

Foreigners' Land Rights in Tanzania - are they there?

Principal Acts

The Land Act [Cap 113 R.E. 2002] ("the Act") and the Village Land Act [Cap 114 R.E. 2002] ("the Village Land Act") are the main land laws in Tanzania in addition to the regulations made thereunder. All land in Tanzania is public land and is vested in the President as a trustee for and on behalf of all Tanzanians. Land in Tanzania is divided into three categories which are general land, village land and reserved land. The Land Act provides for the reserved and general land while the village land is provided for under the Village Land Act.

Concept of Ownership of Land

As stated above, all land in Tanzania is vested in the President as a trustee hence the concept of "absolute ownership of land" or "ownership of land" is not recognized in Tanzania rather people in Tanzania have the "right to use and occupy the land" in accordance with the approved use which is either for residential, commercial, mix of residential and commercial or for pastoral or farming purposes.

A person wishing to use and occupy general land applies to the president for the granted right of occupancy which if granted can either be granted for 33,66 or maximum 99 years. For village land, the right to use and occupy such land is applied and granted by the Village Council as provided for under the Village Land Act.

Can Foreigners Own Land?

The Land Act provides that a non citizen shall not be allocated or granted land unless it is for investment purposes as provided for under the Tanzania Investment Act [Cap 38 R.E. 2002] ("Investment Act"). The Act further provides that a corporate body in which majority shareholders or owners are non-citizens shall be deemed non-citizens or foreign corporation. Whether or not the corporate body is registered in Tanzania, if the majority shareholders or owners are non-citizens, it will be deemed as a foreign corporation hence cannot be granted right of occupancy unless such a corporate body is registered and granted a Certificate of Incentives under the Tanzania Investment Act.

There is a conflict of law between the Companies Act [Act No. 12 of 2002] and the Land Act because the Companies Act provides that any company incorporated under the Companies Act shall have the same power to hold land in Tanzania. This is in direct contradiction to the Land Act which disallows land ownership by a company with majority foreign ownership; however it is an established principle that in any conflict with the Land Act, the Land Act takes precedence meaning that the Companies Act provision of Land Ownership would likely not be valid under our laws.

How can foreigners enjoy rights to use land?

Foreigners can enjoy the rights to use and occupy land through:

a. Derivative rights

Land for investment purposes is granted to the Tanzania Investment Centre ("TIC") which in turn grants derivative rights to investors for a specified amount of time which shall not exceed 99 years. Investors wishing to have rights to occupy and use land may apply to the TIC stipulating the location for investment, the size of land required, purposes for the use of the land etc. Upon approval of the application, the TIC shall grant the investor the derivative right to use and occupy the land i.e. the investor's right to use and occupy the land is derived from the TIC. Should the investor fail to implement the investment as applied to the TIC, the TIC may re-acquire the land from the investor and the investor will be entitled to be paid compensation for any development made on the land. The advantage of acquiring land under the TIC is that the investor may also mortgage the period of derivative right granted by the TIC to any financial institution in the country to obtain a loan for purposes of being able to implement the intended investment. This derivative right is however not accepted by most banks in Tanzania since the mortgage has chances of getting impaired when the security is still persisting. It is a hotly discussed topic amongst bankers in Tanzania.



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b. Lease

Most foreign companies opt to enter into lease agreements with land owners who have been granted right of occupancy. Persons granted right of occupancy may enter into lease agreements either with citizens or non-citizens provided that the maximum term for which any lease may be executed shall be ten days less than the period for which the right of occupancy has been granted. This is the quickest way for such a company to enjoy land rights in Tanzania.

c. Joint Venture

Foreigners can enter into joint venture agreements and incorporate companies in which citizen(s) are major shareholders and are able to acquire granted right of occupancy which enables them to use the acquired land for the purposes of the company business.

Use of Village Land by Foreigners

Persons who wish to occupy and use village land for various purposes can apply for the right to use the land to the Village Council which may grant the non-citizen the right to use and occupy land for a limited period of time and under stipulated conditions as indicated by the Village Council and the Village Land Act.

Conclusion

In Tanzania, as in Africa, land is a sensitive issue for many Tanzanians. There have been many instances of foreigners applying for land and not utilizing it for the project the land is earmarked for. Land has caused instability in many African countries and it is unlikely that in the near future Tanzania will open up to land ownership by foreigners. The commercial interests of foreigners must be balanced by the internal security of a country- I personally believe that allowing foreign companies registered under the Tanzania Investment Act to have derivative rights to own land is the perfect balance.

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