

Land Acquisition in Tanzania: What Foreigners should know:

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For the purposes of land management in Tanzania, land is categorized into the following:

“general land”, is land managed by the Commissioner for Lands. A certificate of a Granted Right of Occupancy (“GRO”) can be granted in respect of this land. Further to this, a Derivative Right to occupy and use land may be created out of the GRO;

“village land”, is land within any area declared to be a village and is managed by the Village Council in which a Customary Right of Occupancy (“CRO”) may be issued. The GRO or a Derivative Right to occupy and use land may only be granted over village land after conversion of the village land to general land; and

“reserved land”, which is land that is set aside under various laws for various purposes, including but not limited to forests, national parks, highways and hazardous land etc.

Land titles that can be issued in Tanzania

The following are the various land titles available in Tanzania.

- **Granted Right of Occupancy (“GRO”)**– means a right to occupy and use land under a long term lease of either 33, 66 or 99 years which is granted by the President in general land or reserved land for a period up to but not exceeding 99 years. A GRO is one of the highest forms of land tenure in Tanzania and effectively constitutes a 99 year lease from the Government.
- **Customary Right of Occupancy (“CRO”)**– means a right to occupy and use land under a long term lease of either 33, 66 or 99 years which is granted by a village council.
- **Derivative Right (“DR”)**– means the right to occupy and use land created out of a GRO and includes a lease, a sub-lease, a license, a usufructuary right and any interest analogous to those interests. A Derivative Right can be granted for a period of 10 days less than the period for which the GRO has been granted.

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General restrictions on occupation of land in Tanzania by foreign companies

- The Land Act states that non-citizens shall not be allocated or granted land, unless it is for investment purposes under the Tanzania
- Majority shareholders or owners are non-citizens, shall be considered a foreign company for the purpose of the Land Act (Section 20(4) of the Land Act).
- In Tanzania, village land is regulated by the Village Land Act (“VLA”). A foreign company cannot occupy village land in Tanzania on the basis set out below:
- Unlike the Land Act which provides for the possibility of a foreign company owning land in Tanzania by way of a Derivative Right or a lease, the VLA does not have a similar provision, hence a foreigner cannot own village land (through a CRO) or lease, even if it is for investment purposes.
- Section 22(2) of the VLA allows a group of persons (including a company) to apply for a CRO. However, section 17(1) of the VLA provides a limited and prescriptive list of “non-village organizations” which can occupy village land – a foreign company is not included in this list.
- A foreign company cannot acquire any legal title to village land in Tanzania because a CRO can only be granted to citizens of Tanzania or a group of persons, all of whom are citizens of Tanzania. Accordingly, an organization whose shareholders are both citizens and non-citizens will not qualify for a grant of a CRO.

Options available for a foreign company looking to access village land in Tanzania

- In order for a foreign company to access village land, it must first process the conversion of the village land into general

Investment Act (Section 20(1) of the Land Act). The Land Act further states that, a body corporate registered in Tanzania, whose land and upon conversion, the foreign company may acquire:-

- a GRO, if the majority of the shareholders of a company are citizens of Tanzania; or
- a Derivative Right through the Tanzania Investment Centre (“TIC”), if the majority of the shareholders of the company are non-citizens of Tanzania.
- The procedural requirements for acquiring a Derivative Right involve a number of steps. If a foreign company is interested in acquiring village land for the purposes of investment, the village land must be converted into general land before the TIC can grant a Derivative Right to the investor to use the land. This is one of the major hurdles to overcome as the process is lengthy. Further advice should be sought should this be a process that you wish to undertake.
- Note that should a foreign company fail to meet the conditions of investment agreed upon on the granting of a Derivative Right, TIC can re-acquire the land back. However, the foreign company will be entitled to compensation on any developments that have been made on the land.

Other options for foreign companies looking to gain access to land more generally (i.e. not limited to just village land) include:

- By way of a long lease or joint venture.
- Under a long term lease, foreign companies could enter into a lease with local land owners for the most part of the term of right of occupancy of the land. The maximum term

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will be up to 99 years with an option of renewal.

- Under a joint venture, a foreign company joins ownership with a Tanzanian entity which takes over 51% of the shareholding of the company – this will enable the joint venture to use the land as a Tanzanian company.

Challenges that foreign companies should be aware of when looking to access village land in Tanzania

- The reality is that enforcing Derivative Rights is sometimes perceived as problematic. As enforcement can theoretically be challenged by TIC. Consequently banks in Tanzania are cautious in using Derivative Rights as forms of security. However, as indicated above, in the event that land is re-acquired, the foreign company will be entitled to compensation for any developments made on that land.
- Issuance of Derivative Rights can be time consuming as the process is lengthy. Relevant approvals from the local government authorities, Ministry of Lands and TIC from application of a DR to issuance can take up to one year depending on the complexity of the matter. All this will be done after the investor has paid necessary government fees associated with the acquisition process. However, if the land is already registered under the TIC, the process can take a maximum of only three months. Should you require further information on the matter, please do not hesitate to contact us.