

9 March 2018



Amendments to the Land Act imposes restrictions on mortgages

- **All moneys obtained from a mortgage from a bank or financial institution (both 'local' and 'foreign') must be invested in Tanzania**
- **Investing moneys outside Tanzania obtained from a mortgage constitutes a breach of conditions of Right of occupancy**
- **Money obtained from a mortgaged 'undeveloped' or 'underdeveloped' land must be invested to develop that mortgaged land**
- **No restrictions on where borrowed money is used if developed land**
- **'Undeveloped' or 'underdeveloped' land now defined in the law**
- **Mortgagor to report to Commissioner for Lands within 6 months on the manner loan used**
- **Mortgagee to file declaration to the Commissioner that the money obtained from the mortgage is invested in Tanzania**
- **Restrictions do not apply to land held under Customary Right of Occupancy**
- **Regulations to be issued on administration and enforcement of these restrictions**

On 9 February 2018, the Written Laws (Miscellaneous Amendments) Act 2018, Act No. 1 of 2018 which amends several laws including the Land Act, was gazetted. The Act was assented into law by the President on 8 February 2018.

The amendments impose a restriction that all moneys obtained from a mortgage from a bank or financial institution, whether local or foreign, must be invested in Tanzania. This restriction will severely dilute guarantees given by Tanzanian individuals to foreign banks.

As was provided in the Bill, the amendments retains the position that if a mortgaged land is 'undeveloped' or 'underdeveloped' land, money obtained therefrom can only be used to develop the particular land (cannot be used elsewhere). This implies that third party mortgages on undeveloped or underdeveloped land cannot now be used by banks.

The amendments make it clear that non-compliance with these new conditions amounts to a breach of the terms of the Right of Occupancy and the Right of Occupancy in question can be revoked, likely, notwithstanding the existence of a mortgage. However, where the mortgaged land is a developed land, money obtained from it can be used in any other investments which however must be within Tanzania. The law also provides that these restrictions do not apply to lands held under the Certificate of Customary Right of Occupancy.

The law imposes a further obligation on the mortgagor to submit to the Commissioner for Lands, within 6 months of creation of the mortgage, information as to the manner in which money obtained from the mortgage is invested to develop the mortgaged land. The law also imposes an obligation on the mortgagee, local or foreign, to submit to the Commissioner a declaration that money obtained from the mortgage is invested in Tanzania. The procedures for administration and enforcement of these restrictions, will be prescribed in the Regulations (not yet promulgated).

Important definitions

'Local banks' means a bank licensed by the Bank of Tanzania to undertake the banking business in Tanzania;

'Local financial institution' means any entity licensed in Tanzania to engage in the banking business, but limited as to size, locations served, or permitted activities as prescribed by the Bank of Tanzania or required by the terms and conditions of its license;

'Underdeveloped land' means land which is not developed in accordance with the conditions of the relevant Rights of Occupancy;

'Undeveloped land' means a land without improvement in or on, under or over such land or without any change of substantial nature in the use of such land.

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

About FB Attorneys

FB Attorneys is an all service law firm based out of Dar es Salaam, Tanzania.

We cover all aspects of the law and specialise in all corporate and commercial matters including Mining, Oil & Gas, Tax, Litigation, Competition, Banking & Intellectual Property law.

FB Attorneys has been ranked as a tier 1 law firm by the IFLR 1000 in the Energy & Infrastructure and Financial & Corporate sectors, tier 1 by Legal 500 and band 2 by Chambers and Partners General Business Law.

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

Disclaimer

Information found in this legal update and any attachments are confidential and may be privileged or otherwise protected from disclosure, and intended solely for the use of the individual or entity to whom it is addressed to. If you are not the intended recipient, please notify the sender immediately and delete this message and any attachment from your system. Any views or opinions expressed in the message or its attachments are not necessarily those of FB ATTORNEYS.

© FB Attorneys 2018. All rights reserved.



A member of **LEXAfrica**