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NEW TRIBAL LAND ACT: ITS LEGAL EFFECT AND IMPLICATIONS TO VARIOUS STAKEHOLDERS

On 20th April 2022 a new Tribal Land Act No:1 of 2018 came into force with an overhaul effect of repealing the old Tribal Land Act of 2007.


In this article, we endeavour to highlight only the material changes brought about by the new Act as pertains Tribal Land system in Botswana. In this regard we shall discuss the legal effect and implication of the new Act to; tribal land owners first, then to financial institutions or person(s) having any financial interest attached to Tribal Land (mortgagees) and finally we highlight the points to note for all real estate agents facilitating Tribal Land sale transactions, with particular regard to tax implications of such transactions.


i. Implication to Tribal Land Owners:


Sections 23 and 24 of the Act require all Tribal Land owners, whether natural or fictitious (i.e companies, organizations, societies) persons, to apply to the Land Board within **six (6) months** from the date of the Act coming into effect, to register or re-register their title documents (whether Certificates; Grants or Leases) with the Deeds Registry. The Act also compels all Tribal Land owners who may not be in possession of their title documents as a result of their loss or owners who may have been allocated their tribal land through the customary system prior the establishment of Land Boards, to also register their ownership within the prescribed six (6) months.




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As a matter of procedure, upon such registration/re-registration, the Tribal Land owner is required to submit their current original title document e.g Certificate or Lease and upon successful completion of the process, the owner is then issued with either a Deed of Customary Land Grant, if they are citizens of Botswana or a Lease for non-citizens.

As regards fictitious persons, it is noteworthy also that, unlike in the previous Act where a citizen company was any company with 51% of its shareholders being citizens, under the new Act, a citizen company only refers to a company whose entire 100% shareholder-ship is under citizens.

Importantly, if a Tribal Land owner fails to register/re-register within the prescribed six(6) months and if the Land Board has tried to locate such owner to no avail, the Land Board is required to process

registration/re-registration without the input of the owner, which process essentially nullifies any title document held by such land owner.


ii. Implication to Mortgages:


In terms of Section 33 of the new Act, no mortgage or bond capable of running for a period of five years or more may be registered without the consent of the Land Board. This requirement however does not affect the existing registered bonds or any instrument of security as the Act carries no retrospective effect.


Furthermore, by virtue of the requirement upon land owners to register/re-register upon which process, the current original title documents have to be submitted to the Land Board(s), the essence of this requirement is that bond holders (substantially financial institutions) are




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required to release such original documents of title, which process may compromise their security since they hold such documents as security. To the extent that such requirement may lead to financial exposure on the mortgagees, there is a need to harmonize the process as between the Land Boards and mortgagees.

Upon cancellation of the existing title documents and issuance of new Deed of Customary Land Grant or Common Law lease, as the case may be, there will also be a need to reflect the existence of financial interest(s) on such new title documents which reflection is usually through endorsement, the process that needs to be done by the Registry of Deeds at instance of the mortgagee but with the land owner's signature required and at the expense of the mortgagor. Hopefully all the mortgagors will be willing and capable of effecting this process as it has financial implications.


The other implication emanates from the effect of failure to register/re-register by the owner(s) or Lessee(s) of mortgaged Tribal Land, in which event the Land Board is mandated to carry out such registration/re-registration without the input of the land owner through which process the current title document which would have the bond endorsement is nullified, with a new issued Deed of Customary Land Grant or Common Law lease being issued, potentially not reflecting existence of the financial interest.


iii. Points to note by real estate agents


In addition to the above highlighted changes, Real Estate Agents, as the frequent actors in sale transactions which result in transfer of land, including Tribal Land, need to appreciate that in terms of Section 33 of the Act, no transfer,




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exchange, partition, division/sub division, issue, sale or other disposal or dealing with tribal land can be carried out without the consent of the Land Board. Any dealing also includes transferring, donating or giving away shares of a private company that holds Tribal Land.

Lastly it is also important to indicate that in terms of the new Act, any transaction with non-citizens in respect of Tribal Land has to be preceded by a publication of such intended transaction(s) in the Gazette and one(1) newspaper circulating in Botswana with specific details stipulated in Section 34 (1) of the new Act.

If you would like to discuss the new Tribal Land Act in more detail, understand its implications to you or clarify any areas of doubt, please feel free to contact us at info@gobhozalegalpractice.co.bw

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Disclaimer: This article is for information only and should not be taken as legal advice.