

THE CADASTRAL SURVEY BILL
(No. XV of 2011)

Explanatory Memorandum

1. The main object of this Bill is to make provision for the general administration, maintenance and updating of a digital cadastral database (DCDB) for the Island of Mauritius and other islands forming part of Mauritius.
2. The Bill also makes provision for –
 - (a) the allocation of a unique Parcel Identification Number to every land parcel or unit of building;
 - (b) the setting up of a geodetic datum in order to accurately identify the location of every land parcel;
 - (c) new standards and rules to be prescribed for the conduct of land surveying; and
 - (d) related matters.

Dr. A. T. KASENALLY
Minister of Housing and Lands

24 June 2011

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A BILL

To make better provision for the maintenance and updating of a digital cadastral database, the conduct of land surveying and related matters

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Cadastral Survey Act 2011.

2. Interpretation

In this Act –

“boundary” means a line or feature used to demarcate adjoining land parcels;

“cadastral survey” means a survey for the determination and description of the spatial extent of a plot of land, including its boundaries;

“Chief Surveyor” has the same meaning as in the Land Surveyors Act;

“Committee” means the LAVIMS Committee set up under section 5;

“coordinates” means the Cartesian coordinates expressed in the prescribed geodetic datum and projection system, which give the precise location of land parcels and boundary points;

“DCDB” means the digital cadastral database set up under section 4;

“fixed boundaries” means lines or natural or man-made features existing between adjoining land parcels that have been measured and fixed by a land surveyor and agreed upon by the adjoining owners;

“general boundaries” means lines or natural or man-made features existing between adjoining land parcels that have not been measured and fixed by a land surveyor;

“Government surveyor” has the same meaning as in the Land Surveyors Act;

“interested person” means a person who owns, possesses, holds a lease, mortgage or charge over, or is entitled to or otherwise has an interest in, a plot of land;

“land parcel” means a plot of land registered as such in the DCDB;

“land registry” means the collection of records kept by the Conservator of Mortgages pursuant to the Transcription and Mortgage Act;

“land surveyor” has the same meaning as in the Land Surveyors Act;

“LAVIMS” means the Land Administration, Valuation and Information Management System;

“local authority” has the same meaning as in the Local Government Act;

“member” –

(a) means a member of the Committee; and

(b) includes the Chairperson of the Committee;

“memorandum of survey” means a report drawn up by a land surveyor for the purposes of section 8(a);

“Minister” means the Minister to whom responsibility for the subject of land surveys is assigned;

“national survey control system” means a coordinated system used to determine the position of points, features and boundaries in cadastral or other surveys, and recorded in the DCDB;

“notary” has the same meaning as in the Notaries Act;

“owner”, in relation to a plot of land, includes –

(a) the person who is its legal owner according to a registered and transcribed title deed;

(b) where the immovable property is situate on State land or *Pas Géométriques*, its lessee;

(c) in respect of leased land, the person who receives rent or, if the land were to be let, would be entitled to receive the rent, whether for his own benefit or that of another person; or

(d) where the owner cannot be found or ascertained, the occupier;

“Parcel Identification Number” means the number assigned to a land parcel or unit pursuant to section 7;

“Permanent Secretary” means the Permanent Secretary of the Ministry responsible for the subject of land surveys;

"PIN" means a Parcel Identification Number;

"plot of land" –

- (a) means a delimited part of land or water;
- (b) includes any unit or other building on, and any right or interest in, the land;

"property" –

- (a) means a plot of land, whether improved or unimproved; and
- (b) includes –
 - (i) houses and buildings, fixtures and other building improvements of any kind, fences, tanks, wells, dams, fruit trees, bushes, shrubs and other plants planted or sown, whether for trade or other purposes, draining of land, ring barking and any other actual improvement; and
 - (ii) reclamation of land by draining or filing, and any retaining walls or other structures or works ancillary to that reclamation, the excavation, grading or levelling of land, and the removal of rocks, stone, sand or soil;

"survey control mark" means a mark referred to in section 6(2) ;

"survey data" means information pertaining to a plot of land obtained from a survey;

"survey dataset" means the set of survey data necessary to integrate a survey of a plot of land into the DCDB;

"survey mark" means a mark placed by a land surveyor for the purposes of a survey;

"survey report" means a report drawn up by a land surveyor for the purposes of section 8(b);

"unit" means any self-contained building used for residential, commercial, industrial or other purposes.

3. Application of Act

(1) Subject to this section, this Act shall apply to the Island of Mauritius.

(2) (a) No person, other than a land surveyor, shall survey a plot of land in Rodrigues or part of Mauritius other than the Island of Mauritius.

(b) A survey under paragraph (a) shall be conducted in such manner as may be prescribed.

(3) The President may, by Proclamation, declare that this Act shall extend, with such modifications and adaptations as may be appropriate, to any part of Mauritius other than the Island of Mauritius.

PART II – DIGITAL CADASTRAL DATABASE

4. Digital cadastral database

(1) (a) The digital cadastral database existing and kept at the Ministry, at the commencement of this Act, shall be deemed to have been set up under this Act, and shall continue to be kept and maintained in electronic form.

(b) The DCDB shall, in respect of every land parcel, consist of the entries specified in subsection (2).

(2) The entries referred to in subsection (1)(b) shall include –

- (a) a digital graphic representation of the land parcel;
- (b) the relationship of all points and polygons in the cadastral framework with the geodetic datum of the Island of Mauritius;
- (c) the relationship of every land parcel with any other adjoining land parcel and any abutting road;
- (d) the lot number, if any, the extent of the land parcel, its PIN, plan or diagram of cadastral survey, street address and particulars of transcription;
- (e) a brief description of any building on the land parcel, its PIN, the area of the building in square metres, its utilisation, the individual descriptors, attributes and other related material;
- (f) an indication as to whether a building on the land parcel is for residential, commercial, industrial or other purposes;
- (g) the full name of the owner;
- (h) the market value of the land parcel in terms of the value of the land, the buildings, if any, and the value of leasehold rights in State lands;
- (i) zoning of the land parcel for planning purposes;
- (j) the district or town boundaries set out in the First Schedule to the Local Government Act, the electoral boundaries of constituencies approved by the Assembly under section 39 of

the Constitution and any other administrative boundaries, of the land parcel;

(k) such other information as the Permanent Secretary may require.

(3) The DCDB shall be upgraded to a coordinated *cadastre* by the recording of accurate surveys and coordinated cadastral surveys.

(4) The recording in the DCDB of information in respect of a land parcel shall not create or affect any interest in the land.

(5) Where the information in the DCDB is inconsistent with information recorded or noted in the land registry, the information recorded or noted in the land registry shall prevail to the extent of the inconsistency.

(6) Any information recorded in a deed of transfer of a land parcel regarding the coordinates of land boundaries shall be consistent with the DCDB.

(7) Where the DCDB indicates that the boundaries of a land parcel are not fixed boundaries, the land parcel map shall be taken to be the general boundaries of that land parcel.

(8) Where any uncertainty or dispute exists as to the alignment of any boundary line, a note to that effect shall be inserted in the DCDB.

(9) For the purposes of this section, the DCDB shall be geo-referenced in terms of the prescribed geodetic datum of Mauritius which is based on the WGS 84 reference system of the World Geodetic System 1984.

5. LAVIMS Committee

(1) There is set up for the purposes of this Act a Committee to be known as the LAVIMS Committee.

(2) The Committee shall consist of –

- (a) the Chief Technical Officer of the Ministry, as Chairperson;
- (b) the Chief Surveyor or his representative;
- (c) a representative of the Ministry responsible for the subject of finance;
- (d) a representative of the Ministry responsible for the subject of local government;
- (e) the Registrar-General or his representative;

- (f) the Director of Valuation and Real Estate Consultancy Services of the Ministry responsible for the subject of finance or his representative;
- (g) the Director, Central Informatics Bureau or his representative.

(3) The Committee shall –

- (a) be responsible for the general administration and maintenance of the DCDB system;
- (b) set standards for integrating new cadastral surveys into the DCDB;
- (c) set standards for integrating the general valuation of every property;
- (d) set standards and procedures for the structure, storage, and provision of cadastral survey data;
- (e) establish data sharing mechanisms with potential geographical data custodians;
- (f) develop procedures to capture any new dataset;
- (g) perform any other act necessary for the maintenance of the DCDB system.

(4) The Committee shall meet as often as necessary but at least once every month.

(5) A meeting of the Committee shall be held at such time and place as the Chairperson may determine.

(6) At a meeting of the Committee, the Chairperson and 3 other members shall constitute a quorum.

(7) The Minister may co-opt such other person as may be of assistance in relation to any matter before the Committee but a co-opted member shall not have the right to vote at a meeting of the Committee.

(8) (a) The Minister shall designate an officer of the Ministry to act as Secretary to the Committee.

(b) The Secretary designated under paragraph (a) –

- (i) shall give notice of every meeting of the Committee to the members;
- (ii) shall prepare and attend every meeting of the Committee;

- (iii) shall keep minutes of proceedings of any meeting of the Committee; and
- (iv) may take part in the deliberations of a meeting of the Committee, but shall not have the right to vote.

(9) Subject to this section, the Committee shall regulate its meetings and proceedings in such manner as it may determine.

PART III – CADASTRAL SURVEY

6. Chief Surveyor

(1) The Chief Surveyor shall, subject to such directions of a general character as may be given to him by the Minister relating to the cadastral survey of a plot of land, perform such functions and may exercise such powers as are conferred upon him by this Act.

(2) The Chief Surveyor –

- (a) shall be responsible for the placement of a survey control mark on any land parcel;
- (b) may enter on any plot of land or any adjacent land, to perform such acts as may be necessary for the installation, protection, maintenance, repair, alteration or removal of a survey control mark;
- (c) may, in respect of a memorandum of survey, survey report or plan deposited with him by a land surveyor –
 - (i) carry field checks at any reasonable time on that plot of land in question; and
 - (ii) make such computations, from the survey dataset deposited, as are necessary to prove the accuracy of the survey, the dimensions, areas, geographical position and the placement of survey marks on a land parcel;
- (d) shall maintain a national geodetic system and a national survey control system;
- (e) shall ensure that facilities to receive survey datasets are available;
- (f) shall be responsible for the updating of the DCDB in such manner as may be prescribed;
- (g) shall set survey standards and rules for the conduct of cadastral surveys;

- (h) shall notify, by notice in the *Gazette*, specified areas to be designated survey areas, being areas of land in respect of which cadastral surveys must be carried out by reference to survey control marks in such manner as may be prescribed; and
- (i) shall do all such acts as may be incidental to, or necessary for, the exercise of his functions under this Act.

(3) Where the Chief Surveyor is of the opinion that he may obtain any information relating to a land parcel from any record or document in the possession of any person, including a public officer, the person concerned shall grant access to it for the Chief Surveyor to obtain the necessary information from the record or document to update the DCDB.

(4) The Chief Surveyor may, where appropriate, delegate his functions and powers under this Act to an appropriate officer of the Ministry.

7. Assignment of Parcel Identification Number

(1) No person shall offer, advertise for sale or make a promise to purchase or to sell any plot of land, or any undivided right in any plot of land or unit, unless a PIN has been assigned to that plot of land or unit.

(2) No lease or charge relating to any plot of land or unit shall be granted or created unless a PIN has been assigned to that plot of land or unit.

(3) Any interested person, or a land surveyor or notary acting on behalf of an interested person, may apply, in such form and manner as may be prescribed, for the assignment of a PIN in respect of any plot of land or unit, and the Chief Surveyor shall, on receipt of an application, assign a PIN to the plot of land or unit.

8. Survey by land surveyors

Every land surveyor who surveys a plot of land shall, in such form and manner as may be prescribed, draw up and make –

- (a) in the case of a survey under section 9, a memorandum of survey; and
- (b) in the case of a survey under section 11, a survey report,

to which shall be annexed a plan of the plot.

9. Summons or notice to adjoining owners

(1) (a) Subject to subsection (2) and section 11, no land surveyor shall for any purpose survey a plot of land which adjoins the plot of land of another person, unless the owner of the adjoining plot of land is present at the survey or has

consented in writing to the survey being made in his absence, or has been summoned to attend the survey but has failed to do so.

(b) A summons under paragraph (a) shall, subject to paragraph (c), be served personally by an usher upon the owner of the adjoining plot of land not less than 14 days before the survey is to be carried out.

(c) Where the adjoining plot of land is State land –

(i) the summons shall be served on the Chief Surveyor not less than 21 days before the survey; and

(ii) the survey shall, except with the concurrence of the Chief Surveyor, be held during office hours.

(2) Where –

(a) the owner of the adjoining plot of land or his address is not known; or

(b) the survey is required to be made by a Government surveyor,

the land surveyor may, in lieu of a summons specified in subsection (1), give notice of the survey in accordance with subsection (3).

(3) A notice of a survey under subsection (2) shall –

(a) indicate the date and time of the survey;

(b) call upon the owner of the adjoining plot of land to be present and to produce his title deed at the survey; and

(c) not less than 14 days before the survey –

(i) be posted in a conspicuous place on the plot of land to be surveyed; and

(ii) be published in the *Gazette* and in 2 daily newspapers approved by the Permanent Secretary.

10. Owners to produce title deeds

(1) Every land surveyor shall, before making a survey under section 9, call upon every owner of an adjoining plot of land who is present to produce his title deed.

(2) Where the owner of an adjoining plot of land who is present at a survey refuses or is unable to produce his title deed, the land surveyor shall record his refusal or inability, as the case may be, in the memorandum of survey.

(3) A memorandum of survey shall be drawn up in one original and be signed by the land surveyor who shall affix his seal or stamp to the memorandum.

11. Survey to determine extent of plot of land

(1) Subject to subsection (2), sections 9 and 10 shall not apply to a survey of a plot of land made at the request of its owner for the sole purpose of determining its approximate extent.

(2) No memorandum of survey shall be drawn up in connection with a survey made under subsection (1).

(3) A survey report of the determination of the extent of a plot of land under subsection (1) shall –

- (a) be drawn up in one original and be signed by the land surveyor who shall affix his seal or stamp to the report; and
- (b) not be binding on the owners of the adjoining plots of land.

12. Survey to be approved by Chief Surveyor

(1) A land surveyor shall, on completion of a survey of a plot of land, deposit his memorandum of survey or survey report and plan, together with such survey dataset as may be required, with the Chief Surveyor.

(2) The Chief Surveyor shall verify whether the survey has been carried out in the prescribed manner and the memorandum of survey or survey report and plan have been drawn up and made in the prescribed form and manner.

(3) Where the Chief Surveyor is of the opinion that a survey –

- (a) has not been carried out in the prescribed form and manner, or that the memorandum of survey has, or survey report and plan have, not been drawn up and made in the prescribed form and manner, he shall require the land surveyor to amend his memorandum of survey, survey report or plan, as the case may be;
- (b) has been carried out in the prescribed form and manner, or that the memorandum of survey has, or survey report and plan have, been drawn up and made in the prescribed form and manner, he shall approve the memorandum of survey or survey report and plan, as the case may be.

13. Registration of memorandum of survey or survey report

(1) The original of every memorandum of survey or survey report which has been approved by the Chief Surveyor shall be registered by the land surveyor with the Registrar-General within 14 days of the completion of the survey.

(2) Where the Registrar-General registers a memorandum of survey or survey report, he shall scan and save it in the DCDB.

14. Duties of Permanent Secretary

(1) The Permanent Secretary shall have the care, control and custody, and ensure the physical protection, of all memoranda of survey or survey reports deposited in his office or recorded in the DCDB.

(2) Every memorandum of survey or survey report deposited in the office of the Permanent Secretary or recorded in the DCDB, and every certified copy of a memorandum of survey issued by the Permanent Secretary, shall be evidence of the survey and of the truth of the matters specified in that memorandum or report.

PART IV – MISCELLANEOUS

15. Access to DCDB

(1) The Committee may, on such terms and conditions as it may determine and, subject to subsection (2), on payment of such fee as may be prescribe, allow any person to have access to any information which is recorded in the DCDB.

(2) Every Ministry, Government Department and local authority shall be exempt from the payment of the fee referred to in subsection (1).

16. Confidentiality

The Permanent Secretary, the Chief Surveyor, a Government surveyor, an officer of the Ministry or a member –

- (a) shall not disclose to any unauthorised person any matter which comes to his knowledge in the performance of his functions or the exercise of his powers under this Act; and
- (b) except where necessary for the purposes of the performance of his functions or the exercise of his powers under this Act, shall not, directly or indirectly –
 - (i) make a record of, or divulge or communicate to any person, any information concerning the affairs of any person, acquired by him by reason of the performance of his functions or the exercise of his powers under this Act; or
 - (ii) produce to any person any document furnished to him by another person for the purposes of this Act.

17. Fees to land surveyors

(1) Subject to subsection (2), the fee payable to a land surveyor other than a Government surveyor may be fixed by agreement between the land surveyor and his client.

(2) The fee payable to a land surveyor shall –

(a) where the land surveyor is appointed by a Court; or

(b) in the absence of agreement with the client or in case of a dispute between him and the client,

be taxed by the Master and Registrar in accordance with such scale and in such manner as may be prescribed.

18. Interference with property rights of owners

(1) Where, in the course of a survey, a land surveyor is unable to carry out an operation without cutting down a standing crop, a tree or brushwood growing on a plot of land and he is unable to obtain the consent of the owner of the plot of land for that purpose, he may apply to the Magistrate of the district in which the plot of land is situated for leave to cut the crop, tree or brushwood, as the case may be.

(2) On an application made under subsection (1), the Magistrate may, after hearing the owner of the plot of land –

(a) authorise the land surveyor to cut down the standing crop, tree or brushwood, as the case may be; and

(b) fix the amount of compensation, if any, payable to the owner of the plot of land.

19. Offences

(1) Any person who –

(a) knowingly obstructs or hinders a land surveyor, or a person assisting a land surveyor, in –

(i) the performance of the land surveyor's functions in relation to a survey;

(ii) the ascertaining or marking out of a boundary or cadastral survey line; or

(iii) the fixing, placing, restoring, repairing, or setting up of a survey mark;

(b) knowingly or recklessly takes, destroys, or alters the position of, or markings on, a survey mark that has been placed or set up –

- (i) for the control of cadastral surveys; or
 - (ii) for the purposes of any cadastral survey;
- (c) places in position, in relation to any plot of land, a peg or mark –
 - (i) that is not a survey mark properly placed; and
 - (ii) with the intention of causing any person to believe that it is a survey mark placed in that position for the purposes of a cadastral survey;
- (d) without lawful authority, removes, defaces, destroys or tampers with a notice posted under section 9(3)(c);
- (e) removes or displaces any boundary stone or survey mark, without the knowledge and consent of the interested person, or without lawful authority; or
- (f) signs a memorandum of survey, survey report or plan without having been on the plot of land during the measurement of the boundary lines,

shall commit an offence.

(2) Any person who contravenes this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 12 months.

(3) The Court before which a person is convicted of an offence under this section may, in addition, order the offender to pay the costs of repairing, replacing, or restoring to its proper position, or restoring the markings on, the survey mark concerned, including any other cadastral survey costs.

20. Repeal

The LAVIMS (Project Implementation) Act is repealed.

21. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

- (2) Any regulations made under subsection (1) may provide –
 - (a) for the levying of fees and charges;
 - (b) for the establishment of a geodetic datum for Mauritius;

- (c) for the manner in which a cadastral survey of a plot of land shall be carried out;
- (d) for the form and manner in which a plan, memorandum of survey or survey report shall be drawn up;
- (e) for the allocation of PINs;
- (f) for the manner in which a survey of a plot of land in Rodrigues or any part of Mauritius other than the Island of Mauritius shall be carried out; and
- (g) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 25,000 rupees and to imprisonment for a term not exceeding 6 months.

22. Consequential amendments

(1) The Affidavits of Prescription Act is amended, in section 4(1)(b), by deleting the words “by a surveyor” and replacing them by the words “drawn up by a land surveyor in accordance with the Cadastral Survey Act 2011”.

(2) The Land Acquisition Act is amended, in section 8(2)(a), by inserting, after the words “or plan”, the words “drawn up by a land surveyor in accordance with the Cadastral Survey Act 2011,”.

(3) The Land Surveyors Act is amended –

- (a) in section 8, by deleting the words “section 15” and replacing them by the words “section 13 of the Cadastral Survey Act 2011”;
- (b) by repealing sections 9 to 18;
- (c) in section 19 —
 - (i) in subsection (1), by repealing paragraphs (c) and (d, the semicolon at the end of paragraph (b) being deleted and replaced by a comma;
 - (ii) by repealing subsection (2) and replacing it by the following new subsection –
 - (2) Any land surveyor who contravenes section 5, 6, 7 or 8 shall commit an offence.
 - (iii) in subsection (3), by deleting the figure “500” and replacing it by the figure “50,000”.

(4) The Morcellement Act is amended –

- (a) in section 4(2), by inserting, after paragraph (g), the following new paragraph –
 - (ga) a representative of the Survey Division of the Ministry responsible for the subject of land surveys;
 - (b) in section 5(2)(c)(ii), by deleting the words “the Land Surveyors Act” and replacing them by the words “the Cadastral Survey Act 2011”;
 - (c) in section 7(3), by inserting, after the words “infrastructural works properly”, the words “and produced a revised morcellement plan incorporating any amendment recommended by the Board”.
- (5) The Notaries Act is amended –
- (a) in section 2 –
 - (i) in the definition of “Treasurer”, by deleting the full stop and replacing it by a semicolon;
 - (ii) by inserting, in the appropriate alphabetical order, the following new definitions –
 - “land parcel” has the same meaning as in the Cadastral Survey Act 2011;
 - “Parcel Identification Number” has the same meaning as in the Cadastral Survey Act 2011;
 - “PIN” means Parcel Identification Number;
 - “unit” has the same meaning as in the Cadastral Survey Act 2011.
 - (b) in section 9, by adding the following new subsection –
 - (6) Where a transaction witnessed by a deed involves the sale or lease of a land parcel or unit, the Registrar-General shall not register the deed unless a PIN has been assigned to the land parcel or unit.
 - (c) in section 22 –
 - (i) by numbering the existing provision as subsection (1);
 - (ii) by adding the following new subsection –

(2) No inscription on a land parcel or unit shall be taken unless a PIN has been assigned to it.

(6) The Sale of Immovable Property Act is amended, in section 5(c), by inserting, after the words “property seized”, the words “by reference to a memorandum of survey and a plan drawn up in accordance with the Cadastral Survey Act 2011 and annexed to the memorandum of seizure”.

(7) The Succession and Wills Act is amended, in section 39(2)(b), by deleting the words “a memorandum and plan with all the formalities prescribed by the Land Surveyors Act” and replacing them by the words “a memorandum of survey and plan in accordance with the Cadastral Survey Act 2011”.

(8) The Registration Duty (Site Plan) Regulations 1991 are amended –

(a) in regulation 2 –

(i) in the definition of “Land Surveyor”, by deleting the full stop and replacing it by a semicolon;

(ii) by adding the following new definition –

“Parcel Identification Number” has the same meaning as in the Cadastral Survey Act 2011;

“PIN” means Parcel Identification Number.

(b) in regulation 3 –

(i) in paragraph (a), by inserting, after the words “Land Surveyor”, the words “in accordance with the Cadastral Survey Act 2011”;

(ii) by inserting, after paragraph (d), the following new paragraph –

(da) indicate the PIN of the plot of land or unit;

23. Commencement

(1) This Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.