

Overcoming issues in relation to the acquisition of land in Uganda

BRIEF OVERVIEW

In the midst of the current property boom in Uganda demand for residential and commercial property has grown exponentially. Similarly, local and international investors are increasingly interested in the lucrative nature of investing in Uganda which in turn throws into the spotlight practical issues resulting from how the real estate regime in Uganda applies differently for Ugandan citizens and non-citizens.

QUESTIONS

1. What types of interest in land can be held?

Ownership and dealings in land in Uganda are regulated by the Constitution of Uganda (the "Constitution"), the Land Act (Cap 227) (the "Land Act") and the Registration of Titles Act (Cap 230) (the "RTA"). The forms of land tenure provided for under the Constitution are:

Customary - Under this tenure, land is communally owned by a particular group of people in a particular area and is held in perpetuity. Its use is usually controlled by elders, clan heads or a group within its own well-defined administrative structures and any decision taken in respect of such land should be consistent with the customs, traditions and practices of the community concerned. The customary interest may be subdivided into smaller parcels of land with certificates of customary ownership issued to the respective holders. A customary interest in land is an unregistered interest in land under the RTA but can be converted to a registered Freehold interest.

Freehold - This is a system of owning registered land either in perpetuity or for so long as certain conditions (for example in relation to the use of the land) are satisfied. It enables the holder to exercise, subject to the law, full powers of ownership of land. Freehold title is usually granted in respect of public land which is owned by the government.

Mailo - This is a system of owning registered land in perpetuity and is identical to the freehold tenure. The distinction is to be found in the origins of the particular land held under mailo tenure. The holder of a mailo interest has absolute ownership of that land.

Leasehold - Similar to the UK a party may grant another person a right to exclusive possession of land for a specified period on certain conditions such as the use of the land and payment of rent. Leasehold transactions, being essentially a purely contractual arrangement, allow parties to define the terms and conditions of access in such a manner as suits their reciprocal land use needs.

2. Are there any restrictions on who can hold interests in land?

Yes, under the Constitution and the Land Act, while Ugandan citizens can hold land under any of the above forms of land tenure, non-citizens are only permitted to hold leasehold interests which have a duration of no more than 99 years.



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3. Who is a non-citizen?

For the purposes of the Land Act, a “non-citizen” means:-

- A person who is not a citizen of Uganda as defined by the Constitution and the Uganda Citizenship And Immigration Control Act (Cap 66);
- In the case of a corporate body, a corporate body in which the controlling interest lies with non-citizens;
- In the case of bodies where shares are not applicable, where the body’s decision making lies with non-citizens;
- A company in which the shares are held in trust for non-citizens; and
- A company incorporated in Uganda whose articles of association do not contain a provision restricting transfer or issue of shares to non-citizens.

For these purposes a “controlling interest” means (i) in the case of companies with shares, an interest in the majority of the shares in the Company and (ii) in the case of companies without shares, control of the decisions of the company.

4. What happens at the expiry of a 99 year leasehold?

The essence of a lease is that it only runs for a given period of time and so the land will revert to the lessor (owner of mailo/freehold interest from which the lease was issued) on expiry. The lessee is not automatically entitled to renewal of its leasehold interest in land. Where a lessor is a public body, such as a District Land Board, the lessee may apply for a fresh lease and will be given priority. Where the lessor is a private landlord, the grant of a fresh lease is entirely at the landlord’s discretion.

5. Is it possible to grant a lease with a “peppercorn” or nominal rent?

Yes, however stamp duty payable for registration of the lease is based on the value of the land as assessed by the Chief Government Valuer rather than the actual rent. Stamp duty payable is 1% of the assessed value.

This valuation will be based on the market value of the land taking into consideration any developments on the land, its location and lease period. The premium and annual rent payable for the lease may also be considered.

6. If non-citizens want to hold an interest in land other than a leasehold interest, what structures can be adopted to facilitate this investment?

A mailo or freehold interest in land can be held through a Ugandan company where majority shares of the company are held by a citizen(s) and which contains restrictions on the transfer of shares to non-citizens.

The articles of association of the company can specifically impose restrictions on the disposal of company property which can be achieved by requiring for approval of the shareholders to be obtained prior to any dealings with company property. Arrangements can be put in place in relation to the transmission and transfer of shares in the company to provide the investor with comfort in relation to control of the entity and the identity of the shareholders.

7. Is there any proposal to reform the land law regime?

Currently, there is no proposal to reform the land law regime in respect to acquisition of mailo or freehold interests in land by non-citizens.

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