

14 December 2017



Bill tabled to amend Land Act imposing restrictions on mortgages

- **All moneys obtained from a mortgage from a local bank or financial institution must be invested in Tanzania.**
- **Investing moneys obtained from a mortgage in places outside Tanzania constitutes a breach of conditions of a right of occupancy.**
- **Money obtained from a mortgaged 'undeveloped' or 'underdeveloped' land must be invested to develop that land otherwise mortgage invalid and constitutes a breach of conditions of a right of occupancy.**
- **Increased risk for banks as 'undeveloped' or 'underdeveloped' land not defined.**
- **Mortgagor required to submit a declaration of compliance with above requirement.**
- **No third party mortgage in respect of 'undeveloped' or 'underdeveloped' land.**
- **Regulations to be created to grandfather mortgages created before this amendment.**

Mid last month, the Written Laws (Miscellaneous Amendments) (No.5) Act 2017, which amends several laws, was presented for first reading in the National Assembly. Among the laws sought to be amended is the Land Act which will have an enormous impact on the banking sector and may affect liquidity in the market.

While the proposed new amendments retain the right of holder of a right of occupancy to mortgage his/her land for purposes of developing that land or for any other investment, there is a restriction that all moneys obtained from a mortgage from a 'local bank or financial institution' must now be invested in Tanzania. This move is geared at boosting local development of plots.

It is proposed that investing moneys obtained from a mortgage in places outside Tanzania constitutes a breach of conditions of a right of occupancy and thus entitles the President to revoke such right of occupancy.

Further to that, where the land mortgaged is 'undeveloped' or 'underdeveloped', the moneys obtained therefrom shall be utilized to develop part or whole of such mortgaged land. To ensure compliance with this legal requirement, the mortgagor is obliged, within six months of creation of the mortgage, to submit to the Commissioner information as to the manner in which the money obtained from the mortgage is invested to develop the mortgaged land. It is proposed that failure to invest money obtained from the mortgage in 'undeveloped' or 'underdeveloped' land constitutes a 'good cause' for the President to revoke a right of occupancy under section 45(2) of the Land Act. It also renders the mortgage invalid thereby creating a huge exposure for the already under pressure banks, who will have to take extra steps before lending. The proposed amendments will also restrict third party mortgages that are not fully compliant with the conditions on their right of occupancies and may open the way for more frauds against banks, which have seen a rising non-performing loans ratio over the past one year.

If the Bill sails through, the Procedure for administration and enforcement of these legal requirements will be prescribed in Regulations that will be made. Unless the amendment is opposed, it is expected that the second reading of the Bill will be in early 2018 for this Bill to become law before June 2018.

For further information on legal updates please contact:

Fayaz Bhojani
Managing Partner
M: +255 784 322751
E: fbhojani@fbattorneys.co.tz

Feizin Amlani
Head, Corporate Affairs
M: +255 688 253509
E: famlani@fbattorneys.co.tz

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FB Attorneys
8th Floor, Amani Place, Ohio Street
P. O. Box 19813
Dar es Salaam, Tanzania
T: +255 22 2135994/5
F: +255 22 2135996
E: info@fbattorneys.co.tz
W: www.fbattorneys.co.tz

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