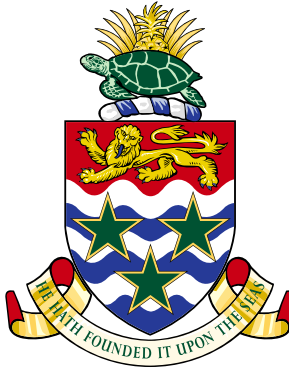


**CAYMAN ISLANDS**



# **REGISTERED LAND (AMENDMENT) BILL, 2021**

**A BILL FOR AN ACT TO AMEND THE REGISTERED LAND ACT (2018 REVISION) TO  
STREAMLINE THE PROVISIONS IMPACTING THE CHARGE OF LAND; TO PROVIDE  
FOR A PRE-LENDING AND PRE-ACTION PROTOCOL; AND FOR INCIDENTAL AND  
CONNECTED PURPOSES**

## PUBLISHING DETAILS

---

**Sponsoring Ministry/Portfolio:**

Law Reform Commission Consultation Draft – 25/03/2021

## Memorandum of OBJECTS AND REASONS

This Bill seeks to amend the Registered Land Act (2018 Revision) (“the principal Act”) in order to streamline the provisions that impact the charge of land and to provide for a “Lending and Pre-action Protocol” which is supported by a “Financial Circumstances Assessment Questionnaire both of which are intended to —

- (a) ensure that a chargee or lender and a chargor or borrower act fairly and reasonably with each other in resolving any matter concerning a charge over land; and
- (b) encourage greater pre-action engagement between the chargee and chargor in order to seek agreement between the parties.

Clause 1 provides the short title and commencement of the legislation.

Clause 2 amends section 64 of the principal Act by inserting proposed new subsections (1A) and (1B). The new subsection (1A) requires the chargee to comply with the pre-lending conduct requirements specified in the Lending and Pre-action Protocol set out in Schedule 1. The pre-lending conduct requirements provide that in any agreement in which a potential chargor purports to charge land to secure payment of a debt or the fulfilment of a condition, the chargee shall, before entering into the agreement, at minimum, specify the following information —

- (a) the borrowing rate and whether such rate will be fixed or variable;
- (b) the duration of the term of the loan;
- (c) the number of instalments to be paid over the life of the loan;
- (d) any factors which may result in an increase of the amount payable by the chargor;
- (e) whether any pre-payment penalties will be applicable to the loan;
- (f) the implications of the charge if the land is held jointly or as tenants in common;
- (g) other options for credit available in the market and their implications;
- (h) the refinancing options;
- (i) the chargee’s rights over the land;
- (j) the period of default before which the chargee will exercise a power of sale;
- (k) notification that the chargor is not compelled to complete the agreement or sign the loan application; and
- (l) that the chargor could lose the land and any money invested if the obligations are not met.

The new subsection (1B) provides that an instrument of special acknowledgement of the charge on the land signed by the chargor is void if a chargee fails to provide evidence that

the chargee has complied with the pre-lending conduct requirements specified in the Lending and Pre-action Protocol set out in Schedule 1.

Clause 2 also amends section 64 of the principal Act by repealing and substituting subsection (2) to make it clear that the money secured by a charge shall be payable three months after the service of a demand in writing unless a later date is specified in the charge instrument.

Clause 3 amends section 67(d) of the principal Act by expanding the range of natural disasters that shall be covered by insurance of the charged land or building to include an earthquake, flood or other calamity.

Clause 3 also amends section 67(f) of the principal Act by extending the lease period which would require the chargor to obtain the consent of the chargee when seeking to lease the charged land, from one year to two years. The principal Act requires leases longer than two years to be registered under the principal Act. As such, this amendment seeks to bring consistency with respect to duration of the lease.

Further, clause 3 amends section 67(g) of the principal Act to clarify that the charged land or lease should not be transferred without the consent of the chargee.

Clause 4 amends section 70 of the principal Act, which deals with the right of redemption. The right of redemption is fundamental to any mortgage relationship. At common law, the interest that the mortgagor retains upon the grant of a mortgage is the right of redemption. The clause amends section 70 of the principal Act by repealing and substituting subsection (1) to clarify that a chargor may redeem the charged land, lease or charge on fulfilment of any obligation rather than condition secured by the charge before it has been sold under section 75. This amendment recognises that it is an obligation that is secured and not a condition.

Clause 4 also amends section 70 of the principal Act by repealing subsection (2) as it relates to the chargor redeeming the charged land, lease or charge before the date of repayment specified in the charge. This subsection is punitive in nature in that it requires the chargor to pay the interest that is due for the remaining period of the charge.

Additionally, clause 4 amends section 70(3) of the principal Act by reducing the notice period required of the chargor to advise of an intention to redeem the charged land, lease or charge from three months to one month. As a consequence, the interest payable is also amended from three months' interest to one month's interest.

Clause 5 amends section 72 of the principal Act in order to require the chargee, in the event of default by the chargor in payment relating to charged residential property, to comply with the requirements of the Lending and Pre-action Protocol set out in Schedule 1 and to provide a financial circumstances assessment questionnaire set out in Schedule 2.

Clause 5 also provides that in the event of default relating to property that is not occupied for a residential purpose, the chargee may serve notice in writing to pay the principal, interest or any other periodical payment or any part thereof in order to comply with the agreement expressed or implied in any charge.

Clause 5 also amends section 72 in order to insert proposed new subsections (1A), (1B), (1C), (1D), (1E), (1F) and (1G). The new subsection (1A) provides that the chargee, after acting in accordance with the requirements under the Lending and Pre-action Protocol set out in Schedule 1, may serve notice on the chargor —

- (a) to pay the principal, interest or any other periodical payment or any part thereof in order to comply with the agreement expressed or implied in any charge; or
- (b) of an intention, after discussing the requirements under the Lending and Pre-action Protocol, to enter into an agreement to vary the terms of the charge or other agreement.

The new subsection (1B) sets out the requirements for the chargor to serve notice on the chargee of the chargor's intention to —

- (a) refer the decision of the chargee to the chargee's internal review mechanism;
- (b) submit any dispute arising from or in relation to the chargee's decision for resolution under the charge instrument; or
- (c) subject to section 77, apply to the court for any direction.

The new subsection (1C) empowers the chargee to serve notice on the chargor to comply with the agreement within three months of the date of service of the notice in circumstances where the chargor breaches an agreement under subsection (1A)(b).

The new subsection (1D) provides that if the chargor does not comply within the three month period under subsection (1C), the chargee may appoint a receiver of the income of the charged property or sell the charged property.

The new subsection (1E) provides that any right of action of the chargee shall be stayed until a determination with respect to the decision of the chargee is provided.

The new subsection (1F) sets out the particulars which shall be contained in a notice served on the chargor. These particulars include —

- (a) the date of default in payment of the principal, interest and other charges or the agreement;
- (b) the principal, interest and other charges due;
- (c) the timeframe within which the default should be remedied;
- (d) the action to be taken if the default is not remedied;
- (e) the nature of the breach;
- (f) if the breach is capable of remedy, what action is required to remedy the breach and the date before which that action is to be taken;
- (g) if the breach is not capable of remedy, the sum required to be paid as compensation for the breach, and the date before which the compensation is to be paid;
- (h) the consequences of failure to comply with a request; and
- (i) whether the chargor would be permitted to remedy the breach at any time after the expiry of the notice and prior to the exercise of the power of sale.

The new subsection (1G) provides that Cabinet may by Order amend Schedules 1 and 2.

Clause 5 also amends section 72(3) of the principal Act by inserting after subparagraph (ii), a subparagraph (iii), which imposes liability on the chargor for money secured by the charge where the chargee of land occupied for residential purposes has complied with the relevant requirements set out in the Lending and Pre-action Protocol.

Clause 6 amends section 75 of the principal Act by repealing and substituting subsection (1) to expand the methods through which a chargee may exercise a power of sale to include sale by private treaty, listing and marketing on a multiple listing system or by any other method that Cabinet may prescribe.

Clause 7 amends section 77 of the principal Act in order to permit a chargee or chargor of land occupied for residential purposes to, subject to the provisions of the legislation, apply to the court for an opinion, advice or direction on any question in relation to the exercise of the chargee's powers under section 72 of the principal Act.

Clause 8

Clause 9 amends the principal Act by inserting Schedules 1 and 2. Schedule 1 provides a Lending and Pre-action Protocol. Schedule 2 provides a financial circumstances assessment questionnaire.

Clause 10 contains the savings and transitional provisions.

**CAYMAN ISLANDS****REGISTERED LAND (AMENDMENT) BILL, 2021****Arrangement of Clauses**

Clause	Page
1. Short title and commencement .....	9
2. Amendment of section 2 of the Registered Land Act (2018 Revision) – definitions .....	9
3. Amendment of section 64 – form and effect of charges.....	10
4. Amendment of section 67 – agreements implied in charges.....	10
5. Amendment of section 70 – right of redemption .....	11
6. Amendment of section 72 – chargee's remedies.....	11
7. Amendment of section 75 - power of sale .....	14
8. Repeal and substitution of section 77 – variation of powers .....	14
9. Amendment of section 153 – service of notices .....	15
10. Insertion of section 161A - amendment of Schedules.....	16
11. Insertion of Schedules 1, 2 and 3 – Pre-Lending and Pre-action Protocol; Financial Circumstances Assessment Questionnaire; Special Acknowledgement.....	16
12. Savings and transitional provisions .....	21





## CAYMAN ISLANDS

**REGISTERED LAND (AMENDMENT) BILL, 2021**

**A BILL FOR AN ACT TO AMEND THE REGISTERED LAND ACT (2018 REVISION) TO STREAMLINE THE PROVISIONS IMPACTING THE CHARGE OF LAND; TO PROVIDE FOR A PRE-LENDING AND PRE-ACTION PROTOCOL; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

**Short title and commencement**

1. (1) This Act may be cited as the Registered Land (Amendment) Act, 2021.
- (2) This Act shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Act and in relation to different matters.

**Amendment of section 2 of the Registered Land Act (2018 Revision) – definitions**

2. The *Registered Land Act (2018 Revision)*, in this Act referred to as the “principal Act”, is amended in section 2 by inserting, in the appropriate alphabetical sequence, the following definition —  
“**“residential purposes ”** means any lot, plot, tract, area, piece or parcel of land including any building used exclusively or intended to be used for family dwelling;”.

**Amendment of section 64 – form and effect of charges**

3. The principal Act, is amended in section 64 as follows —

- (a) by repealing subsection (1) and substituting the following subsection —

“(1) A proprietor may, by an instrument in the prescribed form, charge his land or lease or charge to secure the payment of an existing or a future or a contingent debt or other money or money’s worth or the fulfilment of a condition.”;
- (b) by repealing subsection (2) and substituting the following subsection —

“(2) Any money secured by a charge shall be payable three months after service of a demand in writing unless a later date for repayment is specified in the charge instrument.”; and
- (c) by inserting after subsections (3), the following subsections —

“(3A) A charge presented for registration shall —

  - (a) be accompanied by a special acknowledgement in the form set out in Schedule 3 signed by the chargor; or
  - (b) where the chargor is a company, by the name of the persons attesting to the affixation of the common seal of the company, or by the person acting with the express or implied authority of the company.

(3B) A special acknowledgement under subsection (3A)(a) or an attestation or exercise of express or implied authority under subsection (3A)(b) is valid only if —

  - (a) the chargee has complied with the requirements specified in paragraphs 2, 3 and 4 of the Pre-lending and Pre-action Protocol set out in Schedule 1; and
  - (b) the chargee presents reasonable evidence to confirm that the chargor understands that the charge shall have the power to appoint a receiver of the income of the charged property or to sell the charged property in the circumstances set out in section 72(2).”.

**Amendment of section 67 – agreements implied in charges**

4. The principal Act is amended in section 67 as follows —

- (a) in paragraph (d), by deleting the words “damage by fire or hurricane” and substituting the words “damage by fire, hurricane, earthquake, flood or any other catastrophic event”;
- (b) in paragraph (f), by deleting the words “one year” and substituting the words “two years”; and

- (c) in paragraph (g), by deleting the words “not to transfer the land, lease or charge charged” and substituting the words “not to transfer the charged land, lease”.

### **Amendment of section 70 – right of redemption**

**5.** The principal Act is amended in section 70 as follows —

- (a) by repealing subsection (1) and inserting the following subsection —

“(1) Subject to this section, a chargor —

- (a) on payment of all money due and owing under the charge;
- (b) on fulfilment of any obligation secured by the charge; and
- (c) on payment of any costs or expenses properly incurred by the chargee in exercising any power conferred on the chargor by section 72,

may redeem the charged land, lease or charge at any time before it has been sold under section 75, and any agreement or provision which purports to deprive the chargor of this right of redemption shall be void; and, for the purposes of this subsection, land, a lease or a charge shall be deemed to have been sold when an offer has been accepted on the sale of the charged land pursuant to section 75, a bid has been accepted at the auction sale or an agreement has been reached under a private treaty.”;

- (b) by repealing subsection (2); and
- (c) in subsection (3) —
  - (i) by deleting the words “three months notice” and substituting the words “one month’s notice”; and
  - (ii) by deleting the words “three months’ interest” and substituting the words “one month’s interest”.

### **Amendment of section 72 – chargee’s remedies**

**6.** The principal Act is amended in section 72 as follows —

- (a) by inserting after subsection (2) the following subsections —

“(2A) A notice served pursuant to subsection (1) shall include the following particulars —

- (a) the date of default in payment of the principal, interest and other charges or the agreement;
- (b) the principal, interest and other charges due;
- (c) the period of time within which the default should be remedied;
- (d) the action to be taken if the default is not remedied;

- (e) the nature of the breach;
  - (f) if the breach is capable of remedy, what action is required to remedy the breach and the date before which that action is to be taken;
  - (g) if the breach is not capable of remedy, the sum required to be paid as compensation for the breach, and the date before which the compensation is to be paid;
  - (h) the consequences of failure to comply with a request; and
  - (i) whether the chargor would be permitted to remedy the breach at any time after the expiry of the notice and prior to the exercise of the power of sale.
- (2B) In the case of land occupied by the proprietor for residential purposes, before exercising any of the powers under subsection (2), the chargor shall —
- (a) comply with the pre-action conduct requirements specified under the Pre-lending and Pre-action Protocol set out in Schedule 1; and
  - (b) provide the chargor with a Financial Circumstances Assessment Questionnaire form which include the matters set out in Schedule 2.
- (2C) After the chargee provides the chargor with the Financial Circumstances Assessment Questionnaire required under subsection (2B)(b), the chargor shall complete and return the Financial Circumstances Assessment Questionnaire to the chargee within seven days.
- (2D) Where the chargor fails to complete and return the Financial Circumstances Assessment Questionnaire within the period specified under subsection (2B), or unreasonably fails or refuses to provide information to, or otherwise cooperate with the chargee, the chargee shall be entitled to discontinue any discussions with the chargor commenced in accordance with the Pre-lending and Pre-action Protocol.
- (2E) Notwithstanding subsection (2C), the chargee shall comply with all other relevant requirements of the Pre-lending and Pre-action Protocol.
- (2F) Within five days after receiving the Financial Circumstances Assessment Questionnaire from the chargor, and provided that the chargee has complied with the pre-action conduct requirements under the Pre-lending and Pre-action Protocol, the chargee shall serve on the chargor notice in writing, either —

- (a) advising the chargor that the chargee proposes to enter into an agreement with the chargor to vary the conditions of the charge or to provide relief from the notice served under subsection (1), or to enter another agreement, and to provide the chargor with the proposed terms of the variation of the charge or of the other agreement; or
  - (b) advising the chargor of the chargee's decision not to enter into an agreement with the chargor to vary the conditions of the charge or to provide relief from the notice served under subsection (1), or to enter some other agreement, and requiring the chargor to comply with the notice served under subsection (1).
- (2G) A chargor may within five days of receiving a notice of the decision of the chargee made under subsection (2F) —
- (a) refer the chargee's proposed terms for agreement under subsection (2F)(a), or the chargee's decision under subsection (2F)(b) to the chargee's internal review mechanism, if any, for review; or
  - (b) submit any dispute arising from or in relation to the chargee's decision under subsection (2F) for resolution under any mechanism for alternative dispute resolution prescribed in the charge instrument.
- (2H) The chargee shall take no steps to enforce any of the chargee's powers under subsection (2) prior to the earlier of —
- (a) five days after the chargor has been notified of the result of the review under the chargee's internal review mechanism or of the dispute resolution process under subsection (2G); or
  - (b) three months following the service of the notice served pursuant to subsection (1).
- (2I) Notwithstanding subsection (2H), no action shall be taken until after the hearing or determination of any application to the court made by either the chargor or the charge under section 77.; and
- (b) in subsection (3), in the proviso, as follows —
    - (i) in subparagraph (i), by deleting the words “has expired; and” and substituting the words “has expired”;
    - (ii) in subparagraph (ii), by deleting the words “charged property.” and substituting the words “charged property; and”;
    - (iii) by inserting after subparagraph (ii) the following subparagraph —
      - “(iii) in the case of land occupied for residential purposes, the chargee has complied with the relevant requirements

under the Lending and Pre-action Protocol set out in Schedule 1.”.

### **Amendment of section 75 - power of sale**

7. The principal Act is amended in section 75 by repealing subsection (1) and substituting the following subsections —

- “(1) A chargee exercising a power of sale shall act in good faith and have regard to the interests of the chargor, and in doing so shall comply with the enforcement conduct requirements of the Pre-Lending and Pre-action Protocol prescribed in Schedule 1, and may sell or concur with any person in selling the charged land, lease or charge, or any part thereof, together or in lots, by —
- (a) public auction;
  - (b) listing and marketing the charged property for sale on a public multiple listing system;
  - (c) by private treaty, where the chargee has failed to sell the charged land by public auction or by listing the charged land for sale on a public multiple listing system; or
  - (d) any other method that Cabinet may by Order prescribe, for a sum payable in one amount or by instalments, subject to such reserve price and conditions of sale as the chargee thinks fit.
- (1A) The chargor shall be entitled to bid in any public auction or private treaty of the charged land by the chargee.”.

### **Repeal and substitution of section 77 – variation of powers**

8. The principal Act is amended by repealing section 77 and substituting the following section —

#### **“Application to the court for directions**

77. (1) Where a referral or submission for dispute resolution under subsection (2G) does not resolve the issue or dispute, the chargor may, within five days of being notified of the result of the review under the chargee's internal review mechanism or of the dispute resolution process, apply to the court for directions.
- (2) A chargee or chargor of land occupied for residential purposes may, subject to the provisions under section 72 and of this section, apply to the court for directions on any question in relation to the exercise by the chargee of any of the chargee's powers under section 72.
- (3) An application made under subsection (2) shall not be considered as the commencement of legal proceedings.

- (4) A chargor shall not make an application under this section prior to receiving notification of the result of any review under the chargee's internal review mechanism or of any dispute resolution process commenced pursuant to section 72(2G).
- (5) A chargee shall not make an application under this section unless the chargee has —
  - (a) complied with section 72; and
  - (b) taken all reasonable steps to market and sell the charged land in accordance with section 75.
- (6) On an application made under this section the court shall have the power to —
  - (a) require the parties to exhaust any procedures commenced under section 72(2B)(a) and (b);
  - (b) direct that the chargor and chargee make further attempts to resolve the dispute by further discussion, negotiation, neutral evaluation or mediation;
  - (c) give directions with respect to the reserve price or other terms or conditions of the sale of the charged land;
  - (d) give directions with respect to the chargee obtaining reasonable access to any premises on the charged land for the purpose of inspection or showing the premises to prospective purchasers or for any other purpose in connection with the chargee's efforts to sell the charged land or where appropriate, requiring the chargor to deliver up possession of the charged land to the chargee; and
  - (e) grant such other relief or directions which the court, having regard to the provisions of this Part, deems appropriate.”.

### **Amendment of section 153 – service of notices**

9. The principal Act is amended in section 153 by repealing paragraph (d) and substituting the following paragraph —
- “(d) service cannot be effected under paragraphs (a), (b) or (c), by —
- (i) publishing it in a widely circulating local newspaper for two consecutive editions; or
  - (ii) displaying it in a prominent place on the land affected and by publishing it in three consecutive issues of the *Gazette*.”.

**Insertion of section 161A - amendment of Schedules**

10. The principal Act is amended by inserting after section 161, the following section —

**“Amendment of Schedules**

**161A.** The Cabinet may, by Order, amend the Schedules.”.

**Insertion of Schedules 1, 2 and 3 – Pre-Lending and Pre-action Protocol; Financial Circumstances Assessment Questionnaire; Special Acknowledgement**

11. The principal Act is amended by inserting after section 164 the following Schedules —

**“SCHEDULE 1**

*(sections 64(3B)(a), 72(2B)(a), 72(3)(iii) and 75(1))*

**Pre-Lending and Pre-action Protocol**

1. The aims of this Pre-lending and Pre-action Protocol are to —
- (a) ensure that a chargee or lender and a chargor or borrower act fairly and reasonably with each other in resolving any matter concerning a charge over land; and
  - (b) encourage greater pre-action contact between the chargee and chargor in order to seek agreement between the parties.

**Pre-lending conduct**

2. In any agreement in which a potential chargor purports to charge land to secure the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfilment of a condition, the chargee shall, at minimum, specify the following —
- (a) the borrowing rate and whether such rate will be fixed or variable;
  - (b) the duration of the term of the loan;
  - (c) the number of instalments to be paid over the life of the loan;
  - (d) any factors which may result in an increase of the amount payable by the chargor;
  - (e) whether any pre-payment penalties will be applicable to the loan;
  - (f) the implications of the charge if the land is held jointly or as tenants in common;
  - (g) other options for credit available in the market and their implications;



- (h) the refinancing options;
  - (i) the chargee's rights over the land;
  - (j) the period of default before which the chargee will exercise a power of sale;
  - (k) notification that the chargor is not compelled to complete the agreement or sign the loan application; and
  - (l) that the chargor could lose the land and any money invested if the obligations are not met.
- 3. The information required under paragraph 2 shall be provided not less than three business days prior to the creation of a charge.
- 4. The chargee shall —
  - (a) advise the chargor to retain legal advice before entering into an agreement to borrow and sign the special acknowledgement with respect to section 64(1) of the Act;
  - (b) allow a reasonable time for the chargor to review the agreement before signing the special acknowledgement; and
  - (c) before paying to the chargor the amount to be charged on the land, allow the chargor five days after signing an agreement to consider the transaction and determine whether the chargor wishes to cancel the agreement.

### Pre-action conduct

- 5. Before exercising a power of sale under section 72 of the Act, the chargee shall, in good faith, act in compliance with the Lending and Pre-action Protocol and consider all options that may offer the chargor an alternative repayment option to satisfy any arrears under a charge over land.
- 6. The chargee shall, under the Lending and Pre-action Protocol, do the following —
  - (a) provide all options to remedy the default whether by payment of money or other obligations;
  - (b) provide the chargor with information relating to —
    - (i) the total arrears of principal and interest due and payable in respect of the charge;
    - (ii) the rate at which interest will continue to accrue; and
    - (iii) other costs due by virtue of the power of sale such as whether interest or other charges will be added to the arrears.
- 7. The chargee shall discuss with the chargor —
  - (a) the circumstances which led to the arrears in payment;

- (b) the chargor's financial circumstances in accordance with the financial circumstances assessment questionnaire set out in Schedule 2;
  - (c) whether the circumstances leading to the arrears are short term, medium term or long term;
  - (d) the chargor's proposals for repayment of the arrears and resumption of agreed payments in accordance with the terms of the agreement;
  - (e) whether the chargor may make a claim under a relevant insurance policy to satisfy the arrears;
  - (f) the chargor's ability to independently dispose of the land at a price that will satisfy the arrears;
  - (g) the prospect of extending the period within which payment of the principal or of any interest or any other periodical payment or of any part thereof shall be made;
  - (h) changing the structure of the payments;
  - (i) the capitalisation of the arrears;
  - (j) making interest payments only for a specified period of time;
  - (k) permanently reducing the interest rate attached to the charge;
  - (l) temporarily reducing the interest rate attached to the charge for a specified period of time;
  - (m) payment of the interest and part of the principal for a specified period of time;
  - (n) deferring payment of all or part of the arrears for a specified period of time;
  - (o) extending the term of the loan;
  - (p) adding arrears of interest to the principal amount due;
  - (q) reducing the principal sum to a specified amount;
  - (r) making use of any Government forbearance initiatives in which the chargee chooses to participate;
  - (s) taking advantage of debt counselling programmes to prevent further defaults in payments; and
  - (t) any other matter that the chargee deems appropriate.
8. A chargee shall not exercise the chargee's power of sale if the chargor has submitted a claim to an insurer under a relevant insurance policy and the chargor has —
- (a) proof of a reasonable expectation of eligibility for payment from the insurer or and any other person; and
  - (b) the ability to pay in instalments not covered by the insurer.

9. The chargee shall act reasonably and not engage in discussions under paragraph 7 in a manner which may be —
- (a) disproportionate;
  - (b) excessive;
  - (c) aggressive;
  - (d) intimidating; or
  - (e) harassing.
10. The assessment by the chargee of the information provided by the chargor shall be timely and specific to the chargee's circumstances.
11. The chargee shall consider all options contained in the Lending and Pre-action Protocol and provide reasons in writing to the chargor for a decision taken.
12. Where the chargee proposes to consider an option that will offer relief to the chargor, the chargee shall provide the chargor with all details of the option and advise the chargor that the chargor may obtain independent legal advice before committing to the terms of any agreement that will govern the option.

### Enforcement conduct

13. The chargee during the exercise of the chargee's power of sale shall —
- (a) retain the services of an independent valuator who are accredited by the Cayman Islands Royal Institution of Chartered Surveyors;
  - (b) obtain a fair market value for the land;
  - (c) sell the property at the best price that the market would be willing to offer;  
seek advice on the most appropriate method of selling a property in order to realise a fair price;
  - (d) only realise so much land as is necessary to discharge the chargor's obligation;
  - (e) not wilfully and recklessly deal with the land in such a manner that the interests of the chargor are compromised;
  - (f) not sell the land to a person where there is a conflict of interest or the person is connected to the chargee;
  - (g) not disregard the right of the chargor to any surplus sale proceeds;
  - (h) adequately advertise the sale of the land; and
  - (i) maintain the land in a reasonable state, including undertaking any reasonable repairs, during the exercise of the power of sale.

14. Where the chargor obtains an independent valuation of the land, the price of the land shall be determined by calculating the average between the valuation received by the chargee and the valuation received by the chargor.
15. After the land has been transferred under a power of sale, the chargee shall write promptly to the chargor informing the chargor of the following —
  - (a) the price at which the land was sold;
  - (b) whether the sale price satisfied the principal, interest and other charges secured by the charge;
  - (c) the balance outstanding on the charge, if any;
  - (d) the details and amount of any costs arising from the sale of the land which have been added to the account; and
  - (e) the interest rate to be charged on the remaining balance, if any.

## SCHEDULE 2

*(section 72(2B)(b))*

### Financial Circumstances Assessment Questionnaire

The factors that a chargee shall take into account when assessing the chargor's financial circumstances shall include all matters contained in the financial circumstances assessment questionnaire as follows —

Financial Circumstances Assessment Questionnaire			
	Borrower 1	Borrower 2	TOTAL
<b>Account &amp; Borrower Details</b>			
<b>Monthly Income</b>			
<b>Monthly Household Expenditure including:</b>			
<b>(a) Utilities</b>			
<b>(b) Household Prerequisites</b>			
<b>(c) Transport</b>			
<b>(d) Residential</b>			
<b>(e) Business</b>			
<b>(f) Education</b>			
<b>(g) Medical</b>			
<b>(h) Health Insurance</b>			
<b>(i) Life Assurance</b>			
<b>(j) Pension</b>			

<b>Contribution</b>			
<b>Monthly Debt Payments</b>			
<b>Other Property and non-property expenses</b>			

### **SCHEDULE 3**

*(section 64(3A)(a))*

#### **Special Acknowledgement**

**The Registered Land Act (2018 Revision)**

*(sections 63(1) and 64(3A)(a))*

#### **SPECIAL ACKNOWLEDGEMENT**

This is to acknowledge that I, \_\_\_\_\_ Chargor (Individual / Corporation) of \_\_\_\_\_ understand the effect of section 72 of the *Registered Land Act (2018 Revision)* if I become in default in payment of the principal sum or of any interest or any other periodical payment which is the subject of the charge; and that I, \_\_\_\_\_ Chargee (Individual / Corporation) of \_\_\_\_\_ have complied with all the requirements of the Pre-action Protocol prior to registration of the charge.

Date:

Name:

Signature

Seal”.

#### **Savings and transitional provisions**

- 12.** (1) Any matter or proceeding commenced before the date of the commencement of this amending Act shall be continued, completed and enforced as if this amending Act had not come into force.
- (2) Where —
- (a) prior to the date of commencement of this amending Act, an accused person is convicted following a trial or a plea of guilty to an offence; and

(b) at the date of commencement of this amending Act, no judgment or sentence has been passed upon the accused person in respect of the offence,

the accused person shall, for the purpose of the judgment or sentence, be dealt with in all respects as if this amending Act had not come into force.

(3) Where, at the date of commencement of this amending Act, any trial is or any proceedings are pending the trial or proceedings shall, after that date, be dealt with in all respects as if this amending Act had not come into force.

**Passed by the Parliament the            day of            , 2021.**

*Speaker*

*Clerk of the Parliament*