

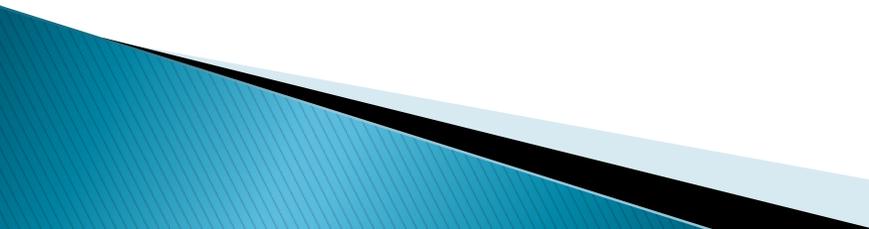
# PROPERTY ACQUISITION AND OWNERSHIP IN ZAMBIA

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# Outline of Presentation

- ▶ Forms of land tenure
  - ▶ Restrictions on land ownership
  - ▶ Procedure for transfer of property
  - ▶ Legal and Statutory costs of transferring property
  - ▶ Regulatory and compliance issues associated with ownership of property
  - ▶ Challenges of interest to an investor
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# Forms of land tenure

- ▶ Generally, all matters relating to ownership of land and acquisition of title to land in Zambia are governed by two primary pieces of legislation: the Lands Act and the Lands and Deeds Registry Act
  - All land is vested in the President for and on behalf of the people of Zambia.
  - Land in Zambia is owned under two forms of tenure – leasehold (State land) and customary.
  - In terms of actual divisions, a large portion of the land (about 80 per cent) is not State controlled but is under the control of tribal chiefs who hold such land as custodians on behalf of their subjects in accordance with customary law.
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# Restrictions on land ownership

The general rule under Zambian law is that only Zambians can hold land. However, there are exceptions provided under the Lands Act allowing for foreign ownership and they include the following:

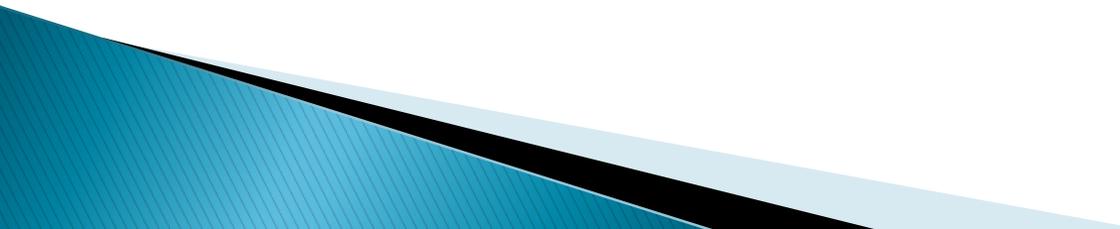
- ▶ where the non-Zambian is a permanent resident in Zambia;
- ▶ where the non-Zambian is an investor and has acquired a certificate of registration issued under the Zambia Development Act;
- ▶ where the non-Zambian has obtained the President's consent in writing under his own hand;

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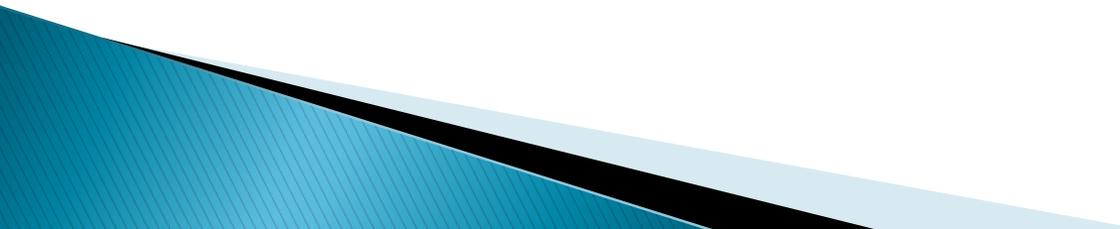
- ▶ where the non-Zambian is a company registered under the Companies Act, and less than 25% of the issued shares are owned by non-Zambians;
- ▶ where the non-Zambian is a body registered under the Land (Perpetual Succession) Act and is a non-profit making, charitable, religious, educational or philanthropic organization or institution which is registered and is approved by the Minister of Lands or
- ▶ where the interest or right in land is being inherited upon death or is being transferred under a right of survivorship or by operation of law

There are, however, no restrictions regarding the leasing of land by foreign nationals. A non-Zambian can therefore enter into a tenancy agreement for the leasing of any land in Zambia.

# Procedure for transfer of property

- ▶ A search on the property at the Lands and Deeds Registry at the Ministry of Lands is conducted to verify that the client is the registered legal owner of the property which is the subject of the sale;
  - ▶ Verification of original certificate of title;
  - ▶ The vendor's lawyer will then prepare a draft contract of sale setting out the terms of the sale to the purchaser's lawyer;
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- ▶ Once finalized, the contract of sale will be executed by the vendor and purchaser and usually, a deposit of 10% of the purchase price, will be paid to the vendor. However, parties are free to agree on the terms of payment of the purchase price;
  - ▶ State consent to assign from the Ministry of Lands is applied for;
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# ...Continuation

- ▶ Property Transfer Tax (**PTT**), currently at 5% of the realisable value of property, will be paid to the Zambia Revenue Authority (**ZRA**) once State consent is obtained;
- ▶ while the contract sets out the terms and conditions of transfer, the actual transfer of the land is undertaken using an instrument known as a deed of assignment (“**Deed of Assignment**”) prepared by the purchaser’s advocates.

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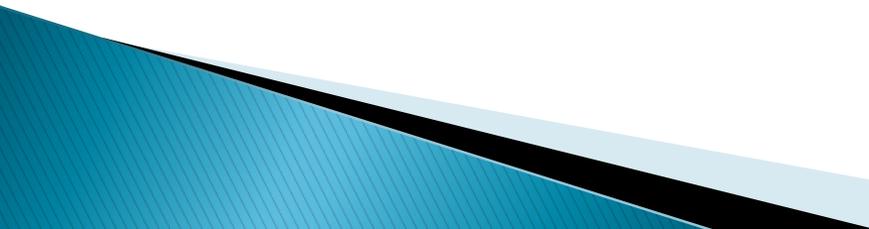
- ▶ CoT in the name of the purchaser will be prepared and be ready for collection from the Ministry of Lands approximately two to three months from the filing of the documents by the purchaser's lawyers.
- ▶ A holder of a CoT is entitled to deal with the land in respect of the CoT in any manner permissible by law. Effectively, during the term of the State lease, the holder has exclusive possession of the land.
- ▶ Notwithstanding, the Act also permits the holder to lease such land to a third party as well as create rights, interests or encumbrances in favor of third parties on the land. However, the creation of such interests may, in certain instances, require the consent of the State

# Legal and Statutory Costs of transferring land

- ▶ Legal fees are a percentage between 1–10% of the Purchase Price as provided by law;  
*Statutory Costs*
- ▶ Search fees– K42
- ▶ State consent – K333.60
- ▶ Outstanding ground rent
- ▶ Outstanding property rates
- ▶ PTT – 5% of realized value
- ▶ VAT @ 16% in the case of commercial properties
- ▶ Registration fees – 1% of the purchase consideration with a K15,000 limit
- ▶ Marking off fee (subdivision) – K250.20
- ▶ Preparation of CoT – K166.80

# Regulatory and compliance issues associated with ownership of land

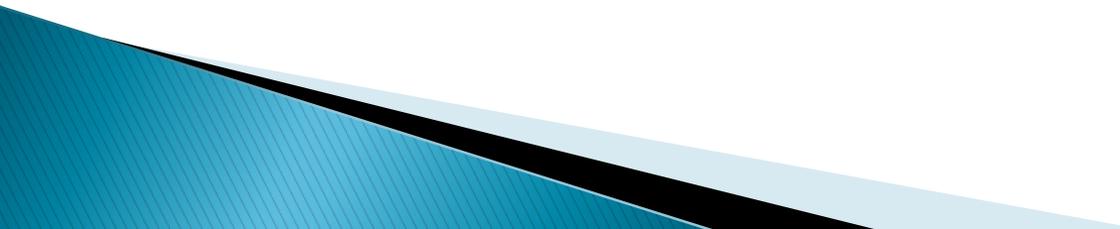
There are primary regulatory and compliance requirements that are associated with direct ownership of the land. These include the following:

- ▶ Adhering to the conditions of the State lease
  - ▶ Paying ground rent to the Ministry by 30 September of every year
  - ▶ Paying property rates bi-annually to the local authority
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Depending on the type of activity carried out in the land, other secondary sector specific regulatory and compliances may arise under different laws and some of the common ones include the following:

- Acquisition and renewal of certificate of registration from the Zambia Development Agency;
- Obtaining requisite environmental approvals from Zambia Environmental Management Agency (i.e. EIS, Environmental permits/licenses);

- ▶ Obtaining the requisite approvals from the National Council for Construction (e.g. registration of contractors and construction contracts of certain amounts);
  - ▶ Obtaining approvals from the specific regulatory institutions for persons involved in the construction sector e.g. Engineering Institute of Zambia, Zambia Institute of Architects;
  - ▶ Obtaining the requisite planning approval for development of land;
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# Challenges of interest to an investor

- ▶ Lack of clarity in the law on issue of eligibility to continue holding land once certificate of registration from ZDA expires;
- ▶ Acquiring consent from chiefs for land under customary tenure may be difficult at times;
- ▶ Potential conflict from settlers on land where chief grants consent for conversion without obtaining approval from such settlers;
- ▶ Lengthy period to obtain CoT where land acquired is under customary tenure or is subject to a subdivision;
- ▶ Transfer and registration fees are high (\*debatable);

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- ▶ The operations of the system at the Ministry of Lands can be erratic at times

The end....

**THANK YOU FOR YOUR ATTENTION!!!**

**QUESTIONS/ADDITIONS/COMMENTS???**

