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EXPLANATORY MEMORANDUM

TREE PLANTATION AGREEMENTS BILL 2000

Hon MONTY HOUSE MLA

THIS IS A BILL TO PROVIDE FOR THE MAKING AND EFFECT OF CERTAIN AGREEMENTS IN RELATION TO TREE PLANTATIONS AND TO CONSEQUENTIALLY AMEND THE AGRICULTURE AND RELATED RESOURCES PROTECTION ACT 1976 AND, MORE EXTENSIVELY, THE TRANSFER OF LAND ACT 1893 (THE "TLA").

THE BILL PROVIDES FOR THE REGISTRATION UNDER THE TLA OF AGREEMENTS MADE UNDER THE PROPOSED ACT AND WHEN REGISTRATION TAKES PLACE, A LEGAL INTEREST, KNOWN AS A "PLANTATION INTEREST" IN THE AGREEMENT LAND WILL BE CREATED.

PART 1 PRELIMINARY

CLAUSE 1: SHORT TITLE

THIS CLAUSE STATES THE SHORT TITLE OF THE PROPOSED ACT – THE *TREE PLANTATION AGREEMENTS ACT 2000* (THE "TPA ACT").

CLAUSE 2: COMMENCEMENT

THIS CLAUSE PROVIDES FOR COMMENCEMENT OF THE ACT ON A DAY FIXED BY PROCLAMATION. HOWEVER, IT IS NOT TO COME INTO OPERATION BEFORE THE PROPOSED *FOREST PRODUCTS ACT 2000* HAS COME INTO OPERATION.

THIS IS BECAUSE THE BILL REFERS TO THAT ACT AND IN THE EVENT THAT THIS BILL WAS PROCLAIMED BEFORE THE BILL FOR THAT ACT, IT (THE TPA ACT) WOULD BE REFERRING TO AN ACT THAT DID NOT EXIST.

CLAUSE 3: INTERPRETATION

THIS IS THE INTERPRETATION PROVISION. NONE OF THE DEFINITIONS OF TERMS ARE COMPLICATED. IT SHOULD BE NOTED THAT:

- A "PLANTATION" IS ONE OR MORE GROUPS OF PLANTED (NOT NATURALLY OCCURRING) TREES; AND
- "PRODUCT" IN RELATION TO A TREE, INCLUDES THE WHOLE TREE, A PART OF THE TREE OR A THING PRODUCED BY THE TREE WHETHER OR NOT THE PART OF THE TREE OR THE THING PRODUCED BY THE TREE IS ABOVE OR BELOW GROUND OR HAS BECOME SEPARATED FROM THE TREE BEFORE BEING HARVESTED.

AN AGREEMENT, WITHIN THE MEANING OF THE PROPOSED ACT CANNOT BE MADE IN RELATION TO A NATURALLY OCCURRING TREES, EG: NATIVE FOREST OR REMNANT NATIVE VEGETATION OR REGROWTH.

AN AGREEMENT CAN BE MADE IN RELATION TO TREES

THAT ARE TO BE HARVESTED OTHERWISE THAN BY BEING FELLED-EG: FRUIT, NUT OR OIL PRODUCING TREES.

CLAUSE 4: APPLICATION OF ACT

THIS CLAUSE DEALS WITH THE APPLICATION OF THE ACT AS IT RELATES TO PUBLIC LAND AND THE PROVISIONS OF THE PROPOSED FOREST PRODUCTS ACT 2000 AND THE *CONSERVATION AND LAND MANAGEMENT ACT 1984*.

SUBCLAUSE (1) PROVIDES THAT THE ACT DOES NOT APPLY IN RELATION TO "THE MANAGEMENT, HARVESTING OR SALE OF FOREST PRODUCTS AS DEFINED IN THE "FOREST PRODUCTS ACT 2000 ON PUBLIC LAND AS DEFINED BY THAT ACT EXCEPT TO THE EXTENT TO WHICH SECTION 5 PROVIDES".

THE PROPOSED SECTION 5 ALLOWS A LESSEE OF CROWN LAND (OTHER THAN A PASTORAL LESSEE) TO ENTER AN AGREEMENT. APART FROM THIS, FOREST PRODUCTS ON CROWN LAND ARE WITHIN THE JURISDICTION OF THE FOREST PRODUCTS COMMISSION AND THE PROPOSED TPA ACT IS NOT INTENDED TO AFFECT OR INTERFERE WITH THAT JURISDICTION.

SUBCLAUSE (2) PROVIDES THAT NOTHING IN THE PROPOSED ACT:

- (a) IS TO BE READ AS GIVING THE FOREST PRODUCTS COMMISSION OR THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CONSERVATION THE POWER TO ENTER INTO AN AGREEMENT; OR
- (b) AFFECTS THE RESPECTIVE POWERS OF THE COMMISSION OR THE EXECUTIVE DIRECTOR IN RELATION TO TIMBER SHAREFARMING AGREEMENTS AS DEFINED IN THE FOREST PRODUCTS ACT 2000 OR THE CONSERVATION AND LAND MANAGEMENT ACT 1984.

IT IS ARGUABLE THAT THE PROPOSED ACT, EVEN WITHOUT THIS SUBCLAUSE, COULD NOT BE READ AS REFERRED TO IN PARAGRAPH (a) OR AFFECT THE POWERS REFERRED TO IN PARAGRAPH (b), BECAUSE THE POWERS AND FUNCTIONS OF THE COMMISSION AND THE EXECUTIVE DIRECTOR WILL NOT EXTEND BEYOND THOSE CONFERRED BY THE FOREST PRODUCTS ACT AND THE CALM ACT. THIS PROVISION MAKES THAT CLEAR.

THIS BILL IS NOT INTENDED TO AFFECT THE ARRANGEMENTS PROVIDED FOR BY THOSE ACTS IN RELATION TO FOREST PRODUCTS ON PUBLIC LAND OR TIMBER SHAREFARMING AGREEMENTS UNDER THOSE

ACTS. IT IS INTENDED TO PROVIDE A MECHANISM THAT MAY BE USED BY PRIVATE LAND HOLDERS AND INVESTORS IN TREE PLANTATIONS.

PART 2 MAKING TREE PLANTATION AGREEMENTS.

CLAUSE 5: PURPOSE OF AGREEMENTS

THIS CLAUSE SETS OUT THE ESSENCE OF WHAT A TREE PLANTATION IS. IT STATES THAT AN OWNER OF FREEHOLD LAND, OR A LESSEE (OTHER THAN A PASTORAL LESSEE), MAY ENTER INTO AN AGREEMENT WITH ANOTHER PERSON, BY WHICH THAT PERSON CAN ESTABLISH AND/OR MAINTAIN AND/OR HARVEST A PLANTATION ON THE LAND.

SUCH AN AGREEMENT MAY BE MADE EVEN IF THE PLANTATION DOES NOT EXIST AT THE TIME THE AGREEMENT IS MADE. THAT IS, THE AGREEMENT MAY BE MADE BEFORE THE TREES ARE PLANTED.

CLAUSE 6: CONTENTS AND FORMALITIES

THIS CLAUSE SETS OUT THE CONTENTS AND FORMALITIES OF AN AGREEMENT. THERE ARE NOT MANY. THE AGREEMENT MUST BE IN WRITING AND STATE THE DAY ON WHICH IT COMMENCES AND THE DAY ON WHICH IT EXPIRES. IMPORTANTLY, IT MUST SPECIFICALLY STATE THAT IT IS A TREE PLANTATION AGREEMENT FOR THE PURPOSES OF THE PROPOSED ACT AND OF COURSE, IT MUST ADEQUATELY DESCRIBE THE LAND THAT IS ALLOCATED TO THE PLANTATION OR PROPOSED PLANTATION.

BEYOND THE BASIC FORMALITIES, AN AGREEMENT MAY CONTAIN WHATEVER PROVISIONS THE PARTIES AGREE TO INCLUDE.

CLAUSE 7: CONSENTS REQUIRED

THIS CLAUSE PROVIDES THAT WHERE A LESSEE ENTERS INTO AN AGREEMENT IT IS OF NO EFFECT UNLESS CERTAIN CONSENTS ARE OBTAINED. IN THE CASE OF A LESSEE OF FREEHOLD LAND THE WRITTEN CONSENT OF THE OWNER IS REQUIRED, AND IN THE CASE OF A LESSEE OF CROWN LAND, SECTION 18 OF THE *LAND ADMINISTRATION ACT 1997* MUST BE COMPLIED WITH (REQUIRING THE CONSENT OF THE MINISTER FOR LANDS.)

PART 3 EFFECT OF REGISTERED TREE PLANTATION AGREEMENTS

CLAUSE 8: INTEREST IN LAND CREATED ON REGISTRATION
THIS CLAUSE STATES THE BASIC LEGAL EFFECTS OF THE REGISTRATION UNDER THE TLA OF AN AGREEMENT.

SUBCLAUSE (1) STATES THAT ON REGISTRATION OF AN AGREEMENT –

- (a) THE PROPERTY IN THE TREES IN A PLANTATION THAT IS THE SUBJECT OF AN AGREEMENT BECOMES A SEPARATE LEGAL INTEREST IN THE AGREEMENT LAND; AND
- (b) THE PROPRIETOR OF A PLANTATION INTEREST UNDER THE AGREEMENT IS EACH PERSON WHO IS REGISTERED AS A PROPRIETOR OF THAT INTEREST.

THIS MEANS THAT THE OWNERSHIP OF THE TREES IS AN INTEREST IN THE LAND ITSELF AND THE OWNER OF THAT INTEREST (AND THE TREES) IS THE PERSON REGISTERED AS THE PROPRIETOR OF THAT INTEREST.

(THE PROVISIONS ALLOWING REGISTRATION TO TAKE PLACE WILL BE PUT IN THE TLA ITSELF BY AMENDMENTS TO THAT ACT SET OUT IN THE SCHEDULE TO THE BILL.)

SUBCLAUSE (2) PROVIDES THAT SUBSECTION (1) APPLIES (IE: THE OWNERSHIP OF THE TREES BECOMES A SEPARATE INTEREST IN THE AGREEMENT LAND) EVEN THOUGH THE TREES ARE AFFIXED TO THE AGREEMENT LAND. (AS NATURALLY THEY WILL BE WHILE THEY ARE GROWING.)

THIS IS TO MAKE IT CLEAR THAT THIS SECTION ALTERS THE COMMON LAW THAT SAYS TREES ARE FIXTURES OF THE LAND ON WHICH THEY ARE GROWING AND THEREFORE OWNED BY THE PERSON WHO OWNS THE LAND.

SUBCLAUSE (3) STATES THAT A PLANTATION INTEREST IS A HEREDITAMENT (A REAL PROPERTY RIGHT CAPABLE OF BEING INHERITED) AND AN ENCUMBRANCE (A BURDEN ON THE LAND TO SECURE THE DUE PERFORMANCE OF THE OBLIGATIONS UNDER THE AGREEMENT).

THE INCLUSION OF THIS PROVISION WILL PREVENT ARGUMENTS AS TO WHETHER A PLANTATION IS OR IS NOT A HEREDITAMENT OR AN ENCUMBRANCE, GIVEN THAT THE INTEREST BEING CREATED IS COMPLETELY NEW TO WEST AUSTRALIAN LAW.

CLAUSE 9: DEALING IN PLANTATION INTERESTS
THIS CLAUSE RELATES TO DEALINGS WITH A PLANTATION INTEREST.

A PLANTATION INTEREST CAN BE TRANSFERRED, DEVEISED OR EXTENDED, MORTGAGED OR OTHERWISE USED AS SECURITY, BE THE SUBJECT OF A CAVEAT OR PROCESS OF EXECUTION AND OTHERWISE BE DEALT WITH AS A SEPARATE INTEREST IN THE AGREEMENT LAND.

A PLANTATION INTEREST CAN BE VARIED. (PROVISIONS WILL BE INSERTED INTO THE TLA TO GOVERN THIS – SEE SCHEDULE.)

A PLANTATION INTEREST AND THE RELEVANT AGREEMENT CAN BE SURRENDERED. (PROVISIONS WILL BE INSERTED INTO THE TLA TO PROVIDE FOR THIS.)

CLAUSE 10: OBLIGATIONS AND RESTRICTIONS RUN WITH THE LAND
THIS CLAUSE PROVIDES THAT THE OBLIGATIONS (INCLUDING POSITIVE COVENANTS – THAT IS, OBLIGATIONS TO DO THINGS) AND RESTRICTIONS THAT BIND THE OWNER OR LESSEE OF THE AGREEMENT LAND UNDER A REGISTERED AGREEMENT ARE BINDING ALSO ON THAT PERSON'S SUCCESSORS IN TITLE, HEIRS, EXECUTORS AND ADMINISTRATORS EXCEPT TO THE EXTENT THAT THE AGREEMENT OTHERWISE PROVIDES.

THIS IS FUNDAMENTALLY IMPORTANT. WHEN AN AGREEMENT IS REGISTERED, THE OBLIGATION AND RESTRICTIONS THAT BIND THE OWNER OR LESSEE WHO ENTERED INTO THE AGREEMENT "RUN WITH THE LAND" AND BIND WHOEVER ELSE OWNS OR TAKES OVER THE LEASE OF THE LAND UNTIL THE PLANTATION INTEREST IS TERMINATED. THIS WILL GIVE THE PROPRIETOR OF THE PLANTATION INTEREST THE SECURITY OF KNOWING THAT THEY WILL STILL BE ABLE TO HARVEST THE PLANTATION EVEN IF THE LAND IS SOLD OR OTHERWISE TRANSFERRED TO A PERSON OTHER THAN THE PERSON WHO ENTERED INTO THE AGREEMENT.

CLAUSE 11: OTHER LEGAL EFFECTS AS TO PLANTATION INTERESTS

THIS CLAUSE DEALS WITH SOME OTHER LEGAL EFFECTS OF A PLANTATION INTEREST.

SUBCLAUSE (1) PROVIDES THAT A PLANTATION INTEREST DOES NOT CONFER A RIGHT TO EXCLUSIVE POSSESSION OF THE RELEVANT AGREEMENT LAND OR THE PLANTATION AREA, EXCEPT TO THE EXTENT THAT THE AGREEMENT OTHERWISE PROVIDES, AND THAT IF EXCLUSIVE

POSSESSION IS GIVEN, THE AGREEMENT IS NOT TO BE TREATED AS A LEASE.

A RIGHT TO EXCLUSIVE POSSESSION IS THE MOST FUNDAMENTAL CHARACTERISTIC OF A LEASE. LEASES ALSO HAVE OTHER CHARACTERISTICS AND IMPLIED TERMS. THIS CLAUSE MAKES IT CLEAR THAT A TREE PLANTATION AGREEMENT IS NOT A LEASE EVEN IF IT DOES GIVE EXCLUSIVE POSSESSION OF THE LAND.

SUBCLAUSE (2) PROVIDES THAT A PLANTATION INTEREST IS NOT A LEASE OR LICENCE TO USE LAND OR A SUBDIVISION OF LAND TO WHICH SECTION 20 OF THE *TOWN PLANNING AND DEVELOPMENT ACT 1928* APPLIES.

THAT SECTION REQUIRES THE APPROVAL OF THE PLANNING COMMISSION FOR A LEASE OR LICENCE TO USE LAND FOR MORE THAN 10 YEARS UNLESS THE LAND IS DEALT WITH AS A LOT, AND FOR A SUBDIVISION. A PLANTATION INTEREST MAY BE CREATED IN RESPECT OF ONLY PART OF THE LAND COMPRISED IN A CERTIFICATE OF TITLE, THAT IS, OF PART OF A LOT. THIS SUBCLAUSE REMOVES ANY POSSIBILITY FOR ARGUMENT THAT A PLANTATION INTEREST IS A LICENCE TO OCCUPY OR A SUBDIVISION, AND THAT THEREFORE PLANNING COMMISSION APPROVAL OF IT IS REQUIRED.

CLAUSE 12: NO CONTRACTING OUT

THIS CLAUSE STATES THAT THE PROVISIONS OF THE ACT APPLY DESPITE ANYTHING TO THE CONTRARY IN AN AGREEMENT.

THIS MEANS THAT PARTIES TO AN AGREEMENT CANNOT AVOID ANY OF THE LEGAL EFFECTS OF THE ACT BY ATTEMPTING TO CONTRACT OUT OF THEM IN THE AGREEMENT. IF PARTIES DO NOT WANT THESE EFFECTS TO APPLY TO THEIR ARRANGEMENTS THEY SHOULD USE SOME MEANS OTHER THAN THE TREE PLANTATION AGREEMENTS PROVIDED FOR BY THIS BILL.

CLAUSE 13: REGULATIONS

THIS CLAUSE CONFERS A GENERAL POWER TO MAKE REGULATIONS.

CLAUSE 14: AMENDMENTS TO OTHER ACTS

THIS CLAUSE STATES THAT AMENDMENTS TO OTHER ACTS ARE MADE AS SET OUT IN THE SCHEDULE

SCHEDULE 1 – AMENDMENTS TO OTHER ACTS

DIVISION 1 AMENDS THE *AGRICULTURE AND RELATED RESOURCES PROTECTION ACT 1976* AND DIVISION 2 AMENDS THE *TRANSFER OF LAND ACT 1893*.

DIVISION 1 – AGRICULTURE AND RELATED RESOURCES PROTECTION ACT 1976

CLAUSE 1: SECTION 7 AMENDED

THIS CLAUSE AMENDS THE DEFINITION OF “OCCUPIER” IN SECTION 7 OF THE *AGRICULTURE AND RELATED RESOURCES PROTECTION ACT 1976* TO INCLUDE A PERSON WHO IS THE PROPRIETOR OF A PLANTATION INTEREST. THIS WILL MEAN THAT THE PROPRIETOR OF A PLANTATION INTEREST WILL BE COVERED BY VARIOUS PROVISIONS IN THE ACT RELATING TO THE CONTROL OF DECLARED PLANTS AND ANIMALS AND APPLYING TO OCCUPIERS OF LAND.

DIVISION 2 – TRANSFER OF LAND ACT 1893

CLAUSE 2: *TRANSFER OF LAND ACT 1893* AMENDED

THIS STATES THAT THE AMENDMENTS IN DIVISION 2 ARE TO THE TRANSFER OF LAND ACT 1893 (“TLA”).

CLAUSE 3: SECTION 4 AMENDED

SUBCLAUSE (1) AMENDS THE DEFINITION OF “DEALING” IN S. 4(1) SO THAT IT ONLY APPLIES IN RELATION TO CROWN LAND. THE WORD IS DEFINED TO HAVE THE SAME MEANING AS IT HAS IN THE *LAND ADMINISTRATION ACT 1997*, WHICH APPLIES TO CROWN LAND. THERE ARE VARIOUS REFERENCES IN THE TLA TO “DEALING” (INCLUDING IN RELATION TO TPA’S) THAT APPLY TO BOTH CROWN LAND AND FREEHOLD LAND, SO THE REFERENCE TO THE *LAND ADMINISTRATION ACT 1997* DEFINITION MUST BE LIMITED TO CROWN LAND.

SUBCLAUSE (2) AMENDS SECTION 4(1) OF THE TLA TO SUBSTITUTE A NEW DEFINITION OF “INSTRUMENT”. THE DEFINITION WILL NOW INCLUDE A TREE PLANTATION AGREEMENT AND A TRANSFER, MORTGAGE, CHARGE OR OTHER DEALING IN RELATION TO A TREE PLANTATION AGREEMENT AND ALSO TO AN EXTENSION, VARIATION AND SURRENDER OF A TREE PLANTATION AGREEMENT. THE RE-DRAFT ALSO CLARIFIES THE EXISTING DEFINITION.

SUBCLAUSE (3) AMENDS SECTION 4(1) TO INSERT A DEFINITION OF “PLANTATION INTEREST”. NATURALLY IT WILL HAVE THE SAME MEANING AS IT HAS IN THE PROPOSED TPA ACT.

SUBCLAUSE (4) INSERTS THE DEFINITION OF "TREE PLANTATION AGREEMENT". THIS WILL MEAN A TREE PLANTATION AGREEMENT ("TPA") AS DEFINED IN THE TPA ACT.

CLAUSE 4: SECTION 65 AMENDED
THIS CLAUSE AMENDS SECTION 65. THAT SECTION RELATES TO THE USE OF THE WORDS "TOGETHER WITH A RIGHT OF CARRIAGE WAY OVER...". WHEN THESE WORDS APPEAR IN A TRANSFER, LEASE OR CERTIFICATE OF TITLE THE WORDS IN THE 9TH SCHEDULE HAVE EFFECT. WITH THIS AMENDMENT THE SAME WILL OCCUR WHERE THOSE WORDS APPEAR IN A TPA. THIS WILL FACILITATE THE GRANTING OF AN EASEMENT IN A TPA.

CLAUSE 5: SECTION 91 AMENDED
THIS CLAUSE AMENDS SECTION 91. THAT SECTION PROVIDES FOR THE LEASE OF FREEHOLD LAND. SUCH A LEASE IS NOT BINDING AGAINST A MORTGAGEE OR ANNUITANT UNLESS THAT PERSON HAS CONSENTED IN WRITING TO IT BEFORE IT IS REGISTERED. THIS AMENDMENT WILL PROVIDE THE SAME PROTECTION TO THE PROPRIETOR OF A PLANTATION INTEREST. THAT IS, WHERE A PLANTATION INTEREST EXISTS IN RELATION TO FREEHOLD LAND THE PROPRIETOR OF THAT INTEREST WILL NOT BE BOUND BY A SUBSEQUENT LEASE OR EXTENSION OF LEASE OF THE LAND UNLESS HE OR SHE HAS CONSENTED TO IT IN WRITING.

CLAUSE 6: PART IV, DIVISION 2A INSERTED
THIS CLAUSE INSERTS A NEW DIVISION 2A INTO PART IV OF THE TLA. PART IV RELATES TO "DEALINGS WITH LAND". THE NEW DIVISION DEALS WITH TREE PLANTATION AGREEMENTS. IT CONTAINS 5 NEW SECTIONS: 104A, 104B, 104C, 104D AND 104E.

SECTION 104A DEFINITIONS CONTAINS 2 DEFINITIONS FOR THE DIVISION. "AGREEMENT" WILL MEAN A TREE PLANTATION AGREEMENT (A DEFINITION OF WHICH HAS BEEN INSERTED INTO THE INTERPRETATION SECTION OF THE TLA). "AGREEMENT LAND" WILL HAVE THE DEFINITION IT WILL HAVE IN THE TPA ACT.

SECTION 104B REGISTRATION OF TREE PLANTATION AGREEMENTS DEALS WITH THE REGISTRATION OF TREE PLANTATION AGREEMENTS.

SUBSECTION (1) SIMPLY PROVIDES THAT A PARTY TO AN AGREEMENT, MAY LODGE THAT AGREEMENT FOR REGISTRATION IN THE APPROVED FORM AND ON PAYMENT

OF THE PRESCRIBED FEE.

SUBSECTION (2) REQUIRES AN AGREEMENT LODGED FOR REGISTRATION TO BE ACCOMPANIED BY:

- (a) THE WRITTEN CONSENT OF EACH PERSON WHO HAS A REGISTERED INTEREST IN THE AGREEMENT LAND; AND
- (b) IF THE AGREEMENT IS ENTERED INTO BY A LESSEE OF FREEHOLD LAND, BY THE WRITTEN CONSENT OF EACH PERSON WHO HAS A REGISTERED INTEREST IN THE FREEHOLD INTEREST IN THE AGREEMENT LAND.

THE PERSONS WHOSE CONSENT IS REQUIRED HAVE A PRIOR REGISTERED INTEREST IN THE LAND. IF THEY CONSENT TO THE REGISTRATION OF THE AGREEMENT THEIR INTEREST WILL BE SUBJECT TO THE PLANTATION INTEREST. IF THEY DO NOT CONSENT THE AGREEMENT WILL NOT BE REGISTERED BECAUSE IF IT WERE, THE PLANTATION INTEREST WOULD NOT BE SECURE AGAINST THE PRIOR REGISTERED INTEREST. (AND COULD BE LOST IN THE EVENT OF, SAY, THE EXERCISE OF A POWER OF SALE BY A MORTGAGEE.)

SUBSECTION (3) PREVENTS THE REGISTRATION OF AN AGREEMENT ENTERED INTO BY A LESSEE OF CROWN LAND UNLESS THERE IS COMPLIANCE WITH SECTION 18 OF *THE LAND ADMINISTRATION ACT*. THAT SECTION REQUIRES THE PRIOR APPROVAL OF THE MINISTER FOR LANDS TO ANY DEALING WITH AN INTEREST IN CROWN LAND.

SECTION 104C EXTENSION OF PLANTATION INTERESTS DEALS WITH EXTENSIONS OF PLANTATION INTERESTS.

SUBSECTION (1) PROVIDES THAT A PLANTATION INTEREST MAY BE EXTENDED BY AN INSTRUMENT IN THE APPROVED FORM SETTING OUT THE TERM OF THE EXTENSION AND THE CONDITIONS (IF ANY) ON WHICH THE EXTENSION IS MADE. IT MUST BE SIGNED BY THE PROPRIETOR/S OF THE PLANTATION INTEREST AND:

- THE OWNER/S OF THE AGREEMENT LAND (IF THE AGREEMENT WAS WITH AN OWNER); OR
- THE LESSEE/S OF THE AGREEMENT LAND (IF THE AGREEMENT WAS WITH A LESSEE).

IN OTHER WORDS, AN EXTENSION MUST BE EXECUTED BY THE PERSON/S (OR SUCCESSOR/S IN TITLE TO THE PERSON/S) WHO ENTERED INTO THE AGREEMENT.

SUBSECTION (2) PROVIDES THAT AN INSTRUMENT OF EXTENSION WILL NOT BE REGISTERED UNLESS CERTAIN THINGS HAPPEN.

- (a) WRITTEN CONSENT TO THE INSTRUMENT MUST BE

LODGED ON BEHALF OF:

- EACH PERSON WHO HAS AN INTEREST IN THE AGREEMENT LAND THAT WAS REGISTERED SUBSEQUENT TO THE AGREEMENT (SO IF THE AGREEMENT WAS WITH A FREEHOLD OWNER AND A LEASE WAS REGISTERED AFTER THE AGREEMENT THE LESSEE WOULD HAVE TO CONSENT TO THE EXTENSION OR IT COULDN'T BE REGISTERED; IF THE AGREEMENT WAS WITH A LESSEE AND A SUB-LEASE WAS REGISTERED AFTER THE AGREEMENT THE SUB-LESSEE WOULD HAVE TO CONSENT TO THE EXTENSION OR IT COULDN'T BE REGISTERED);
- IF THE AGREEMENT WAS WITH A LESSEE, EACH PERSON WHO HAS AN INTEREST IN THE FREEHOLD THAT WAS REGISTERED AFTER THE AGREEMENT (FOR EXAMPLE, IF A MORTGAGE OF THE FREEHOLD WAS REGISTERED AFTER THE AGREEMENT THE MORTGAGEE WOULD HAVE TO CONSENT TO AN EXTENSION OF THE AGREEMENT OR THAT EXTENSION COULD NOT BE REGISTERED); AND
- EACH PERSON WHO HAS A REGISTERED INTEREST IN THE PLANTATION INTEREST (IF THE PROPRIETOR OF A PLANTATION INTEREST HAS MORTGAGED THAT PLANTATION INTEREST THEN THE MORTGAGEE WOULD HAVE TO CONSENT TO THE EXTENSION OR IT COULD NOT BE REGISTERED).

EACH PERSON WHOSE CONSENT IS REQUIRED BY THIS PROVISION IS A PERSON WHOSE INTEREST IS SUBJECT TO THE PLANTATION INTEREST BECAUSE THE AGREEMENT TO WHICH THE PLANTATION INTEREST RELATES WAS REGISTERED BEFORE THEIR INTEREST. IF AN EXTENSION IS REGISTERED, THEIR INTEREST WILL BE SUBJECT TO THE EXTENDED PLANTATION INTEREST SO IT CAN'T BE REGISTERED WITHOUT THEIR CONSENT.

A PROVISION TO THE SAME EFFECT OPERATES WITH RESPECT TO THE EXTENSION OF MORTGAGES, CHARGES AND LEASES UNDER THE TLA. THIS PROVISION WILL ALLOW THE TLA AND THE DEPARTMENT OF LAND ADMINISTRATION (DOLA) TO OPERATE, AND USE THE SAME PROCEDURES IN RELATION TO A PLANTATION INTEREST AS THEY DO IN RELATION TO OTHER INTERESTS IN LAND.

- (b) IF THE AGREEMENT IS WITH A LESSEE OF CROWN LAND SECTION 18 OF THE *LAND ADMINISTRATION ACT 1997* MUST BE COMPLIED WITH.

AN EXTENSION OF THE PLANTATION INTEREST WILL BE A DEALING WITH AN INTEREST IN CROWN LAND TO WHICH THE MINISTER FOR LANDS' APPROVAL MUST BE GIVEN.

- (c) THE INSTRUMENT OF EXTENSION MUST BE ACCOMPANIED BY THE PRESCRIBED FEE.

SUBSECTION (3) PROVIDES THAT AN INSTRUMENT OF EXTENSION MAY ALSO BE USED TO VARY THE PROVISIONS OF AN AGREEMENT (AS LONG AS THE AGREEMENT AS VARIED WOULD CONTINUE TO APPLY WITH SECTION 6 (1) OF THE TPA ACT). A VARIATION CANNOT BE USED TO EFFECT A CHANGE TO THE PARTIES OR A CHANGE TO THE AREA OF A PLANTATION THAT IS THE SUBJECT OF AN AGREEMENT.

THE MAIN PURPOSE OF AN EXTENSION IS TO EXTEND THE TERM OF AN AGREEMENT BUT AT THE SAME TIME ITS PROVISIONS MAY BE VARIED. AN EXTENSION CANNOT CHANGE THE PARTIES TO AN AGREEMENT OR THE AREA OF THE PLANTATION, HOWEVER. THESE CHANGES WOULD REQUIRE A TRANSFER OF THE AGREEMENT OR A NEW AGREEMENT.

SECTION 104D VARIATION OF AGREEMENTS DEALS WITH THE VARIATION OF AN AGREEMENT.

SUBSECTION (1) PROVIDES THAT THE PROVISIONS OF AN AGREEMENT MAY BE VARIED BY AN INSTRUMENT OF VARIATION SETTING OUT THE VARIATIONS AND THE CONDITIONS (IF ANY) ON WHICH THE VARIATIONS ARE MADE. THE INSTRUMENT MUST BE SIGNED BY THE SAME PEOPLE WHO ARE REQUIRED TO SIGN AN EXTENSION (SEE 104C (1) (a) AND (b)). THAT IS, BY THE PARTIES TO THE AGREEMENT OR THEIR SUCCESSORS IN TITLE.

SUBSECTION (2) PREVENTS THE REGISTRATION OF AN INSTRUMENT OF VARIATION UNLESS CERTAIN THINGS HAVE HAPPENED.

PARAGRAPHS (a) AND (c) REQUIRE THE CONSENT OF CERTAIN PERSONS. (THESE ARE THE SAME PEOPLE WHO ARE REQUIRED TO CONSENT TO AN EXTENSION (SEE SECTION 104C (2))

PARAGRAPH (b) PREVENTS THE REGISTRATION UNLESS THE REGISTRAR IS SATISFIED THAT THE VARIED AGREEMENT WOULD CONTINUE TO COMPLY WITH SECTION 6 (1) OF THE TPA ACT (THE FORMALITIES OF AN AGREEMENT).

PARAGRAPH (d) REQUIRES THE PRESCRIBED FEE.

SUBSECTION (3) PROVIDES THAT A VARIATION INSTRUMENT CANNOT BE USED TO EFFECT A CHANGE TO THE PARTIES TO AN AGREEMENT OR THE AREA OF A PLANTATION (A TRANSFER OF THE AGREEMENT OR A NEW AGREEMENT WOULD BE REQUIRED FOR THIS). NOR CAN A VARIATION BE USED FOR AN EXTENSION OR OTHER CHANGE TO THE TERM OF AN AGREEMENT.

SECTION 104E SURRENDER OF PLANTATION INTERESTS AND AGREEMENTS DEALS WITH THE SURRENDER OF PLANTATION INTERESTS AND AGREEMENTS.

SUBSECTION (1) PROVIDES THAT A PLANTATION INTEREST AND THE RELEVANT AGREEMENT MAY BE SURRENDERED WHOLLY OR PARTIALLY BY AN INSTRUMENT OF SURRENDER SIGNED BY SPECIFIED PERSONS. AGAIN, THESE PERSONS WOULD BE THE PARTIES TO THE AGREEMENT OR THEIR SUCCESSORS IN TITLE.

SUBSECTION (2) PROVIDES THAT AN INSTRUMENT OF SURRENDER CANNOT BE REGISTERED UNLESS CERTAIN THINGS HAPPEN.

HERE, THE CONSENT OF OTHER PERSONS WHO HAVE AN INTEREST IN THE LAND IS NOT REQUIRED BECAUSE THOSE INTERESTS CANNOT BE JEOPARDISED BY A SURRENDER OF A PLANTATION INTEREST. BUT THE HOLDERS OF AN INTEREST (EG: A MORTGAGE) IN THE PLANTATION INTEREST ITSELF, OR A CAVEATOR OF THE PLANTATION INTEREST WOULD BE AFFECTED. THEIR INTEREST WOULD BE LOST IF THE PLANTATION INTEREST WAS SURRENDERED SO PARAGRAPH (a) REQUIRES ANY SUCH INTEREST OR CAVEAT TO BE SURRENDERED, DISCHARGED OR WITHDRAWN BEFORE THE SURRENDER OF THE PLANTATION INTEREST CAN BE REGISTERED.

BY PARAGRAPH (b) COMPLIANCE WITH SECTION 18 OF THE *LAND ADMINISTRATION ACT* IS AGAIN REQUIRED AND BY PARAGRAPH (c) THE PRESCRIBED FEE MUST BE PAID.

CLAUSE 7: SECTION 110 AMENDED
THIS CLAUSE AMENDS SECTION 10 OF THE TLA. THAT SECTION CONCERNS THE TRANSFER OF LAND BY A MORTGAGEE OR AN ANNUITANT OF A CHARGE UPON EXERCISE OF THEIR POWER OF SALE. WHEN THAT TRANSFER IS REGISTERED, THE ESTATE OR INTEREST OF THE MORTGAGOR OR GRANTOR VESTS IN THE PURCHASER OF THE INTEREST TRANSFERRED "FREED AND

DISCHARGED FROM ALL LIABILITY ON ACCOUNT OF SUCH MORTGAGE OR CHARGE AND OF ANY MORTGAGE OR CHARGE OR ENCUMBRANCE REGISTERED SUBSEQUENT THERETO *EXCEPTING* A LEASE OR GRANT OF EASEMENT TO WHICH THE MORTGAGEE OR ANNUITANT OR HIS TRANSFEREES SHALL HAVE CONSENTED IN WRITING TO”.

THIS SECTION COULD APPLY IN RELATION TO THE SALE OF A PLANTATION INTEREST BY A MORTGAGEE OF THAT PLANTATION INTEREST IN THE SAME WAY AS IT COULD APPLY TO THE SALE OF ANY ESTATE OR INTEREST. BUT WHEN IT APPLIES TO THE SALE OF AN ESTATE OR INTEREST IN LAND THAT IS NOT A PLANTATION INTEREST (EG: THE FREEHOLD) THAT ESTATE OR INTEREST SHOULD BE TRANSFERRED SUBJECT TO A PLANTATION INTEREST TO WHICH THE MORTGAGEE OR ANNUITANT CONSENTED TO, IN THE SAME WAY AS IT IS SOLD SUBJECT TO A LEASE OR EASEMENT THAT WAS CONSENTED TO.

THE NEW SUBSECTION (2) WILL APPLY IN SUCH A CASE TO REQUIRE SUBSECTION (1) TO BE READ IN A WAY THAT WILL ALLOW THAT TO HAPPEN.

CLAUSE 8: SECTION 111 AMENDED
THIS CLAUSE AMENDS SECTION 111 OF THE TLA. THAT SECTION PROVIDES REMEDIES FOR A MORTGAGEE OR ANNUITANT ON DEFAULT IN PAYMENT UNDER A MORTGAGE OR CHARGE. PRINCIPALLY, IT ALLOWS A MORTGAGEE OR ANNUITANT OF A CHARGE TO TAKE POSSESSION OF THE LAND.

A SUBSECTION (2) WILL BE INSERTED TO PREVENT THAT SECTION APPLYING TO ALLOW A MORTGAGEE OF AN ESTATE OR INTEREST OTHER THAN A PLANTATION INTEREST (EG: FREEHOLD OR A LEASE) FROM TAKING THAT ACTION IN RELATION TO A PLANTATION INTEREST TO WHICH THE MORTGAGEE, OR ANNUITANT OR THEIR TRANSFEREE HAS CONSENTED IN WRITING.

CLAUSE 9: SECTION 129A AMENDED
THIS CLAUSE AMENDS SECTION 129A OF THE TLA. THAT SECTION PROVIDES FOR THE CREATION OF RESTRICTIVE COVENANTS. IT REQUIRES THE CONSENT OF THE MORTGAGEE OR ANNUITANT IF THE LAND IS SUBJECT TO A MORTGAGE OR CHARGE. THE AMENDMENTS TO IT WILL MEAN THE CONSENT OF THE PROPRIETOR OF A PLANTATION INTEREST WILL BE REQUIRED IF THE LAND IS SUBJECT TO A PLANTATION INTEREST.

CLAUSE 10: SECTION 137 AMENDED

THIS CLAUSE AMENDS SECTION 137 OF THE TLA. THAT SECTION PROVIDES FOR THE LODGEMENT OF A CAVEAT BY A PERSON CLAIMING AN UNREGISTERED OR EQUITABLE INTEREST IN LAND. A CAVEAT PREVENTS THE TRANSFER OR REGISTRATION OF ANY INSTRUMENT AFFECTING THE LAND WHILE THE CAVEAT REMAINS (UNLESS THE INTEREST IS SUBJECT TO THE CAVEAT).

A SUBSECTION (2) WILL BE ADDED PROVIDING FOR THE LODGEMENT OF A CAVEAT BY A PARTY TO A TREE PLANTATION AGREEMENT BEFORE THE AGREEMENT IS REGISTERED. THIS WILL ALLOW A PERSON TO PROTECT THEIR "INTEREST IN LAND TO BE" UNTIL SUCH TIME AS THE AGREEMENT IS REGISTERED AND THE INTEREST IN LAND IS ACTUALLY CREATED.