator intends to take; and
- (d) the period within which such objections or representations must be lodged with the adjudicator.

(9) A person lodges an objection or representation if within the specified period he serves—

- (a) on the adjudicator a written statement setting out the grounds for his objection or representation; and
- (b) on all the other persons who will be affected by the action a copy of the written statement served on the adjudicator under subparagraph (a).

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(10) The adjudicator shall not be required to serve notice under paragraphs (5) and (7) if, in the circumstances, he does not consider it appropriate or practicable to do so.

(11) Paragraph (10) does not apply to notices required to be served by rule 30.

Consideration by the adjudicator of applications (including applications for directions), representations and objections

48 (1) In relation to any application, representation or objection made to the adjudicator, unless—

- (a) the adjudicator is satisfied that it is frivolous or vexatious; or
- (b) it is received by the adjudicator after the expiry of any time limit specified for making that application, representation or objection,

the adjudicator must consider all applications, representations or objections made to him.

(2) If an application, representation or objection is received by the adjudicator after the expiry of any time limit specified for making it, the adjudicator may consider the application, representation or objection, but he is not bound to do so.

(3) In considering any application, representation or objection, the adjudicator must make all enquiries he thinks necessary and must, if required by these Rules or if he considers it necessary, give the person making the application, representation or objection and the parties or other persons who will be affected by it the opportunity to appear before him or to submit written representations.

(4) The adjudicator may decide to accept or reject an application, representation or objection in whole or in part.

(5) Following his consideration of any applications, representations or objections that are made to him, the adjudicator must notify the person who made the application, representation or objection and the parties and any other persons who will be affected by it, of his decision in accordance with these Rules.

Adjournment

49 In addition to the powers and obligations to adjourn proceedings contained in Part 2 and rule 34, the adjudicator may adjourn the whole or part of the proceedings when and to the extent that he feels it reasonable to do so.

Power to vary or set aside directions

50 Subject to these Rules, the adjudicator may at any time, on the application of a party or otherwise, vary or set aside directions made under these Rules.

Failure to comply with a direction

51 (1) Where a party has failed to comply with a direction given by the adjudicator (including a direction to commence court proceedings under section 95 of the Act), the adjudicator may impose a sanction on the defaulting party—

- (a) on the application of any other party; or

(b) of his own motion.

(2) Where the defaulting party was the person who made (or has been substituted for or added to the party who made) the original application, the sanction may include requiring the registrar to cancel the original application in whole or in part.

(3) Where the defaulting party was a person who objected to (or has been substituted for or added to the party who objected to) the original application, the sanction may include requiring the registrar to give effect to the original application in whole or in part as if the objection had not been made.

(4) A sanction that includes either of the requirements on the registrar under paragraph (2) or (3) shall be treated as the substantive decision on that matter.

(5) If the sanction does not include either of the requirements on the registrar under paragraph (2) or (3), the adjudicator must serve written notice on the parties of his decision as to what if any sanctions are imposed, and he may make consequential directions.

Errors of procedure

52 Where, before the adjudicator has made his final substantive order in relation to a matter, there has been an error of procedure such as a failure to comply with a rule—

- (a) the error does not invalidate any step taken in the proceedings, unless the adjudicator so orders; and
- (b) the adjudicator may make an order or take any other step that he considers appropriate to remedy the error.

Accidental slips or omissions

53 The adjudicator may at any time amend an order or direction to correct a clerical error or other accidental slip or omission.

Time and place

54 If the adjudicator deems it appropriate to do so, he may alter—

- (a) any time limit specified in these Rules;
- (b) any time limit set by the adjudicator; or
- (c) the date, time or location appointed for a hearing or for any other appearance of the parties before him.

Calculation of time

55 (1) Where a period of time for doing an act is specified by these Rules or by a direction of the adjudicator, that period is to be calculated—

- (a) excluding the day on which the period begins; and
- (b) unless otherwise specified, by reference to calendar days.

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(2) Where the time specified by these Rules or by a direction of the adjudicator for doing an act ends on a day which is not a business day, that act is done in time if it is done on the next business day.

Representation of parties

56 (1) If a party who was previously unrepresented appoints a representative or, having been represented, appoints a replacement representative, that party must, as soon as reasonably practicable following the appointment, notify the adjudicator and the other parties in writing—

- (a) of the fact that he has appointed a representative or replacement representative;
- (b) of the name and contact details of the representative or replacement representative;
- (c) whether the representative or replacement representative has been authorized by the party to accept service of documents; and
- (d) if the representative or replacement representative has been authorized to accept service, of the address for service.

(2) If a party who was previously represented ceases to be represented, that party must, as soon as reasonably practicable following the ending of his representation, notify the adjudicator and the other parties in writing—

- (a) of the fact that he is no longer represented; and
- (b) where the party's address for service had previously been the address of the representative, of the party's new address for service.

(3) In this rule, "representative" means an authorized representative.

Commencement

57 These Rules come into operation on 2 July 2018.

Made this 22nd June 2018

Minister of Public Works

[Operative Date: 02 July 2018]