



LAND/BANKING LAW



KEY ISSUES:

- Borrowed Money from Banks/Financial Institutions that is secured by Mortgage must be used to develop the mortgaged land before utilized for other purposes.
- The Landowner must notify the Commissioner for Land how the loan has been used to develop the land.
- Money obtained from mortgage from a local/foreign Bank must be invested in Tanzania.

BORROWERS AND LENDERS BEWARE!!

The Written Laws Miscellaneous Amendment Act, No. 1 of 2018

The Written Laws Miscellaneous Amendment Act, No. 1 of 2018 (“the Amendment Act”) that was signed by the President into law on 08th February, 2018 has made several amendments to the laws of Tanzania. The Amended laws are; The Bankruptcy Act, Cap. 26, the Budget Act, Cap 439, the Land Act, Cap. 113 and the Public Service Act Cap. 239.



Of particular interest is the Amendment to the Land Act, Cap. 113. *The Amendment Act amends by inserting new Sections 120A, 120B, 120C, 120D and 120E in the Land Act, Cap 113.* The existing Section 120A which was brought about by the Mortgage Financing (Special Provisions) Act No. 17 of 2008 has been re-designated as Section 120F.

Under this article we shall dwell on the amendments of sections 120A, 120B, 120C, 120D and 120E.

1. What are the Changes

In a nut shell, *the amendments are meant to regulate the mortgaging of land to local or foreign banks or financial institutions to secure money to and reinvesting the money elsewhere other than for development of the mortgaged land, if the mortgaged land is underdeveloped or undeveloped.* The amendments are meant to curb the improper mortgaging of lands without appropriate development as per the terms and conditions of the Certificate of Right of Occupancy (Title Deeds). Thus, upon coming into force of the Amendment Act, Banks and financial



institutions that offer loans secured by Mortgage must ensure the proceeds of the loans are directly used for developing the mortgaged land, if the land has not been developed.

2. What is the Impact

- a) The coming into force of the Amendment Act will change the landscape of the routine usage of land as mortgage for loans. As of now onwards, Banks and Financial institutions will be required to clearly understand and beware of the purpose of the Loan.
- b) Section 120A (2) provides that, Where part or the whole of the mortgaged land is undeveloped or underdeveloped, *the money obtained from the local bank or financial institution shall be utilised to develop part or whole of such mortgaged land*. In clear terms, Banks and Financial institutors will be required to ensure the proceeds of the Loan are specifically applied to the development of the Mortgaged land.
- c) Furthermore, under section 120 A (3) *it is the duty of the landowner (the mortgagor) to inform the Commissioner for Lands within 6 months from obtaining the loan from a Bank or Financial institution how the Loan has been utilised for the development of the mortgaged land*.
- d) Moreover, it is the requirement of the law under section 120B (1) that, *the money obtained from a mortgage from a local/foreign bank or financial institution must be invested in Tanzania*. In addition, the Bank or financial institution (local or international) is required to submit to the Commissioner for Lands a declaration that the money obtained from the mortgage is invested in Tanzania (section 120B (2)). Consequently, Banks are now required to ensure they keep sufficient records as well as obtain and follow upon their Customers on the effective use of the loan to develop the mortgaged land (if the same is underdeveloped or undeveloped).



3. Exception

The only exception of the application of the changes under these amendments is for *the land owned under the Certificate of Customary Right of Occupancy*. These are Certificates of titles issued under the Village Land Act Cap. 114.



4. Non Compliance

Non-Compliance by the Banks or the Borrower is sanctioned under section 120D of the Amendment Act. The section provides

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that; failure to comply with the requirements under sections 120A and 120B shall constitute a breach of conditions of right of occupancy provided for under Section 45(2). Indeed, Section 45(2) empowers the President to revoke right of occupancy for breach of any condition or regulation made under the Land Act.

5. What is the way forward?

Upon coming into force of the act, it is important for the Banks/Financial Institutions and Borrowers to beware and note that:-

- a) Any loan taken from mortgaging of land must have a declaration that the money will be invested in Tanzania (no opportunity to mortgage to secure a loan to develop a business outside Tanzania).
- b) Within six months, the mortgagor (the land owner) must submit to the Commissioner for Lands information as to the manner in which the money obtained from the mortgage is invested to develop the mortgaged land (section 120A (3)).
- c) Any Default to the requirement of the law risks the revocation of the title deed by the President. Consequently, a loss to the Bank and Loss to the Borrower.
- d) Underdeveloped or Undeveloped land shall not longer be used to secure loan facility for other purposes such as loan for education, medical treatment or other purpose other than for the developing of the land, unless the mortgaged land is well developed to the satisfaction of the Commissioner for Land.

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