



INVESTING IN TANZANIA

**Land Acquisition for
Foreign Investment
Purposes**

ALN.AFRICA

Overview

Tanzania presents abundant investment opportunities, including in sectors where land is an important resource, such as agriculture, projects and infrastructure, real estate and construction, manufacturing, and other capex-heavy industries. To capitalise on these opportunities, investors must ensure that they have taken the necessary steps to secure their land rights.

Whether through acquiring property or entering into long-term leases, having a legally recognised and secure interest in the underlying land is essential. This safeguards the investor's ability to benefit from the land, including mortgaging and transferring it, land mitigates risks associated with competing claims and provides a solid foundation for long-term success. In some cases, a good title underpins the bankability of an entire project, affecting its creditworthiness and financing risks.

This article highlights some of the critical factors that foreign investors should consider when navigating the complex legal and regulatory framework relating to land ownership and use in Tanzania. Without valid land rights, investors face significant risks, including uncertainty in project implementation, the inability to secure financing, and potential legal disputes.

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Should you have any questions on land acquisition in Tanzania for foreign investment purposes, including from a Projects & Infrastructure, Tax, Corporate Commercial, Banking & Finance, Disputes or Forensics, Risk and Compliance perspective, please do not hesitate to contact us.



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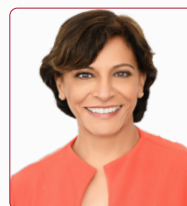
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Legal Framework Governing Land Ownership

All land in Tanzania is vested in the office of the President as trustee for and on behalf of all citizens of Tanzania. Land in Tanzania is divided into three categories:

- **General land**, which is under the control and administration of the central government through the Commissioner for Lands. A GRO (defined below) to occupy and use land can be granted over general land;
- **Village land**, which is owned and controlled by local communities through their respective village councils. 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 includes protected areas, national parks, and forests.

A person who wants to occupy land can either lease it or apply to acquire it by being issued with an appropriate classification of title. Tanzania offers various land titles to provide legal recognition and rights to land occupiers. These titles vary depending on the category of the underlying land.

- **Granted Right of Occupancy (GRO):** This title grants the right to occupy and utilise land under a long-term lease, typically for 33, 66, or 99 years. GROs are issued by the President for general or reserved land, and they serve as a 99-year government lease. GROs represent one of the highest forms of land tenure in Tanzania.
- **Customary Right of Occupancy (CRO):** This title provides the right to occupy and use land through a long-term lease, also for 33, 66, or 99 years. Village councils can grant CROs, which are identical to GROs but apply only to land under their jurisdiction.
- **Derivative Right:** This refers to the right to occupy and use land created by a GRO. It encompasses leases, sub-leases, licenses, usufructuary rights, and similar interests. Derivative Rights can be granted for a period which is one (1) year shorter than the duration of the associated GRO. Derivative Rights are exclusively granted by the Tanzania Investment Centre (TIC) to foreign investors.

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Derivative Rights: Land Acquisition by Foreigners

While there are no restrictions on non-citizens leasing land in Tanzania for residential or investment purposes, there are restrictions on land ownership by non-citizens and a majority of foreign owned companies. Specifically, the Tanzanian laws provide that a non-citizen can only own land for an approved investment purpose and that right can only be issued by the TIC in the form of a Derivative Right.

For land ownership under Tanzanian laws, a non-citizen has been defined as set out below. This article uses the definitions of non-citizen and foreign investors interchangeably.

Non-Citizen

1. an individual who is not a citizen of Tanzania;
2. a body corporate registered in Tanzania whose shares are not at least more than 50% owned by Tanzanian citizens;
3. by convention, a foreign body corporate which is not incorporated in Tanzania; or
4. in the case of a joint venture, the majority of the interest is held by a non-citizen.

Below is a high-level summary of the key steps involved in a foreign investor obtaining a Derivative Right. It is important to note that the process involves the close collaboration of the relevant stakeholders, which include the investor, any stakeholders from whom land is being acquired, the TIC, and the Ministry of Lands.

Throughout the process, the TIC and the Ministry of Lands maintain regular communication, exchange information, and collaborate to ensure compliance with land-related regulations, protect the rights of the local communities, and promote responsible and sustainable investment practices. It is important to note that the specific procedures and interactions between the TIC and the Ministry of Lands may vary depending on the nature and scale of the investment, as well as any regional or sector-specific considerations.

It is also important to note that the specific procedures and requirements may vary depending on the nature of the investment, the sector involved, and any applicable laws and regulations.

Procedure for Acquiring a Derivative Right

i. Identify Suitable Land: The investor must first identify land that is suitable for their investment. Given that foreigners can only be granted Derivative Rights, the underlying category of land must be general land. Accordingly, if a foreign investor identifies any village land which they wish to acquire, then they will need to follow a preliminary process to convert the village land to general land, before commencing the Derivative Right

process with the TIC. Please refer to the subheading on Converting Village Land to General Land below for a summary of the village land conversion process. Furthermore, if the investor has not already identified suitable land, then the TIC, in coordination with the investor, may work together to identify suitable land for the proposed investment through the TIC's land bank. This may involve assessing available land parcels, their size, location, and compatibility with the investor's requirements.

ii. TIC Registration: To acquire land through a Derivative Right issued by the TIC, the foreign investor is required to first register the investment with the body. Please refer to page 11 of the ALN Tanzania Investment Guide for an overview of the TIC registration requirements and note that the majority of foreign-owned investors are required to demonstrate a minimum investment capital of USD 500,000 to be eligible for TIC registration.

iii. Application for a Derivative Right: Once the TIC registration is completed, the investor applies to them, providing all necessary documentation and information required for the Derivative Right application. This includes details about the proposed investment project, the intended land use, and any relevant supporting documents concerning the land. The relevant fees also need to be paid.

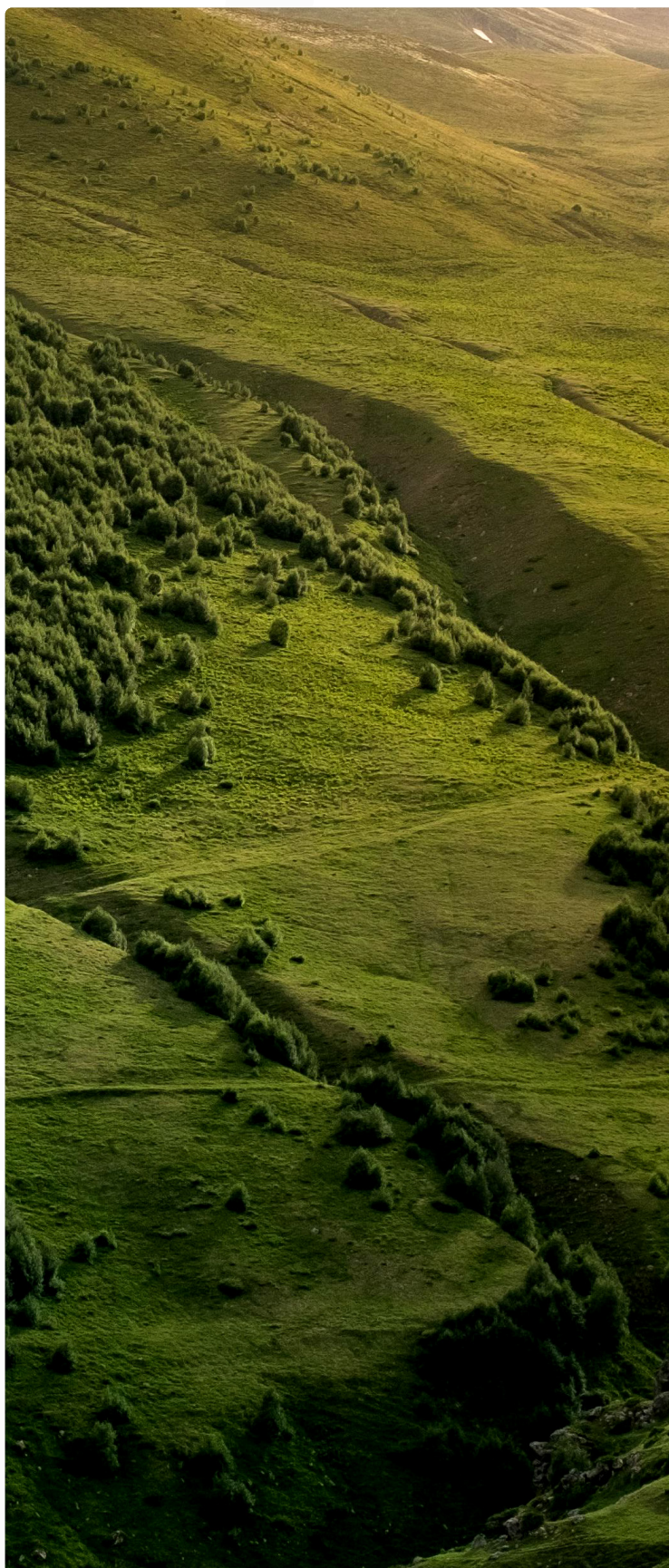
a. Application Review: The TIC reviews the application and conducts a thorough assessment to ensure compliance with investment regulations and requirements. They verify the completeness and accuracy of the application and assess its alignment with the government's investment policies.

b. Consultation and Clarifications: During the review process, the TIC may seek additional information or clarification from the applicant to ensure a comprehensive understanding of the proposed investment and its impact on the local economy, job creation, and sustainable development.

c. Collaboration with the Ministry of Lands: The TIC works closely with the Ministry of Lands during the process of allocating land for investment purposes. The collaboration between these entities helps facilitate the smooth and transparent allocation of land to foreign investors.

- i. Investment Proposal Submission:** When a foreign investor submits an investment proposal to the TIC that requires land allocation, the TIC assesses the proposal's feasibility and economic benefits.
- ii. Consultation with the Ministry of Lands:** The TIC engages in consultations with the Ministry of Lands to discuss the specific land requirements and seek their input and guidance. This step ensures compliance with land-related regulations, policies, and procedures.
- iii. Land Evaluation and Verification:** The Ministry of Lands conducts evaluations and verifications to ascertain the availability and suitability of the identified land for the investment project. This includes checking land ownership, potential conflicts, and any existing rights or restrictions associated with the land.
- iv. Land Allocation Approval:** Upon completion of the evaluation process, the Ministry of Lands (through the land allocation committee) provides its approval for the allocation of the identified land for investment purposes. This approval signifies that the land is suitable for the proposed investment and can be allocated to the foreign investor.
- v. Issuance of Derivative Right:** Once the land allocation approval is obtained, the TIC facilitates the issuance of a Derivative Right to the foreign investor. This legal document confirms the investor's rights and interests in the allocated land, granting them the necessary authority to utilise and develop the land for their investment project.
- vi. Timing:** The time it takes for the TIC to issue a derivative right can vary depending on several factors. The intricacy of the investment project, the level of application completion, and the workload of the TIC at the moment all have an impact on processing time. Generally, the timeline for issuing a derivative right ranges from 2 to 6 months.

The majority of foreign owned investors are required to demonstrate a minimum investment capital of USD 500,000 to be eligible for TIC registration.



Converting Village Land to General Land

In Tanzania, foreign investors often identify village land as an optimal choice for their investment projects. While a foreign investor can acquire village land for investment purposes, certain procedures must be followed. The investor cannot acquire the designated village land as it is; instead, it must undergo a transfer process from village land to general land.

The transfer from village land to general land requires the villagers' involvement through their village council and assembly. Compensation must be paid to the affected villagers as a result of the transfer. It is the investor's responsibility to cover the compensation costs, subject to the confirmation of the compensation amount determined by a qualified valuer. This ensures that the villagers are fairly compensated for the land being transferred.

Once the compensation is settled and the transfer process is completed, the land is earmarked for investment purposes. At this stage, if the investor is majority foreign-owned, then the land is granted to the TIC, so that a derivative right can be issued in favour of the foreign investor, solidifying their legal rights and interests in the land. If the investor is majority Tanzanian owned, then the land is issued to the investor as a GRO by the Commissioner for Lands.

These procedures allow foreign investors to acquire village land for investment projects while respecting the rights of the local communities. It ensures a transparent and fair process where compensation is provided, and the transfer to general land is conducted through the proper channels. The involvement of the TIC further adds a layer of oversight and support, facilitating the legal transfer of land for investment purposes in Tanzania.

TIC's prior approval is required if an investor intends to sub-title, mortgage, change the land use or transfer a derivative title.

Utilisation and Disposal of Derivative Rights

Acquiring derivative rights in Tanzania is a significant consideration for foreign investors seeking to establish their presence in the country. Investors need to understand the obligations associated with holding derivative rights to ensure a smooth and compliant process to leverage such derivative rights for their investment ventures.

Because Derivative Rights are issued specifically for an investment purpose, as approved by the TIC, an investor is required to obtain the TIC's approval and/or notify the TIC in respect of certain transactions relating to the land. For example, the TIC's prior approval is required if an investor intends to sub-title, mortgage, change the land use or transfer a derivative title. There are procedures to be followed to procure such approvals.

In terms of mortgaging Derivative Rights, in the past, banks in Tanzania approached Derivative Rights with caution, especially when they were presented as forms of security by foreign investors. Concerns arose when banks requested additional security due to limitations associated with the sale of land designated for investment purposes, as such land is already registered under the TIC. This limited the range of potential buyers when banks needed to sell the land to recover loan amounts.

Additionally, there was initial uncertainty regarding the acceptance of GROs held by foreign investors, acquired before 2001. Although the Land Act does not apply restrictions retrospectively, foreign investors who acquired land through GROs before 2001 were not obligated, under the Land Act and Tanzania Investment Act, to convert their titles into derivative rights until the expiration of the title term.

To address these challenges and provide reassurance, the TIC has communicated officially with relevant banks, confirming that properties held under Derivative Rights possess the same security value as any other property. As a result, banks have become more receptive to accepting Derivative Rights without necessarily requesting additional security, which has largely alleviated the concerns around this issue.

Conclusion

In summary, foreign investors considering land ownership in Tanzania must ensure that they have a clear understanding of the regulatory framework governing land ownership in Tanzania so that they can make commercially sensitive decisions which also provide adequate protection for their investments.

Businesses investing in the country are encouraged to cast a wide net on issues relating to due diligence and title investigation, land use planning, resettlement and compensation, land valuation, environmental considerations and risk sharing between the parties. This robust evaluation will result in more comprehensive transaction documentation being put in place to safeguard the investor's interests not only through the land acquisition process but also in terms of the actual use and development of the land.

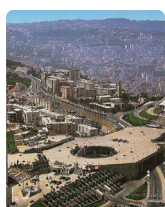
By carefully considering these factors and undertaking the necessary steps, foreign investors can enhance their understanding and mitigate risks associated with property acquisition in Tanzania. Collaborating with experienced legal professionals well-versed in Tanzanian land laws and regulations is crucial to ensure a smooth and successful investment journey.

With proper due diligence and comprehensive measures in place, foreign investors can confidently pursue their property acquisition objectives in Tanzania's thriving investment landscape.

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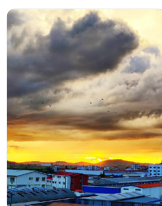
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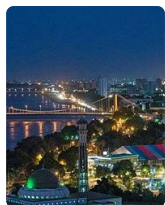
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