



KEY ISSUES:

- These regulations put into effect the restriction to mortgage bare and underdeveloped lands as security for loan in Tanzania.
- Any loan that is secured by a mortgage of land in Tanzania the proceeds of the loan must exclusively be invested in Tanzania.
- The person applying for the loan secured by mortgage must submit a report to the Commissioner for Lands explaining the way the borrowed money is utilized to develop the mortgaged land

NO MORTGAGE OVER BARE LAND

A. INTRODUCTION

The Minister for Lands, Housing and Human Settlement Development has on 25th March, 2019 issued new regulations titled, the Land (Procedure for Mortgage of Land) Regulations 2019 (Government Notice No. 345 of 2019). These regulations put into effect the restriction to mortgage bare and underdeveloped lands as security for loan in Tanzania.

The regulations are made under section 120E which was part of the amendments made to the Land Act, Cap 113 through the Written Laws Miscellaneous Amendment Act, 2018 (Act No. 1 of 2018). In the said amendments, the Land Act was amended to prohibit mortgage of undeveloped or underdeveloped Land as per the terms and conditions of the Certificate of Right of Occupancy (Title Deeds). Therefore, Banks and financial institutions that offer loans secured by Mortgage must ensure the Mortgaged land is appropriately developed or ensure the proceeds of the loans are directly used for developing the mortgaged land, if the land has not been developed.

B. APPLICATION OF THE REGULATIONS

a) Undeveloped Land

Regulations 4 defines what is undeveloped or underdeveloped land. According to Regulation 4(1)(a) *a land is considered undeveloped if it is either Vacant or no improvements thereon or no change of substantial nature in the use of the land.* In the case of land used for Agriculture or pastoral purposes, the Land shall not be undeveloped unless such land has not been used for cultivation or pasturage, at any time for a period of twenty-four months.



b) Underdeveloped Land

- According to Regulation 4(1)(b) *land is considered to be underdeveloped when such land is only fenced, or only hedged, or only leveled, or only ploughed, or only cleared or partially cleared site*

of some former developments; or inadequately developed contrary to the conditions of relevant right of occupancy

- ii. Land that is used for agriculture purposes is considered to be underdeveloped where the Occupier fails to cultivate one eighth ($1/8$) of the land during the first year of the term of the right of occupancy or fails to cultivate another one eighth of the land during each of the next four years of the term (regulation 4(2)(a)). *This means, Agricultural land would not be suitable for mortgage where the land is not appropriately cultivated. And as regulations requires, the land must be cultivated by one eighth ($1/8$) within the first year since the title deed was issued and indeed another One-eighth ($1/8$) on another every 4 years.*
- iii. According to Regulation 4(2)(b), land used for pastoral purposes is considered underdeveloped where the occupier of the land fails to keep his own livestock in one-seventh ($1/7$) of the total area of the land during the first year of the term of the right of occupancy or fails to stock with his own livestock a further one seventh ($1/7$) of the total area of such land during each of the next four years. *Therefore, for pastoralist wishing to mortgage their land, according to these regulations, their land would be suitable for mortgage only if, they have stocked their own livestock, but also the size of land occupied by the livestock must be one-seventh ($1/7$) of the total area of the land during the first year of the term of the title deed but also must continue to stock the land with his own livestock at one-seventh ($1/7$) of the total area of the land in every four years.*
- iv. In a mixed land, where there is both agriculture and pastoral activities, Regulation 4(2)(c) requires the occupier of the land during the first year of the term of the right of occupancy to fully cultivate one-fifth ($1/5$) and fully stock, with his own livestock, one-tenth ($1/10$) of the total area of the land. Also, the occupier must during each of the next four years of such term fully cultivate a further one-fifth ($1/5$) and to fully stock, with his own livestock, a further one-tenth ($1/10$) of the total area of such land. Consequently, the owner of the land with mixed purposes i.e. both agriculture and pastoral use, must indeed cultivate one-fifth ($1/5$) the land and appropriately keep livestock in one-tenth ($1/10$) of the total area. Failure to maintain this requirement the land may be considered as underdeveloped hence not fit to mortgage to secure a loan.
- v. *Therefore, it is the requirement of the law that, any land to be used as mortgage to secure loan, must be appropriately or gradually developed in accordance to the terms and conditions of the right of occupancy.* An underdeveloped or undeveloped land as outlined above shall no longer be used as mortgage to secure the Loan anymore.



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C. DECLARATION OF INVESTMENT IN TANZANIA

It is the requirement of these regulations that, *any loan that is secured by a mortgage of land in Tanzania the proceeds of the loan must exclusively invested in Tanzania*. The person applying for the loan secured by mortgage must submit a declaration in a prescribed form. The declaration requires the person to disclose to the Commissioner for Lands among other things information about the purpose of the loan as well as the place where the money would be utilized. (Regulation 5)

D. REPORT OF UTILISATION

The amended Land Act, Cap 113 under Section 120A(2)(b) and 120A(3) requires any person who mortgages an undeveloped or underdeveloped land must use the proceeds of the loan to exclusively develop the land. On this regard, *regulation 7, lays a requirement that, the person applying for the loan must submit a report to the Commissioner for Lands explaining the way the borrowed money is utilized to develop the mortgaged land*. It is also the requirement of the regulation that, in the event the loan is issued in instalments, then the report must as well be filed to the Commissioner in every six months of issued instalment.



E. OFFENCE AND PENALTIES

Regulation 8 creates an offence for any person who submit or makes false declaration or information may be liable to a fine of up to one million or to imprisonment of up to two years.

F. WAY FORWARD

These regulations were published in the Government Notice No. 345 of 26th April 2019 and entered into force thereon. It is therefore important for the Banks/Financial Institutions and Borrowers in general to beware and note that:-

- i. No loan would be issued against a land as security to an undeveloped or underdeveloped land unless such loan is exclusively used and utilized for the development of the said land.
- ii. 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).
- iii. Within 6 months, the Mortgagor (the Landowner) must submit to the Commissioner for Lands information as to the way the money obtained from the mortgage is invested to develop the mortgaged land.

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