

What Foreigners Need to Know

The Legal Framework

When The Land Act No. 4 of 1999 came into force on the 1st of May 2001, it restricted the foreign ownership of land in Tanzania. In terms of GN No. 485 of 2001, foreigners are only entitled to own land in Tanzania for investment.

However, Tanzania nevertheless encourages foreign investments in many sectors — including land. To this end, The Tanzania Investment Centre (TIC) was established to provide for more favourable conditions for investors in Tanzania. As a Government Agency for investment, its objective is to promote and facilitate investment.

Land in Tanzania is grouped into the following categories –

- (a) general land;
- (b) village land;
- (c) reserved land.

Each category is regulated by its own specific legislation.

Land Ownership is generally governed by The Land Act No. 4, and The Village Land Act No. 5 of 1999 (including amendments, rules and regulations, guidelines and other relevant laws). Sections 19(2) and 20 of The Land Act No.4 of 1999 permit non-citizens to own land **if**

1. it is for investment purposes, **and**
2. those investments are regulated by The Tanzania Investment Act No. 26 of 1997.

Foreign investors may be granted

1. a Right of Occupancy (the duration of which may be 33, 66 or 99 years);
2. a Derivative Right; or

A prospective Investor must procure a TIC status to be granted a Certificate of Incentives. Only once the investor has such a Certificate in hand can they apply for interests in land.

3. a Partial Transfer of Interest by a citizen.

The Tanzania Investment Act contains enabling provisions for non-citizens who wish to invest in Tanzania (subject to obtaining necessary consents and approvals from the relevant authorities). These provisions are outlined below.

Categories of Rights for Foreigners

1. Right of Occupancy:

- The prospective Investor applies to the TIC;
- if all requirements are satisfied, the Investor is instructed to pay appropriate fees to the TIC;
- the TIC issues a Sub-Title (Lease) to the Right of Occupancy to the Investor under Land Registration Act Cap 334.

Our view is that the Sub-Title issued under Land Registration Act Cap 334 contains the features of a lease – with the TIC acting as Lessor and the Investor acting as Lessee.

In practice, the tenure for the Right of Occupancy (granted to the TIC by the relevant Land Authorities) allows the TIC to issue to the investor the same tenure, but for a shorter period. For instance, a tenure granted to the TIC for 99 years, could be granted by the TIC to the investor for 98 years, with a renewable term upon application when the term expires.

2. Derivative Right:

- The prospective Investor applies to the TIC;
- if all requirements are met, the Investor is instructed to pay appropriate fees to the TIC;
- the TIC issues a Derivative Right (Licence) to the Investor.

'A Derivative Right' is defined in the Land Act as "a right to occupy and use land created out of a right of occupancy and includes a lease, a sub-lease, a licence, a usufructuary right and any interest analogous to those interests."

The Derivative Right, too, has terms and conditions analogous to agreements between a Lessor and Lessee – again with the TIC as Lessor and Investor as Lessee. The difference is that obligations and responsibilities traditionally fulfilled by the Lessor are transferred to the Lessee as per title deed conditions, making the Derivative Right a special lease.

It is our view that in such a special lease the Lessor retains few obligations. The result is that - provided the Lessee complies with the terms and conditions of the Derivative Right - he shall peaceably and quietly hold and enjoy the land and its improvement during the tenure of his Derivative Right – without interruption (or interference) from the Lessor.

In the unlikely event of a dispute arising in such a case, the mode of resolving it is that of arbitration between Lessor and Lessee, in accordance with the Arbitration Ordinance Cap 15.

3. *Partial Transfer of Interest by a Citizen:*

- The potential Investor enters into an agreement with a citizen for a partial transfer of interest in land;
- an agreement is submitted to the TIC for registration;
- a "Lease hold right" may be issued to the Investor.

This arrangement implies a joint venture between a citizen and non-citizen.



- When obtaining any of the 3 above possible interests in land, foreign investors are not limited to obtaining rights in land listed by the TIC.
- It is possible to purchase a house or unit from a seller.
- Once agreement has been reached, the seller is required to surrender the Title to The Commissioner of Lands, who will re-issue the land to the TIC, who will in turn eventually issue a Derivative Right for it.

Caveat Emptor

The laws regulating land ownership in Tanzania are complex. There are also a variety of corporate structures that can be established to maximise the efficiency of investments in land. For these reasons, foreign investors are strongly urged to seek specialist legal advice from experts who know how to navigate and apply the legislation, conventions, and available legal instruments to ensure secure and lucrative investments in Tanzania.

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