

The Land Administration System and the Credit Market in Zambia

- A Minor Field Study -

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Preface

This study has been carried out within the framework of the Minor Field Studies Scholarship Programme, MFS, which is funded by the Swedish International Development Cooperation Agency, Sida /Asdi.

The MFS Scholarship Programme offers Swedish university students an opportunity to undertake two months of field work in a country in Africa, Asia or Latin America. The results of the work are presented in a report at the Master's degree level, usually the student's final degree project. Minor Field Studies are primarily conducted within subject areas that are important from a development perspective and in countries supported by Swedish international development assistance.

The main purpose of the MFS Programme is to enhance Swedish university students' knowledge and understanding of these countries and their problems and opportunities. MFS should provide the student with initial experience of conditions in such a country. A further purpose is to widen the Swedish human resources cadre for engagement in international development cooperation.

The International Office at the Royal Institute of Technology, KTH, Stockholm, administers the MFS Programme for the faculties of engineering and natural sciences in Sweden.

Sigrun Santesson
Programme Officer
MFS Programme

Foreword

This work for this thesis was performed in Lusaka, Zambia, and in Sweden within the Department of Technology and Society, Division of Real Estate Science, Lund Institute of Technology. The study comprises the last part of our Master of Science in Land Surveying and Management.

First and foremost we would like to thank Sida for making this study financial viable; Boo Lilje, Senior County Surveyor (ret.), who helped us with ideas in the initial stage, acted as an intermediary with valuable contacts in Zambia, and gave useful comments and viewpoints in the final stage of our work; and Sören Lundqvist, Project Manager for Swedesurvey in Zambia, who helped us with all practical matters before and during our stay in Lusaka and made our time there pleasant.

We also want to thank Mr Mwanalushi, Assistant Surveyor General, Cadastral at the Ministry of Lands, Mr Katchamba, Chief Registrar at the Ministry of Lands and Mr Mabuku, Legal Assistant at the Lusaka City Council, who took good care of us during our stay and patiently answered all our questions. Furthermore, thanks to all others who participated in interviews.

We extend special thanks to our supervisor Ulf Jensen, Professor at the Department of Technology and Society, who together with Professor Tommy Österberg, Technical Director at Swedesurvey, and Torbjörn Östberg, Senior County Surveyor (ret.) added useful comments and viewpoints.

Finally, we would like to thank the Swedish Schoolnet and Lexin Swedish-English Dictionary for greatly facilitating our work.

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Summary

This thesis is based on a Minor Field Study performed in Lusaka, Zambia, in the spring of 2003. The purpose of the study was to examine and describe the land administration system and the credit market regarding properties in Zambia. Issues studied include the way the Government allocates land, how a breach of contract will affect other parties with interest in land, how land is conveyed, how the credit market operates and how the insolvency of the mortgagor is handled.

More than half of the population in Sub-Saharan countries lack title or other rights to land for residential purposes and for cultivation. The scarcity of access to land and lack of ownership hamper the social and economic development of a country. A way to promote this social and economic development is to introduce a well-functioning land administration system. A growing population, especially in urban areas, will make the protection of individual rights concerning land more and more important since the competition for land will increase.

In Zambia, all land is vested in the President for and on behalf of the people. The President, through the Ministry of Lands and the Councils, administrates five different kinds of leases: the 14-year Provisional Certificate of Title, the 99-year Lands and Deeds Certificate of Title, the 10-year Land Record Card, the 30-year Occupancy License and the 99-year Council Certificate of Title. The registration procedure is regulated by law and the existing land administration system covers about 6 % of the area of the country.

A conveyance must have the consent of the President to be valid. In case of breach of contract, such as unpaid ground rent or failure to improve the land within the specified time, the Government has the power to repossess the property.

The banks accept all different kind of titles as collateral for a loan, but also stipulate the main requirement that the land must be improved. In a situation of default, the bank, after approval of the court, may convey the property through a compulsory auction. However, the possibility for the Government to repossess the property makes the role of the banks as mortgagees insecure.

Sammanfattning

Detta examensarbete är baserat på en fältstudie utförd under våren 2003 i Lusaka, Zambia. Syftet med arbetet är att undersöka och beskriva markadministrationssystemet och kreditmarknaden vad gäller fastigheter i Zambia. Frågor som har legat till grund för undersökningen är på vilket sätt staten fördelar mark, hur ett kontraktsbrott påverkar andra intressenter, hur mark överläts, hur kreditmarknaden fungerar och hur låntagarens obestånd hanteras.

Mer än halva befolkningen i länderna söder om Sahara saknar rättighet till mark för boende och odling. Brist på marktillgång och avsaknad av äganderätt förhindrar ett lands sociala och ekonomiska utveckling. Införandet av ett välfungerande markadministrationssystem främjar denna sociala och ekonomiska utveckling. En växande befolkning, särskilt i storstadsområdena, innebär en ökad konkurrens om marken vilket gör det än mer viktigare att skydda individuella markrättigheter.

I Zambia ägs på folkets vägnar all mark av presidenten. Genom Ministry of Lands och kommunerna administrerar presidenten fem olika typer av avtal; den 14-åriga Provisional Certificate of Title, den 99-åriga Lands and Deeds Certificate of Title, den 10-åriga Land Record Card, den 30-åriga Occupancy License och den 99-åriga Council Certificate of Title. Registreringsprocessen är reglerad i lag och det nuvarande registreringssystemet täcker cirka 6 % av landets area.

Presidenten måste ge sitt medgivande för att en överlåtelse ska vara giltig. I händelse av kontraktsbrott såsom obetald avgift eller underlåtelse att utveckla marken inom specificerad tid har staten rätt att återta fastigheten.

Bankerna accepterar alla de olika avtalen som fastighetspant men med huvudkravet att marken ska vara utvecklad. I en obeståndssituation kan banken efter godkännande från domstol överlåta fastigheten genom exekutiv auktion. Möjligheten för staten att återta fastigheten gör dock bankernas roll som långgivare osäker.

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Glossary

Commissioner of Lands	The head of the Lands Department at the Ministry of Lands, to whom the power of the president concerning the custody of land is delegated
Customary land	Land not registered in the registration system
Deed	A contract concerning land
Freehold	The right to own land
Land administration system	Administration of matters concerning rights, use and values of land
Land Tenure	Way in which land is held
Leasehold	The right to lease land
Lusaka City Council	Local government responsible for the land delivery process within Lusaka
Ministry of Lands	Central government responsible for subjects relating to land management
New land	An area consisting of virgin land which is to be allocated to suitable applicants
State land	Land registered in the registration system
Title	The right to land
Title deed	A contract as a proof of right to land

1 Introduction

This chapter opens with the background and the purpose of the thesis. Then the methodology and the delimitations used to achieve the purpose are presented. The target group and the reliability of results are presented in the following sections. Finally, an overview of the disposition of the thesis is given.

1.1 Background

Land resources facilitate accessibility to soil, water and human activity, and access to land is therefore the basis of human life.¹ The access is restricted by either physical or institutional constraints, such as flooding, steep slopes and lack of infrastructure, or ownership conditions and high purchase prices.² In sub-Saharan countries approximately more than half of the population lack title or other secure rights to land for dwellings and food production sufficient for their daily needs. It is generally accepted that the lack of access to land and ownership hampers the social and economic development in a country, and thus a well-functioning land administration system is essential.³

A proper land administration system provides security of tenure, which makes occupants more willing to participate in upgrading activities such as making improvements to the land and the structures on it. An improved environment including clean water, suitable latrines, and waste management will be achieved as well.⁴ The development and improvement of a land administration system depends on the tradition, legal system, administration, and human and technical assets of the country.⁵

Historically, the need for land administration emerged as soon as a tribe, a family or an individual claimed right in a territory for human activities like hunting, fishing, grazing and cultivating. Control of the land was held within the family or community through occupation, through fights between different groups or by agreements or applications of the customary rules.⁶

The colonisation hampered the original development of a land administration system in most sub-Saharan countries. The land set aside for colonisation was under a formal land registration system,

¹ FIG, 2001, p 6

² Nordin and Österberg, 2000, p 22

³ FIG, 2001, p 6

⁴ Nordin and Österberg, 2000, p 4

⁵ Nordin and Österberg, 2000, p 22

⁶ Larsson, 2000, p 9

influenced by the colonists. In the remaining areas, where most of the population lives, the traditional land tenure still dominates.⁷

The protection of individual rights becomes more and more important as a growing population increases the competition for land.⁸ This is especially true for urban areas, since they offer greater income opportunities and better access to services such as health care and education. Unfortunately, many people end up living in areas with a high degree of poverty, a polluted environment, and health hazards. Security of tenure is one step to promote urban development.⁹ Today, the intention of a land administration system is to offer a legal framework and supervising organisations together with governance of land rights and land use.¹⁰

The need for a land record originates from the will of the state to have control of the land units obliged to pay taxes and other charges, and the will of the purchaser to get publicity for the transfer of the land.¹¹ Hence, from the point of view of the public sector, the aim of the establishment of a land record was to provide a basis for taxation of land, and from the point of view of the private sector, to act as a register for rights concerning land.¹²

For financial institutions to grant mortgages and loans for investments, assets are needed as collateral. Sub-Saharan countries usually do not have legislation that allows efficient creation of mortgages. At present, people in these countries have large assets in land. If a secured ownership and access to a system with safe transactions existed, these assets could be transformed into capital.¹³

The lack of a real land market may have its origin in unclear delimitation of individual and group rights and in insecure ownership. A functional land administration system would remove such obstacles. A real land market would make it possible to achieve appropriate land use and to establish an efficient and consistent land policy. The land market would facilitate the development of private as well as public land acquisitions.¹⁴

1.2 Purpose

The purpose of this Minor Field Study was to examine and describe the land administration system and the credit market for properties in Zambia. This entailed studies of the land allocation, the procedure of obtaining a title or a right to occupy, the registration procedure and the

⁷ Österberg, 2002, p 6

⁸ Larsson, 2000, p 10

⁹ Nordin and Österberg, 2000, p 4

¹⁰ Österberg, 2002, p 5

¹¹ Larsson, 2000, p 19

¹² Larsson, 2000, p 15-16

¹³ de Soto, 2000, p 3

¹⁴ Payne, 1997, p 11

two authorities responsible of these functions. The possibility of using the property as collateral for a loan was studied as well. Questions to be answered were as follows:

- In what ways does the Government allocate land?
- How will a breach of contract affect other parties with interest in the land?
- How is land conveyed?
- How does the credit market operate?
- How is the insolvency of the mortgagor handled?

1.3 Methodology

This thesis is based on a Minor Field Study performed in Lusaka, Zambia during eight weeks in the spring of 2003.

Study visits were made to the Ministry of Lands and the Lusaka City Council, the two main authorities dealing with land issues. To gather information, qualitative interviews were performed with some of the key persons working at the Survey and Lands Department and Lands and Deeds Registry at the Ministry of Lands, and at the Legal Service Department at the Lusaka City Council.

Four banks – Zambia National Commercial Bank Plc, Zambia National Building Society, Indo-Zambia Bank Ltd and Barclays – were visited and qualitative interviews with employees were performed there as well.

Documentation, such as laws, reports, papers, articles and maps, were collected from various persons, organisations and authorities throughout the visit to Zambia.

1.4 Limitations of Scope

The study focuses on the land administration system concerning state land and is concentrated to the Lusaka area.

1.5 Target Group

The target group of this thesis is land surveying students and professional land surveyors with an interest in issues affecting developing countries.

1.6 Reliability

To a great extent, the information consists of unpublished written documents based on research, which makes those references second hand information. The interviews were affected by the fact that both the interviewees and the researchers were obliged to use English instead of their respective native languages. The majority of the information derives from several references, which strengthen the correctness but in some cases the information becomes contradictory.

1.7 Disposition

This thesis is composed of five parts where the first contains of *Introduction, Facts about Zambia and Land Tenure*. This part will give an understanding for the need of a tenure system and a land administration system. The historical development of the same is presented as well.

The second part consists of *Statutory Laws, The Ministry of Lands and The Lusaka City Council* and treats relevant laws concerning the land administration system together with a description of the two main authorities dealing with land issues. From this part on, the thesis will address only statutory tenure.

The third part contains *The Land Delivery Process, The Conveyance Procedure and Definition of Legal Measures*. This part will form a general view of the issuing of title deeds, the repossessing of a property, and the conveyance procedure as an introduction to the next part. In addition, this part handles the situation in Zambia on the basis of the legal problems concerning land registration system.

The fourth part is composed of *Mortgage Conditions*, which is supposed to present the possibility of using the property as collateral for a loan. However, the collection of information concerning this part was insufficient because of difficulties to get in contact with employees with the will and the time to answer our questions.

The last part consists of the *Conclusion* drawn on the basis of the thesis.

2 Facts about Zambia

This chapter gives a general view of Zambia in terms of politics, geography, the Zambian people and economics.

2.1 Politics

The travel books of the Scottish missionary David Livingstone awakened the British interest for inland Africa. In 1889, the British Government colonised today's Zambia through Cecil Rhodes and his mining organisation the British South Africa Company (BSAC).¹⁵ Two territories were created, and in 1911 these were combined and named Northern Rhodesia. The capital, located at Livingstone, was transferred to Lusaka in 1936.¹⁶ In 1924, 35 years after the colonisation through the BSAC, the colony was put directly under the control of the British Crown.

In 1964, independence was achieved without bloodshed, and Northern Rhodesia became the Republic of Zambia with Kenneth Kaunda as president. The Zambian people elect their president every five years, and the latest election was won by Movement for Multiparty Democracy and Levy Mwanawasa in December 2001.¹⁷

2.2 Geography

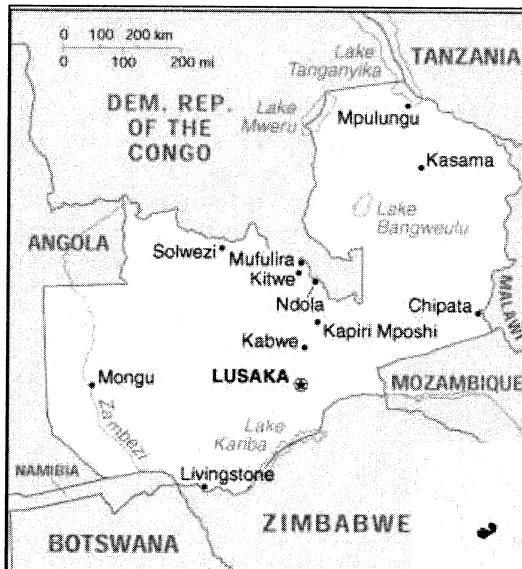


Figure 1: Map of Zambia.¹⁸

¹⁵ Bolling, 1999, p 11

¹⁶ <http://www.lonelyplanet.com/destinations/africa/zambia/history.htm>, 2003-05-08

¹⁷ Else, 2002, p 38

¹⁸ <http://www.luptravel.com/worldmaps/maps/za-map.jpg>, 2004-05-23

Zambia is located in southern Africa and borders Tanzania, Malawi, Mozambique, Zimbabwe, Botswana, Namibia, Angola and the Democratic Republic of the Congo. It is divided into nine provinces.¹⁹ The country covers an area of 752,614 square kilometres, which is slightly smaller than Sweden and Norway combined and the elevation is 900-1,800 metres above sea level. The greater part of the vegetation is woodlands and grasslands.²⁰

2.3 The Zambian People

The country is one of the poorest in the world, with 85 % living below the poverty line which is one US dollar per day.²¹ The population is about 10.3 million with an annual growth rate of 2.8 %. By the year 2010 the population is expected to be 12.5 million. The population density is about 14 people per square kilometre, which makes the country sparsely populated. However, this figure is misleading, since half of the population is concentrated in the Lusaka area and the cities of the Copperbelt.²² The capital Lusaka, with a population of 1.4 million, is growing at an annual rate of about 6 %, and this is placing increasing demands on residential land in the area.²³

Primarily because of the effects of AIDS, the average lifespan has fallen from 51 years in 1990 to 42.6 years in 2002.²⁴ 50 % of the population is under sixteen years of age. Zambia has one of the highest HIV positive rates, 20 % of the population, in the world.²⁵

Illiteracy is at 22 % despite a seven-year compulsory school.²⁶ The shortage of schools and the income of the family determine whether children are able to attend school.²⁷

There are over 70 different ethnic groups in the country but the authorities recognise only twenty of their languages.²⁸ A standard Zambian language does not exist. To avoid preferential treatment of any of the groups, English was chosen upon Zambia's independence as the state language. Since 1996 Zambia is officially a Christian state, but traditional African religion still remains to a great extent and there are also small congregations of Muslims and Hindus.²⁹

¹⁹ Else, 2002, p 26

²⁰ Bolling, 1999, p 3

²¹ UPF, 2001, p 5

²² Else, 2002, p 40

²³ Nordin, 1998, p 3

²⁴ <http://www.usaid.gov/zm/phn/so3.htm>, 2003-09-23

²⁵ Else, 2002, p 74

²⁶ Bolling, 1999, p 4

²⁷ Else, 2002, p 41

²⁸ Else, 2002, p 40

²⁹ Bolling, 1999, p 6-7

2.4 Economics

The most important export commodities are copper, cobalt, electricity, tobacco, flowers and cotton, exported mainly to Great Britain, South Africa, Switzerland and Malawi.³⁰

The currency in Zambia is Kwacha, which floats freely against the major world currencies. In February 2003 the exchange rate was K1000 per 1.70 Swedish crowns. The inflation rate has fluctuated; in 1993 it was 183.8 %³¹ and in 2002 it was 26.7%.³²

³⁰ <http://www.zambiz.co.zm>, 2003-05-22

³¹ http://www.zambiaembassy.se/Links/monetary_and_banking_system.htm, 2003-05-30

³² http://www.boz.zm/Economics/SnapShotZambia_files/frame.htm, 2004-01-27

3 Land Tenure

In this chapter a historical view of land tenure before and after independence is given. The first section examines the influence on land tenure of colonists, and is followed by a section explaining the change from freehold into leasehold. The last part presents customary tenure, and particularly the allocation of land within customary areas.

3.1 Land Tenure before Independence

Until colonisation, all land in Zambia was held under customary tenure. The right to claim land came with membership in a tribe or a village in accordance with the chief and the customary law.³³ An individual had only permission to use the land and to transfer rights in land, but not to sell it.³⁴

The BSAC influenced customary tenure through the introduction of the freehold and leasehold tenure systems for the white settlers.³⁵ That land was given title, which enabled the titleholders to use their land as collateral for a loan, and therefore enabled them to develop their land.³⁶ For white settlers the issuing of Certificate of Claims began in 1897 based on land not surveyed. The leasehold was later granted for 99 years on non-agricultural land and for 999 years on agricultural land.³⁷

To raise money, the BSAC introduced a hut tax for the indigenous people. If they were unable to pay, they were imprisoned or got their houses burned down. This forced a lot of men to move and seek work in the mining regions.³⁸ However, these men were not allowed to settle in these areas; instead, they were expected to return back home.³⁹

After 1924, the British Crown administered the land in a way that gave white settlers access to the most fertile land. That land was called Crown Land, to which British and statutory law was applied. Less fertile land, Reserve Land, was left to the indigenous people and remained under customary law. The natives were not allowed to own or settle on Crown Land, which covered 64% of the total landmass, without permission.⁴⁰ The colonists were allowed to hold land in the Reserve Land, but not for more than five years.⁴¹

³³ van Loenen, 1999, p 2

³⁴ Ministry of Lands, 2002, p 2

³⁵ van Loenen, 1999, p 2

³⁶ Ministry of Lands, 2002, p 3

³⁷ Mr Moyo, 2003, interview

³⁸ Else, 2002, p 20

³⁹ Ministry of Lands, 2002, p 3

⁴⁰ Ministry of Lands, 2002, p 0 and 3

⁴¹ van Loenen, 1999, p 2

A growing population increased the demand of the indigenous people for more land, and in 1947, a great part of the Crown Land was turned into Trust Land for the occupation of the indigenous people. The Crown Land now covered only 6% of the total landmass.⁴² If it was in the interest of both the white settlers and the indigenous people, the settlers could hold land in Trust Land for 99 years.⁴³

The lease granted to the settlers had to be approved by the Commissioner of Lands and was based on a numbered sketch plan or a survey diagram, approved by the Surveyor General, while the Registrar of Lands and Deeds issued the title deed. Since the indigenous people could not obtain title to land and believed that the country belonged to them, they started to struggle for equal rights.⁴⁴

3.2 Land Tenure after Independence

At the independence in 1964, all rights relating to land in Northern Rhodesia were transferred to and vested in the president of the republic of Zambia.⁴⁵ Crown Land was now named State Land while Reserve and Trust Lands were renamed Customary Land.⁴⁶

As independence came about, many white settlers did not want to continue living in Zambia under a black government. They left the country and abandoned vast tracts of land, most of it held on freehold. The government therefore needed a way to repossess land left by the settlers. Freehold land was mainly prime land with better infrastructure. The indigenous people coveted this land, but the most were too poor to purchase it.⁴⁷ The political culture in many developing countries at that time was oriented toward socialism and one of the issues was the idea that everyone should have the same possibility to possess land.⁴⁸ There was also a migration of people from rural to urban areas, which created scarcity of land.⁴⁹

In 1975, the freehold was abolished through the Land (Conversion of Titles) Act, which stated that:

- “land continued to be vested in the Republican President to hold it in perpetuity for and on behalf of the people of Zambia;
- all land previously held under freehold title be converted to statutory leasehold, held for 100 years, and subsequent offers of land were to be for a period of 99 years; and
- all transactions in land had to have the prior consent of the President and that in exercise of this power, the President

⁴² Ministry of Lands, 2002, p 3-4

⁴³ van Loenen, 1999, p 2

⁴⁴ Ministry of Lands, 2002, p 4

⁴⁵ Matibini¹, 2003, p 8

⁴⁶ Mr Mwanalushi, 2003, interview

⁴⁷ Mr Zulu, 2003, interview

⁴⁸ Mr Moyo, 2003, interview

⁴⁹ Ministry of Lands, 2002, p 5

could fix the maximum amount that could be received in any land transaction.”⁵⁰

One incident that provoked the abolishment of the freehold system was the sale of a piece of undeveloped land located on Cairo Road in Lusaka. An individual got the land practically for free from the government, and within days sold the piece of freehold land for one million US dollars. The government was displeased at having given away land for development, only to see it sold the next day for a tremendous profit, and in the socialistic climate of the time, the public complained as well.⁵¹

Historically, bare land had no value, but its scarcity together with the increasing demand for land in urban areas made people willing to pay. This created a value of land, which generated a nascent land market.

3.3 Customary Tenure

In Zambia, 94 % of the land is held under customary tenure and customary law prevails in these areas.⁵² Different tribes have different rules, which constitute the customary law. This customary law was not recognized until it was proved not to disagree with written law.⁵³

Registration of customary land provides only protection of use and occupancy rights, and makes security of tenure uncertain.⁵⁴ Another reason for this insecurity is the inadequate physical descriptions of boundaries. The insecurity of tenure makes financial institutions unwilling to accept land as collateral.⁵⁵

Some of the presidential power regarding customary land is handed over to the chiefs of the tribes, who obtain a lease called Right of Occupancy. The chief or the head man of the tribe holds all land on behalf of his people, acts with their consent and handles administration of the land. Land is allocated by the chief to the head of a family, who divides it among family members.⁵⁶ However, the President has the right to appropriate any land if it benefits the country.⁵⁷ For example, if a new road is to be built, the president has the authority to possess the land in question and have it surveyed for the purposes of the Government. The Ministry of Lands attempts to , to avoid conflicts and the final step of compulsory acquisition by approaching tribal chiefs to convince them of the advantages of the project.⁵⁸

⁵⁰ Ministry of Lands, 2002, p 6-7

⁵¹ Mr Moyo, 2003, interview

⁵² Ministry of Lands, 2002, p 0

⁵³ Banda, Chinene, Maimbo, Msune, 1998, p 91

⁵⁴ van Loenen, 1999, p 4

⁵⁵ Ministry of Lands, 2002, p 11

⁵⁶ van Loenen, 1999, p 4

⁵⁷ The Lands Acquisition Act, PART II, sec. 3

⁵⁸ Mr Mwanalushi, 2003, interview

If somebody wants a piece of land in a customary area, the Ministry of Lands advises the client to talk to the chief in that area and the chief will deliberate with his people to come to a resolution.⁵⁹ If the answer is positive, the chief gives the client a plan showing the approximate location of the piece of land. The client gets the plan stamped by the council, which in turn makes a recommendation to the Commissioner of Lands. The Ministry of Lands numbers the plan, and at the request of the client also prepares a sketch plan.⁶⁰ The lease will be a Provisional Certificate of Title, valid for 14 years, and the piece of land will still remain customary land. If the client wants a Lands and Deeds Certificate of Title, valid for 99 years, the consent of the chief is necessary for the area to be surveyed. The property will be registered at the Ministry of Lands, but will not change from customary to state land.⁶¹ If the chief disapproves, the client has no power and has no possibility of appeal.⁶²

The areas of the chiefs are not formally surveyed, but narrative descriptions of the boundaries do exist. Currently, there are a lot of boundary disputes between the chiefs who are arguing over their land. Normally the disputing parties consult the Ministry of Lands, which studies the narrative description and sometimes even visits the area. These difficulties would have been avoided if all the areas had been surveyed and pegged out, but financial problems made it impossible.⁶³

⁵⁹ The Lands Act, PART II, sec. 8(2)

⁶⁰ Mr Mwanalushi, 2003, interview

⁶¹ Mr Zulu, 2003, interview

⁶² The Lands Act, PART II, sec. 15

⁶³ Mr Mwanalushi, 2003, interview

4 Statutory Laws

To provide a better understanding of the Zambian land administration system, rules applying to state land are presented. These rules have been collected from relevant laws, such as the Lands Act, the Lands and Deeds Registry Act, the Lands Acquisition Act, the Land Survey Act, and the Housing (Statutory and Improvement Areas) Act. In the second section concerning the Lands and Deeds Registry Act, only the registration part is taken into consideration. Finally, the responsibilities of the Lands Tribunal are presented, along with a judgement involving repossession of a property.

4.1 The Lands Act

The Act was established in 1995 and regulates the continuation of leaseholds and statutory tenure, the continued vesting of land in the president and the alienation of land by the president, the statutory recognition and continuation of customary tenure, the conversion of customary tenure into leasehold tenure, and the establishment of a Land Development Fund and a Lands Tribunal.⁶⁴

All land in Zambia is vested in and held by the president in perpetuity for and on behalf of the people of Zambia. The president may alienate land vested in him to any Zambian, or to a non-Zambian, if certain conditions are fulfilled. However, the president may not alienate Land held under customary tenure:

- “without taking into consideration the local customary law on land tenure which is not in conflict with this Act;
- without consulting the Chief and the local authority in the area in which the land to be alienated are situated, and in the case of a game management area and the Director of National Park and Wildlife Services, who shall identify the piece of land to be alienated;
- without consulting any other person or body whose interest might be affected by the grant; and
- if an applicant for a leasehold title has not obtained the prior approval of the chief and the local authority within whose area the land is situated.”⁶⁵

The term of alienation may not exceed 99 years if no particular grounds exist, such as national interests or fulfilment of obligations of the Republic.⁶⁶ When alienating land, the president must consider the controlling of settlements, the cultivation and utilisation of land for the preservation of the natural resources, and setting aside land for development and control of forest reserves, game management areas

⁶⁴ The Lands Act

⁶⁵ The Lands Act, PART II, sec. 3(1-4)

⁶⁶ The Lands Act, PART II, sec. 3(6a)

and national parks.⁶⁷ For all alienation, except where the alienation is for public purposes, the president must receive consideration and ground rent in money for such land.⁶⁸ Unpaid ground rent must be paid with a penalty of 25 % of the rent due.⁶⁹

To sell, transfer or assign any land, the leaseholder needs the consent of the president. If the consent is not granted within forty-five days, it considered granted. A refusal and reason must be presented within thirty days; such refusal may be appealed to the Lands Tribunal.⁷⁰ It is illegal to occupy vacant land without permission and such transgression results in eviction.⁷¹

Land held under customary tenure before the commencement of the Act will continue to be held and recognised as such, and no laws may violate those rights.⁷² It is possible to convert land under customary tenure into statutory tenure, in order to obtain a Provisional Certificate of Title or a Lands and Deeds Certificate of Title. The conversion requires approval of the chief and the local authorities.⁷³

If the lessee has complied with the conditions of the lease, the lease will be renewed upon expiry for a new term not exceeding 99 years.⁷⁴ In case of breach of contract, a notice from the president is given to the lessee, and a certificate of re-entry is entered into the register. If, within three months, the lessee describes the situation and explains why a certificate of re-entry should not be issued, and the president is satisfied with this explanation, the certificate will not be issued. An appeal to the Lands Tribunal may be made within thirty days.⁷⁵

4.2 The Lands and Deeds Registry Act

The act was established in 1914 and contains rules for the registration of documents, for issuing of the Provisional Certificate of Title and Lands and Deeds Certificate of Title, and for the transfer and transmission of registered land.⁷⁶

There is a registry office with a Chief Registrar in Lusaka and a district registry office with a District Registrar in each district for the registration of documents.⁷⁷ Documents required to be registered include those concerning grant, conveyance or transfer of land or any

⁶⁷ The Lands Act, PART II, sec. 3(7)

⁶⁸ The Lands Act, PART II, sec. 4(1)

⁶⁹ The Lands Act, PART II, sec. 14(2)

⁷⁰ The Lands Act, PART II, sec. 5

⁷¹ The Lands Act, PART II, sec. 9

⁷² The Lands Act, PART II, sec. 7(1)

⁷³ The Lands Act, PART II, sec. 8(1-2)

⁷⁴ The Lands Act, PART II, sec. 10(1)

⁷⁵ The Lands Act, PART II, sec. 13

⁷⁶ The Lands and Deeds Registry Act

⁷⁷ The Lands and Deeds Registry Act, PART II, sec. 3(1-3)

interest in land and agreements for lease or permits of occupation of land for a period exceeding one year.⁷⁸

A document is registered when the names of the proprietors, the date of the document, the date of the registration and a brief account of the nature of the document are registered, either in a book or electronically.⁷⁹

All deeds of assignment must be registered within three months of their issuance. However, all other documents, except probate of a will, must be registered within thirty days if the document is issued at the same place where it will be registered, or within ninety days if the document is not issued at the same place where it will be registered. If the document is issued abroad, it must be registered within one year. A probate of a will concerning land or any interest in land must be registered within twelve months of the grant. The documents will be void if not registered within the time prescribed.⁸⁰ The Registrar must make sure that all duties and all annual payments have been duly paid prior to registration of a document.⁸¹

Any document relating to land must illustrate the land in question in an attached diagram, plan or description.⁸² A diagram contains geometrical, numerical and verbal descriptions, a plan shows the position, beacons, boundaries and dimensions,⁸³ and a description is a sketch plan that shows the boundaries of the parcel in relation to adjoining parcels. All three must state the year and the document number, and must be approved by the Surveyor General.⁸⁴

The Registrar, after receiving a claim from any person, may decide to correct any error or omission made in a Register. If the claimant is dissatisfied with the decision, an appeal to the Court may be made.⁸⁵

The registry is open for search and examination by anyone during office hours. A certified copy of any document may be obtained for free or upon payment.⁸⁶

4.3 The Lands Acquisition Act

The act was established in 1970 and regulates the compulsory acquisition of land and any interest in or right over property.⁸⁷

⁷⁸ The Lands and Deeds Registry Act, PART II, sec. 4(1)

⁷⁹ The Lands and Deeds Registry Act, PART II, sec. 16(1-2)

⁸⁰ The Lands and Deeds Registry Act, PART II, sec. 5-6

⁸¹ The Lands and Deeds Registry Act, PART II, sec. 14

⁸² The Lands and Deeds Registry Act, PART II, sec. 12(2)

⁸³ Land Survey, PART I, sec. 2

⁸⁴ The Lands and Deeds Registry Act, PART II, sec. 12(1-2)

⁸⁵ The Lands and Deeds Registry Act, PART II, sec. 11

⁸⁶ The Lands and Deeds Registry Act, PART II, sec. 22(1)

⁸⁷ The Lands Acquisition Act

The president may compulsorily obtain any property for the interest of the Republic.⁸⁸ Before the acquisition an investigation to determine the suitability of the land is done and entering the property without notice is allowed. However, entry into any building or adjacent court or garden requires a notice of seven days. After any entry, the government must compensate the owner for any damage sustained during the entry.⁸⁹

If the land is found suitable, the Minister must give notice in writing to the persons interested in the property and a public notice must appear in the newspapers.⁹⁰ The notice states when the property must be relinquished by the possessor, and the period specified may not be less than two months from the date of the notice. In urgent cases the president may order a shorter period.⁹¹ If the property is not transferred within the specified period, the Minister may apply, on behalf of the person entitled to transfer the land, for the registration of the transfer, which the Registrar will record.⁹²

The Government provides compensation for a property acquired. The president may compensate in cash or, as far as is practical, grant other equivalent land or buildings.⁹³ The level of compensation will be based on relevant data, such as the value of the property if sold in the open market.⁹⁴ No compensation will be paid for undeveloped or unutilised land. Land can be deemed undeveloped though it has been fenced, hedged, cleared, levelled, ploughed or is used in certain ways, such as for parking or waste disposal. Unutilised land includes land with deteriorated and disused buildings, unoccupied land or land occupied only by watchmen, or land used only for cultivation and pasturage.⁹⁵

Persons disputing any decision regarding acquisition or compensation may appeal to the High Court.⁹⁶

4.4 The Land Survey Act

The Act was established in 1960 and contains provisions for the way the land survey is to be performed, how diagrams and plans will be prepared, and for the protection of survey beacons and other survey marks.⁹⁷

⁸⁸ The Lands Acquisition Act, PART II, sec. 3

⁸⁹ The Lands Acquisition Act, PART II, sec. 4

⁹⁰ The Lands Acquisition Act, PART II, sec. 5

⁹¹ The Lands Acquisition Act, PART II, sec. 6(1)

⁹² The Lands Acquisition Act, PART V, sec. 19

⁹³ The Lands Acquisition Act, PART III, sec. 10

⁹⁴ The Lands Acquisition Act, PART III, sec. 12(b)

⁹⁵ The Lands Acquisition Act, PART IV, sec. 15(1-4)

⁹⁶ The Lands Acquisition Act, PART III, sec. 11

⁹⁷ The Land Survey Act

A Surveyor General must be appointed whose responsibilities include managing the survey and charting of land to be registered, all records concerning the survey of parcels approved, the management of trigonometrical, topographical and level surveys, and the preparation of maps. All records and documents are considered to belong to the Government, but approved plans and diagrams are accessible by the public.⁹⁸

For any land survey of any previously unsurveyed land, the land surveyor must present a plan accepted by the Commissioner of Lands showing the boundaries of the parcel to the Surveyor General for examination and filing. Furthermore, all records, other information regarding the survey, and an agreement as to beacons and boundaries must be presented.⁹⁹

To be lawfully established, the position of a beacon or boundary must be in agreement with the position adopted in an original survey, in a sub-divisional survey or in a re-survey. In all surveys, the annexed diagram or general plan must be approved. An order of the Court will make the position of a beacon or boundary lawfully established as well.¹⁰⁰

4.5 The Housing (Statutory and Improvement Areas) Act

The Housing (Statutory and Improvement Areas) Act from 1974 regulates the legalising and upgrading of unplanned settlements.¹⁰¹ It is “an act to provide for the control and improvement of housing in certain areas; and to provide for matters connected with or incidental thereto.”¹⁰²

4.5.1 Statutory Housing Areas

An area of land within the jurisdiction of a council may be declared by the Minister to be a Statutory Housing Area, provided that the area is held on freehold or leasehold by the state. A detailed area plan is provided as well that is approved by the Surveyor General, and the plan must be deposited with the Commissioner of Lands and to the Registrar of Lands and Deeds at the Ministry of Lands.¹⁰³ However, in connection with the Land (Conversion of Titles) Act in 1975, all land held on freehold was converted into leasehold valid for 100 years.¹⁰⁴

The council has the power to subdivide the land, grant leases and erect buildings, and make other improvements on the land.¹⁰⁵ The council,

⁹⁸ The Land Survey Act, PART II, sec. 4

⁹⁹ The Land Survey Act, PART III, sec. 15

¹⁰⁰ The Land Survey Act, PART V, sec. 25(2)

¹⁰¹ Nordin, 1998, p 8

¹⁰² The Housing (Statutory and Improvement Areas) Act

¹⁰³ The Housing (Statutory and Improvement Areas) Act, PART II, sec. 4(1)

¹⁰⁴ Ministry of Lands, 2002, p 6-7

¹⁰⁵ The Housing (Statutory and Improvement Areas) Act, PART II, sec. 5(1)

on payment of a prescribed fee, may issue a Council Certificate of Title to a lessee. The title deed must be registered, filed in the registry and delivered to the lessee.¹⁰⁶ To preserve the priority all known encumbrances must be noted upon every title deed by the registrar.¹⁰⁷

4.5.2 Improvement Areas

An area of land within the jurisdiction of a council may be declared by the Minister to be an Improvement Area provided that the area, first and foremost, is held on leasehold by the state. Then a plan showing the area in detail and approved by the Surveyor General must be deposited with the Surveyor General and the Registrar of Lands and Deeds.¹⁰⁸ The council has the power to subdivide the land, implement the construction and maintenance of public facilities such as roads, pathways and sewerages, and erect buildings and make other improvements on the land.¹⁰⁹

No one is allowed to build, use, let, sell, create a lien or security or in other ways handle any building erected on the land without an Occupancy License issued by the council on payment. The license is valid for a period not exceeding thirty years, and must be registered at the council. In case of breach of the conditions in the license, the council may revoke the license after three months' notice.¹¹⁰

4.5.3 Statutory Housing Areas and Improvement Areas

Every council with a Statutory Housing Area or an Improvement Area must have a registrar responsible for the filing of grants and certificates of titles issued under the Housing (Statutory and Improvement Areas) Act.¹¹¹ The registrar must maintain a presentation book containing a short description and the date and the time of entry for each registered document.¹¹² Documents required or permitted to be registered must be registered in the same chronological order in which they were entered into the presentation book. An original of the document must be handed over to the person entitled and a copy must be filed in the register.¹¹³ Documents required to be registered are considered invalid if not registered.¹¹⁴ The registry is open for search and examination by anyone and a certified copy of any document may be obtained upon payment.¹¹⁵

¹⁰⁶ The Housing (Statutory and Improvement Areas) Act, PART II, sec. 7

¹⁰⁷ The Housing (Statutory and Improvement Areas) Act, PART II, sec. 9

¹⁰⁸ The Housing (Statutory and Improvement Areas) Act, PART VIII, sec. 37(1)

¹⁰⁹ The Housing (Statutory and Improvement Areas) Act, PART VIII, sec. 38

¹¹⁰ The Housing (Statutory and Improvement Areas) Act, PART VIII, sec. 39

¹¹¹ The Housing (Statutory and Improvement Areas) Act, PART III, sec. 11

¹¹² The Housing (Statutory and Improvement Areas) Act, PART III, sec. 12(1)

¹¹³ The Housing (Statutory and Improvement Areas) Act, PART III, sec. 14

¹¹⁴ The Housing (Statutory and Improvement Areas) Act, PART III, sec. 16

¹¹⁵ The Housing (Statutory and Improvement Areas) Act, PART III, sec. 19

If an error in any registered document is discovered, the registrar has the power to rectify the error. The proprietor of the document may appeal to the court within thirty days if aggrieved.¹¹⁶

4.6 The Lands Tribunal

The Lands Tribunal was established by the Lands Act of 1995 and consists of members appointed by the Minister.¹¹⁷ The Tribunal has authority to perform the following tasks:

- inquire into, make awards and make decisions in land disputes and disputes of compensations to be paid
- inquire and adjudicate upon matters concerning land rights and obligations
- perform acts and duties prescribed under the Lands Act or any other written law¹¹⁸

It is possible to appear before the Tribunal in person or through an advocate at one's own expense.¹¹⁹ An appeal to the Lands Tribunal must be in writing¹²⁰ and any person disputing any award, declaration or decision of the Tribunal can appeal to the Supreme Court within thirty days.¹²¹

Until the creation of the Tribunal, the Commissioner of Lands and to a lesser extent the Surveyor General, solved issues regarding land. For example, in the case of an encroachment, the Commissioner of Lands could consult the Surveyor General for advice in the matter. The Commissioner of Lands then made a decision whether there was an encroachment and informed the client who, if aggrieved, could appeal to the High Court.

One reason the Tribunal was created was to avoid the Commissioner of Lands having responsibility for allocation of land as well as acting as a judge concerning land matters. It was decided that administrative cases should go to an independent tribunal. Another reason was to make the judicial procedures less cumbersome, less expensive and to relieve pressure on the Courts.

Today the Lands Tribunal also solves boundary disputes between chiefs, but the original objective was to solve disputes regarding land on title.¹²²

¹¹⁶ The Housing (Statutory and Improvement Areas) Act, PART III, sec. 33

¹¹⁷ The Lands Act, PART IV, sec. 20(2)

¹¹⁸ The Lands Act, PART IV, sec. 22

¹¹⁹ The Lands Act, PART IV, sec. 25

¹²⁰ The Lands Act, Subsidiary Legislation, PART II, sec. 3(1)

¹²¹ The Lands Act, PART IV, sec. 29

¹²² Mr Zulu, 2003, interview

4.6.1 Chilembo versus the Commissioner of Lands

This is an appeal by an individual, Appellant, against the decision of the Commissioner of Lands, Respondent, to repossess Stand No. 9708 in Lusaka to which the Appellant held a Lands and Deeds Certificate of Title since 1st of December 1981. The Respondent repossessed the stand from the appellant in 1993 for the failure of the Appellant to develop it and to pay ground rent. The appellant was in prison between May 1986 and December 1988 and thereafter developed asthma, for which the Appellant sought treatment by traditional healers. When the Appellant returned to Lusaka, the stand had been repossessed and allocated to someone else. The Appellant commented upon the repossession, citing his imprisonment, illness and recovery as reasons for not complying with the conditions in the lease. In conjunction with the repossession, materials worth a lot of money were lost, but for that the Appellant demanded no compensation.

On the 12th of December 1989, a Notice of Intention to repossess was sent to the Appellant to the address on record. The Notice of Intention was returned to the sender and since the Respondent had no other ways to get in touch with the Appellant, the Respondent offered the stand to another applicant. A Certificate of Re-Entry was issued on 25th of October 1991 and there was still no contact with the Appellant.

When the Appellant finally made his presentations, the Respondent sent a letter dated the 30th June 1993 requesting the Appellant to produce a discharge slip from prison and a bank statement of account. A medical report indicating that the Appellant had been suffering from asthma was requested as well. The Appellant obtained the documents and was verbally promised another plot by the Respondent.

In 1996 when the Appellant still had not been allocated a new plot, the dispute was turned over to the Lands Tribunal. During questioning, the Appellant admitted breach of contract regarding the development of the property and the payment of the ground rent. The Appellant also admitted neglecting to inform the Respondent about the change of address, the imprisonment and the health problems.

The Tribunal analysed the evidence and considered the mitigating circumstances, since the Appellant seemed to be a person who would have fulfilled his obligations were it not for his personal problems. The Tribunal also deemed that the Respondent acted in good faith and that the Appellant should have tried to get in contact with the Respondent.

The Appellant wanted the Respondent to issue a Letter of Offer of a new plot in Lusaka based on the verbal promise of the Respondent. A document from the Stanbic Bank Zambia Limited supported a regular and sufficient income for development of the new plot. The Tribunal considered themselves without power of jurisdiction in this matter but

requested the Respondent to handle the case of the Appellant with greatest support. The judgement was given on 17th of October 1997.¹²³

¹²³ The Lands Tribunal, 1997, LAT/10/96

5 The Ministry of Lands

The chapter describes the four departments of the Ministry of Lands: the Human Resources and Administration Department, Lands Department, Survey and Lands Department, and Lands and Deeds Registry Department. The greatest emphasis is the department of the Lands and Deeds Registry, and in this section, the different kinds of documents lodged in the register are presented. Finally, a way to open up new areas for development of land through the Land Development Fund is described.

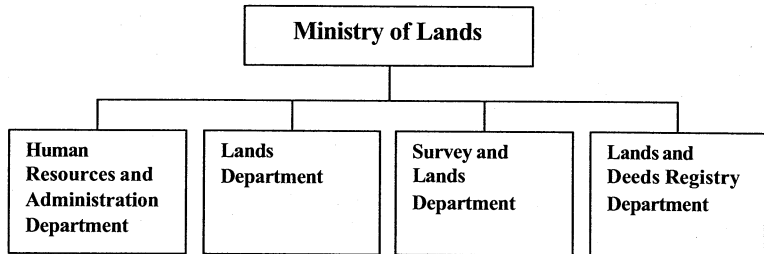


Figure 2: Organisation chart of Ministry of Lands

The Ministry of Lands is a central department located in Lusaka with seven regional offices situated in the provincial capitals Ndola, Kabwe, Livingstone, Solwezi, Kasama, Mansa and Chipata.¹²⁴ The Ministry consists of four departments: Human Resources and Administration, Lands, Survey and Lands, and Lands and Deeds Registry.¹²⁵

The Ministry of Lands is responsible for matters related to land management such as:

- land policy and administration
 - to make land available to all land users for various purposes
- registration
 - to prepare and register legal documents for the purchase and administration of land
- land survey
 - to produce national topographic maps of Zambia
- provision of land for all purposes
- cadastral survey and mapping

¹²⁴ <http://www.lands.gov.zm/objectives.html>, 2003-05-23

¹²⁵ Ministry of Lands, 2002, p 22

-
- to prepare field cadastral survey with examination and national survey control
 - to supply survey information on land including work on administration and international boundaries and make available aerial photography for mapping.¹²⁶

5.1 Human Resources and Administration

Department

The department of Human Resources and Administration is responsible for providing support services to make the Ministry a well-functioning organisation.¹²⁷

5.2 Lands Department

The president has transferred the custody of all land to the Lands Department and has delegated his powers to the head of the department, the Commissioner of Lands. The responsibility of the department is to make land available to the public and to collect ground rent. The department also acts as legal advisor for the government and administers the properties of the government.¹²⁸ The Lands Department is divided into three sections: Lands Administration, Legal and Estates and Valuation.¹²⁹

5.3 Survey and Lands Department

The Survey and Lands Department is the national survey and mapping organisation and provides for the following:

- o undertaking cadastral surveys in designated areas
- o providing land information to private surveyors and other organization
- o preparing survey plans and diagrams for examination and filing in Lusaka
- o providing consultancy services to the general public on land survey matter
- o mediating in boundary disputes including boundaries of the chiefs

The department of Survey and Lands is headed by the Surveyor General and consists of three sections: Cadastral Services, Mapping Services, and Survey Services.¹³⁰

¹²⁶ <http://www.lands.gov.zm/overview.html>,
<http://www.lands.gov.zm/objectives.html>, 2003-05-23

¹²⁷ Ministry of Lands, 2002, p 23

¹²⁸ <http://www.lands.gov.zm/departments.html>, 2003-05-23

¹²⁹ Ministry of Lands, 2002, p 25

¹³⁰ <http://www.lands.gov.zm/departments.html>, 2003-05-23

5.4 Lands and Deeds Registry Department

The department of Lands and Deeds Registry is headed by the Chief Registrar and has the responsibility to register rights regarding properties and to keep and maintain the register. The department issues title deeds and oversees the legal aspects of land transactions.¹³¹

Documents in the register include:

- deed of assignment
 - A deed drawn between vendor and purchaser, which is registered in the computer system and in physical copy files. The requirements are an original copy of the title deed, a state consent to assign, a tax clearance certificate showing the payment of the stamp duty and the property tax, a lodgement schedule and a registration receipt of 1 % of the value of the property.
- deed of gift
 - A deed drawn to transfer a property as a gift. The requirements are an original copy of the title deed and a lodgement schedule. The registration fee is K46 000.
- direct lease
 - A lease signed between the president as the lessor and the lessee of a particular property for the Provisional Certificate of Title and the Lands and Deeds Certificate of Title. For the Right of Occupancy a lease is signed between the president and the chief.
- order of appointment of administrator
 - A document vesting powers into an administrator over estate of the deceased. The registration fee is K11 000.
- deed of assent
 - A deed drawn to vest leasehold of a property from the deceased into the beneficiary. The requirements are an original copy of the title deed, a copy of Order of Appointment of Administrator or a copy of Probate of the Will. The registration fee is K46 000.
- deed of mortgage
 - A deed drawn between mortgagor and mortgagee for a property to be held as collateral. The requirements are an original copy of the title deed, a copy of the title deed from the physical file and a lodgement schedule. The registration fee is 1 % of the value of the mortgage.
- memorandum of discharge
 - A document prepared by mortgagee to discharge a Deed of Mortgage. The registration fee is K11 000.

¹³¹ <http://www.lands.gov.zm/departments.html>, 2003-05-23

- duplicate Certificate of Title
 - A deed issued when the original title deed is lost. The requirements are an affidavit, and an application letter addressed to the Chief Register. The fee for a diagram is K20 000 to K100 000 and the registration fee is K51 000.
- caveats
 - A document that bars any further dealings on a particular property unless notice is given to the caveator. It may be as an intending purchaser with a Contract of Sale of a registration fee of K51 000 or it may be as a beneficial interest with a registration fee of K20 000.
- withdrawal of caveat
 - A document prepared by caveator to discharge a caveat. For an intending purchaser the registration fee is K51 000 and for a beneficial interest the registration fee is K20 000.
- power of attorney
 - A deed vesting powers to run a business on behalf of the actual owner. The registration fee is K20 000.
- floating debenture
 - A mortgage deed that is not tied to fixed assets. The registration fee is 1 % of the value of the mortgage with a maximum of K500 000.

5.5 The Land Development Fund

The Land Development Fund was established by the Lands Act of 1995. The purpose of the Fund is to open up new areas for development of land.¹³² There are three sources for the Fund: money appropriated by Parliament, 75 % of the proceeds from allocation of land, and 50 % of the money collected by the Ministry of Lands for ground rent.¹³³

The Fund is vested in the Minister responsible for finance¹³⁴ and¹³⁵ managed and administered by the Minister responsible for land through the Permanent Secretary.¹³⁶ The two Ministers must present an annual statement of the income and expenditure of the Fund to the National Assembly.¹³⁷ The Fund is audited every year.¹³⁸

¹³² The Lands Act, PART III, sec. 18(1)

¹³³ The Lands Act, PART III, sec. 16(2)

¹³⁴ The Lands Act, PART III, sec. 17

¹³⁵ Mr Besa, 2003, interview

¹³⁶ The Lands Act, PART III, sec. 17

¹³⁷ The Lands Act, PART III, sec. 19

¹³⁸ The Lands Act, Subsidiary Legislation, PART II, sec. 9

Only the District Councils can apply for disbursement of funds for projects which the private sector cannot provide,¹³⁹ such as provision of communal water, electrification, construction of roads and replanning, demarcation and surveying of new areas.¹⁴⁰ The application must be in writing and must contain the following information:

- “the development proposal in detail;
- the name of the town and province for which the development proposal is to be implemented;
- the estimated cost of the development that the Council wishes to undertake;
- a diagram or sketch plan showing the location and hectarage of the parcel of land that is the subject of the development proposal;
- a plan of implantation of the development proposal; and
- a plan of the future operation and maintenance of the development and how the development will be financed.”¹⁴¹

A Land Development Fund Committee is established to scrutinise the applications, and to oppose or recommend the project to the Minister of Lands for a final decision.¹⁴² A meeting of the Committee to consider the application must be called within thirty days of receipt of the application.¹⁴³ If the Minister ratifies the recommendation, a request is given to the Minister of Finance to release money from the Fund.¹⁴⁴ A rejected project proposal may be appealed by the applicant to the Minister of Lands for review of the decision, and any further documentary evidence to support the appeal may be provided.¹⁴⁵ A Council with an approved project must open a Land Development Fund Account for administration of project funds.¹⁴⁶ The beneficiary Council must submit a report to the Committee every three months and at the end of the project. The report must include physical achievements, a detailed explanation of income and expenditure, whether more funds are required and estimated future requirements.¹⁴⁷ Up to the present, 35 applications have been approved.¹⁴⁸

The Committee is also responsible for monitoring and evaluating the use of the funds.¹⁴⁹ If the Committee find evidence of misuse of the

¹³⁹ The Lands Act, Subsidiary Legislation, PART II, sec. 4(1)

¹⁴⁰ Mr Besa, 2003, interview

¹⁴¹ The Lands Act, Subsidiary Legislation, PART II, sec. 4(2a-f)

¹⁴² Mr Besa, 2003, interview

¹⁴³ The Lands Act, Subsidiary Legislation, PART II, sec. 5(1)

¹⁴⁴ The Lands Act, Subsidiary Legislation, PART II, sec. 5(5a)

¹⁴⁵ Mr Besa, 2003, interview

¹⁴⁶ The Lands Act, Subsidiary Legislation, PART II, sec. 7

¹⁴⁷ The Lands Act, Subsidiary Legislation, PART II, sec. 8

¹⁴⁸ Mr Zulu, 2003, interview

¹⁴⁹ The Lands Act, Subsidiary Legislation, PART III, sec. 10

funds by the Council, they may recommend the Minister of Lands to take such actions as freezing the bank account of the Council.¹⁵⁰

The Fund has been closed down for two years because of misappropriation and the situation is being investigated. This is a very sensitive issue and it was difficult to get more information during the interviews.

¹⁵⁰ The Lands Act, Subsidiary Legislation, PART III, sec. 11

6 The Lusaka City Council

The four departments principally involved in the land delivery process – City Planning, Legal Services, Public Health and Social Services, and the Valuation and Real Estate Management of the Lusaka City Council – are presented in this chapter. A section describing the process of declaring an area as an Improvement Area or a Statutory Housing Area is also presented.

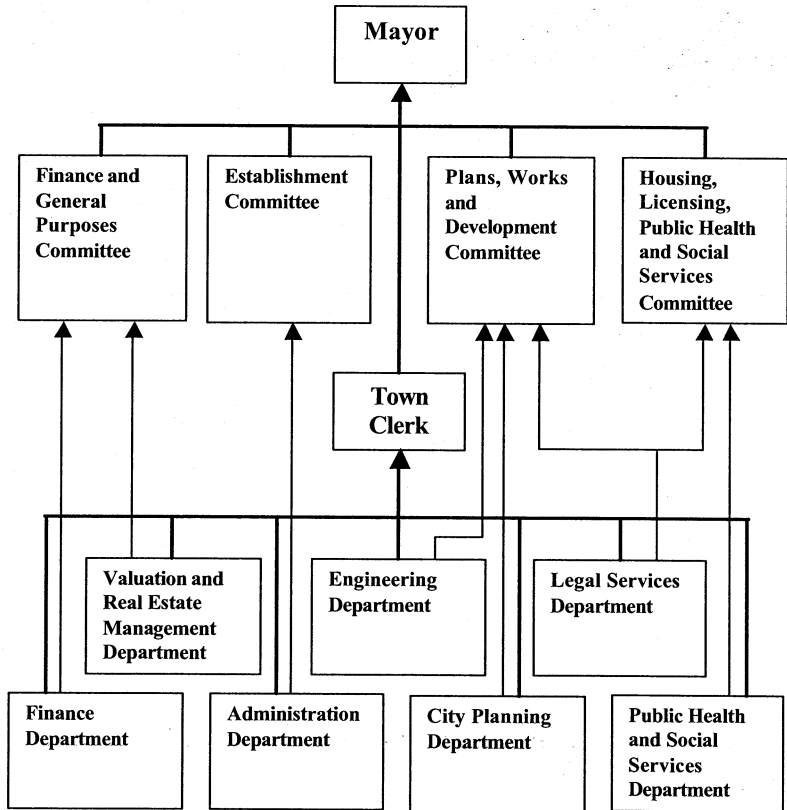


Figure 3: Organisation chart of Lusaka City Council

The Mayor is the chairperson of the City Council and presides over council meetings where proposals and decisions are taken collectively with the four committees of the Council. Subordinate to the Mayor is the Town Clerk, who counsels on subjects relating to the operations of the City Council. The City Council, which is a local government, has seven departments headed by Directors, and four departments are mainly involved in the land delivery process within the city.¹⁵¹ The departments are City Planning, Legal Services, Public Health and

¹⁵¹ Swedesurvey, 2001, p 5-6

Social Services and Valuation and Real Estate Management. Altogether, the councils throughout the country are over 70 in number.¹⁵²

6.1 City Planning Department

The City Planning Department is responsible for physical planning within the city of Lusaka. It also ensures that development takes place in agreement with the approved Development Plans. The Department consist of four sections. The Forward Planning Section is responsible for physical planning and for creating a computerised land information system for the city. The Development Control Section makes sure development is in accordance with the approved plans. The two remaining sections are the Transport Planning Section and Administration Section.¹⁵³

6.2 Legal Services Department

Legal issues concerning land within the city are managed by the department of Legal Services, which has six sections with the following tasks:

- Litigation Section
 - to collect and recover loans, debts, service charges and assist in dealing with debtors and subject concerning litigation
 - to prepare court proceedings and be responsible for documents relating to litigation in court
 - to deal with matters regarding rates and valuation
 - to give attention to claims considering deceased establishment and bankruptcy liquidation
- Estates Section
 - to handle matters relating the conveyance process of Council Houses and other properties in areas within the jurisdiction of the City Council
 - to be in charge of the preparation of legal documents and make sure that the service charges from the allocation of plots are paid
 - to make proposals and advertise
- Licensing Section
 - to handle applications for trading and liquor licenses
- Contracts Section
 - to prepare and execute contracts and agreements
- Deeds Registry Section
 - to issue Occupancy Licenses and Council Certificate of Titles and handle matters relating to the Housing (Statutory and Improvement Areas) Act

¹⁵² Lusaka City Council, 2002, p 3

¹⁵³ Swedesurvey, 2001, p 8

- to register legal documents
 - to contribute to the declaration of either a statutory housing area or an improvement area
- o Administration Section
 - to deal with personnel matters and administration of the department¹⁵⁴

6.3 Public Health and Social Services Department

The department of Public Health and Social Services is responsible for public health and social services for the residents of Lusaka. One of the sections, Peri-Urban Housing, is responsible for the low-income settlements and works to achieve an improved living standard in these areas. The section issues and approves the agreement form needed to apply for an Occupancy License. The Director of the Department must approve the application form needed to apply for an Occupancy License or a Council Certificate of Title.¹⁵⁵

6.4 Valuation and Real Estate Management Department

During the period of 1999/2000, the Lusaka City Council received property tax from less than half of the properties. The reasons are that the Council has only an incomplete Valuation Roll and lessees have neglected payments. The property tax is 1 % of the rateable value shown in the Valuation Roll, but the minimum sum is K130 000. The loss of that revenue has hampered the service delivery within the city. The Council recently established this department to make revenue collection more efficient.

The department is responsible for the assessment of the rateable values of properties and for the management of the commercial properties owned by the Council, and has the following tasks:

- o “identifying new entries and amendments to the Valuation Roll;
- o updating property data files;
- o carrying out inspections and referencing;
- o undertaking valuations;
- o updating the roll;
- o seeking approval of the roll;
- o notifying the general public and receiving objections; and
- o defending the roll at the Valuation Tribunal sitting.”¹⁵⁶

¹⁵⁴ Swedesurvey, 2001, p 6-9

¹⁵⁵ Mr Mabuku, 2003, interview

¹⁵⁶ Lusaka City Council, 2001,p 1

6.5 Declaration of Areas

After independence, polices for site and service schemes and upgrading of squatter settlements were introduced. It was not until ten years later, in 1974, that the Housing (Statutory and Improvements Areas) Act was enacted.¹⁵⁷

An area can be declared either as an Improvement Area or as a Statutory Housing Area, and according to the Housing (Statutory and Improvements Areas) Act, two conditions must be met. The first condition states that land must be held as leasehold. The second condition states that a layout plan must be established showing particulars or details, and that the plan must be approved by Ministry of Lands.¹⁵⁸ If the conditions are met, the steps in the process to declare an area are as follows:

1. "The Council first resolves in council that certain area should be declared as a Statutory Housing Area or an Improvement Area.
2. A survey of the settlement area is carried out which results in a layout plan.
3. The layout plan is approved by the Surveyor General.
4. The documents are taken to Legal Department at City Council.
5. The Council requests the Minister of Local Government and Housing to declare the area to be a Statutory Housing Area or an Improvement Area.
6. The Minister of Local Government and Housing declares the area as a Statutory Housing Area or an Improvement Area."¹⁵⁹

6.5.1 Improvement Area

The layout plan within an improvement area must be entitled Improvement Area Plan and contain the following details: name and description of the improvement area, existing roads, roads suggested for construction, existing areas for common users, suggested areas for common users and positions of buildings identified by a serial number.¹⁶⁰

In an improvement area and with approval from the Minister the council can subdivide land and erect buildings or effect improvements on land in agreement with conditions issued by the National Housing Authority. The council may also construct and maintain public facilities such as roads, drainage and sewerage where appropriate.¹⁶¹

¹⁵⁷ Matibini², 2003, p 4

¹⁵⁸ The Housing (Statutory and Improvements Areas) Act, PART II, sec. 4(1) and PART VIII, sec. 37(1)

¹⁵⁹ Nordin, 1998, p 9

¹⁶⁰ The Housing (Statutory and Improvement Areas) Act, PART VIII, sec. 37(2)

¹⁶¹ The Housing (Statutory and Improvement Areas) Act, PART VIII, sec. 38

6.5.2 Statutory Housing Area

According to the Housing (Statutory and Improvement Areas) Act the layout plan within a Statutory Housing Area shall be entitled Statutory Housing Area Plan and shall contain the following details: name and description of the Statutory Housing Area, existing roads, roads suggested for construction, existing areas for common users, suggested areas for common users and the area and measurements of each parcel of land identified by a serial number.¹⁶²

If the Minister gives approval, the council may subdivide land in a Statutory Housing Area. The council may also let a parcel of land to a person under conditions approved by the Minister. In accordance with the conditions stipulated by the National Housing Authority, the council can also erect buildings or effect improvements.

In a Statutory Housing Area, the Council is not supposed to hand out more than one parcel of land to the same person, and is not allowed to save land for use and occupation by the Council itself.¹⁶³

¹⁶² The Housing (Statutory and Improvement Areas) Act, PART II, sec. 4(2)

¹⁶³ The Housing (Statutory and Improvement Areas) Act, PART II, sec. 5(1)

7 The Land Delivery Process

In this chapter the land delivery process and the functions of the two authorities responsible for delivery are described. The procedure of issuing and registration of the five different kinds of titles – Provisional Certificate of Title, Lands and Deeds Certificate of Title, Land Record Card, Occupancy License and Council Certificate of Title – is explained in the first and second sections. Finally, a discussion concerning repossession is presented.

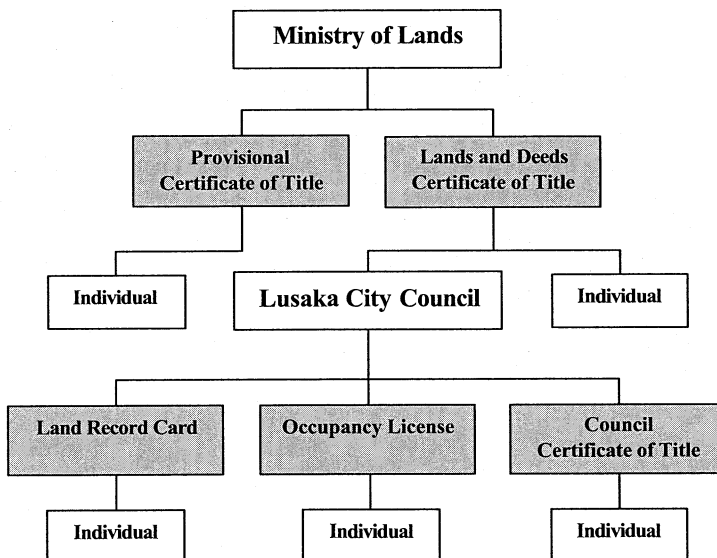


Figure 4: Chart of the land delivery process

7.1 The Ministry of Lands

The land delivery process starts when the Commissioner of Lands opens up a new area consisting of virgin land. This area, which is called new land, is most likely taken from customary land or may be reposessed from a farm too big for the lessee to make the necessary developments stated in the lease. The new land will be demarcated and divided into small pieces. The Surveyor General will make the drawings and numbering.

When each plot has a plot number, the Surveyor General will send the plan to the Commissioner of Lands, who will advertise those properties. Anyone may apply and application is made through the councils, which act as agents of the Commissioner of Lands. On the basis of these applications, the council makes recommendations to the Commissioner of Lands and interviews are performed to determine the most suitable candidates, who will be offered the properties

through a direct lease.¹⁶⁴ A letter containing the following information is sent to the chosen applicants:

- description of fees that have to be paid to the Ministry of Lands within 30 days as annual rent, consideration fees, registration fees and preparation fees
- information about to which council the service charges need to be paid
- what kind of lease, the date from when the lease is valid, the amount of the annual ground rent and what time of the year it is supposed to be paid to the Ministry of Lands
- requirement of completion of building to a minimum value of K.500 000 within 18 months with the completion of the foundation within 9 months. The use of the property is restricted in accordance with the Approved Development Plan and in case of assignment, subdivision, mortgaging or sub-letting the property a consent of the Government is required
- the rights of the Commissioner of Lands to offer the property to somebody else if the fees in item one are not paid or no proof of the payment has been shown
- the condition that no refund or compensation are payable if the land is relinquished or if the Government cancels the lease due to breaches the lessee has committed
- a reminder of a prior approval of the Town Planning Authority through the Town Clerk before any development are implemented on the property¹⁶⁵

7.1.1 Provisional Certificate of Title

To obtain a Provisional Certificate of Title, a 14-year lease, no survey needs to be done which means no beacons will be placed out. A sketch plan of the location is sufficient. The 14-year lease is called a provisional title because it gives the lessee time to develop the property and raise money to have a survey done. The Provisional Certificate of Title is supposed to turn into a Lands and Deeds Certificate of Title, but is considered by the lessees to be as secure as a Lands and Deeds Certificate of Title because of the possibility to renew.¹⁶⁶

Anyone may apply for a Provisional Certificate of Title and after receiving the application the Registrar must make an investigation to form an opinion about the issuance.¹⁶⁷ A complaint may be lodged, against the issuing of the title deed, and afterward the title deed will be issued as applied for, as amended, or refused after a hearing by the court.¹⁶⁸ The Provisional Certificate of Title will then be issued to the

¹⁶⁴ Mr Mwanalushi, 2003, interview

¹⁶⁵ Ministry of Lands, 2003, p 1

¹⁶⁶ Mr Mwanalushi, 2003, interview

¹⁶⁷ The Lands and Deeds Registry Act, PART III, sec. 38(1)

¹⁶⁸ The Lands and Deeds Registry Act, PART III, sec. 41

lessee¹⁶⁹ and registered at the district registries or at the Lands and Deeds Registry in Lusaka.¹⁷⁰ At the time of issuing, all mortgages and encumbrances must be disclosed upon the application to remain their priority.¹⁷¹ The registered proprietor confers the same rights, benefits and privileges as a holder of a Lands and Deeds Certificate of Title.¹⁷²

Six years from the issue of the Provisional Certificate of Title, the proprietor may apply to convert the title into a Lands and Deeds Certificate of Title.¹⁷³ The Ministry of Lands is not likely to approve clients that seem unable to afford the survey in towns like Lusaka.¹⁷⁴

7.1.2 Lands and Deeds Certificate of Title

The selected applicants who wish to apply for a Lands and Deeds Certificate of Title, a 99-year lease, need to contact the survey department and request that a survey be done where beacons are placed out. Originally, all plots were meant to be surveyed in connection with subdivision and numbering. The ideal is also to mark the points for power, electricity and water lines at the same time. Unfortunately, this is not possible because of financial difficulties that make the Ministry of Lands wait until clients approach the Ministry themselves.¹⁷⁵ After the survey, a diagram is drawn up containing geometrical, numerical and verbal descriptions of the parcel.¹⁷⁶

A Lands and Deeds Certificate of Title will be issued to the lessee¹⁷⁷ and registered at the district registries or at the Lands and Deeds Registry in Lusaka.¹⁷⁸ The Registrar must place a notice of an application for the issuing of the title deed in the local newspapers. In the announcement, the time interval for lodging complaints concerning the issuing must be stated.¹⁷⁹ Complaints must be consigned to the court by the Registrar. The court may order the title deed to be issued as applied for, issued as amended, or refused.¹⁸⁰ If no complaints have been lodged, the Registrar will issue a Lands and Deeds Certificate of Title to the applicant.¹⁸¹ In relation to the issuing of the title deed, mortgages and encumbrances affecting the land must be disclosed upon the application to protect their priority.¹⁸²

¹⁶⁹ The Lands and Deeds Registry Act, PART III, sec. 30

¹⁷⁰ The Lands and Deeds Registry Act, PART III, sec. 29

¹⁷¹ The Lands and Deeds Registry Act, PART III, sec. 47

¹⁷² The Lands and Deeds Registry Act, PART III, sec. 32

¹⁷³ The Lands and Deeds Registry Act, PART III, sec. 43

¹⁷⁴ Mr Mwanalushi, 2003, interview

¹⁷⁵ Mr Mwanalushi, 2003, interview

¹⁷⁶ Land Survey, PART I, sec. 2

¹⁷⁷ The Lands and Deeds Registry Act, PART III, sec. 30

¹⁷⁸ The Lands and Deeds Registry Act, PART III, sec. 29

¹⁷⁹ The Lands and Deeds Registry Act, PART III, sec. 44

¹⁸⁰ The Lands and Deeds Registry Act, PART III, sec. 46

¹⁸¹ The Lands and Deeds Registry Act, PART III, sec. 45

¹⁸² The Lands and Deeds Registry Act, PART III, sec. 47

Land held under a Lands and Deeds Certificate of Title is protected against adverse possession.¹⁸³

7.1.3 Lost Title

The proprietor of a lost, mislaid or destroyed title deed may state the facts of the circumstances and make a description of matters affecting the land. If the Registrar is satisfied with the statement and the description, a duplicate title deed, an exact copy of the original, will be issued and noted in the register. However, the Registrar must advertise in the press at least fourteen days prior to issuing the duplicate title deed.¹⁸⁴

7.2 The Lusaka City Council

The Lusaka City Council applies for land at the Ministry of Lands and is given a Lands and Deeds Certificate of Title of 99 years after the area is surveyed. The Council then administrates the area and approves leases to applicants. To avoid problems, the Lands and Deeds Certificate of Title can be renewed before it expires. For example, if the Lands and Deeds Certificate of Title expires within the next 29 years it is impossible for the Council to approve an Occupancy license valid for 30 years, but at this time the Council can renew the title.¹⁸⁵

Three types of documents are administrated by the council: Land Record Card, Occupancy License and Council Certificate of Title. The issuing of Occupancy Licenses and Council Certificate of Titles was introduced about 25 years ago.

7.2.1 Land Record Card

New Land Record Cards are not given out any longer. Previously, the cards were issued and were valid for 10 years in areas without a layout plan, but that are yet to be legalised and upgraded to an Improvement Area or a Statutory Housing Area. The council may not have even received the main head lease for that area from the Ministry of Lands. The card is not a title deed, but rather a stopgap document issued in particular areas before the council has made logistics arrangements and set up the infrastructure. To obtain a Land Record Card the applicant applied to the Legal Services Department at the council and paid an application fee of K20 000 to K75 000. The card had to be signed by the Director of Legal Services. Even though the card is renewable, it was supposed to be at a temporary measure.

A rent must be paid monthly in advance and may be revised after notice by the local authority. At a conveyance, all outstanding rents and other charges must be paid, and consent from the local authority must be given. A building permit must be granted before erecting any

¹⁸³ The Lands and Deeds Registry Act, PART III, sec. 35

¹⁸⁴ The Lands and Deeds Registry Act, PART III, sec. 56

¹⁸⁵ Mr Mwanalushi, 2003, interview

buildings, and work must be finished within six months from the date of the permit.

Not all Land Record Cards are in the register, but they are filed in a strong room. However, the intention of the council is to attain proper record-keeping in the future.¹⁸⁶

7.2.2 Occupancy License

An Improvement Area is composed of unplanned housing developments, in other words a previous squatter settlement.¹⁸⁷ In these areas, Occupancy Licenses are issued giving permission to occupy for 30 years. Any Land Record Card can be turned into an Occupancy License at the initiative of the cardholder as soon as the area is upgraded. This could result in a high number of Land Record Cards even in the Improvement Areas.¹⁸⁸ An aerial photograph over the area shows each building, identified by a serial number, and only the land under and immediately surrounding the building is linked to the license.¹⁸⁹

In an upgraded area, the Peri-Urban Section at the Public Health and Social Services Department gives an agreement form, which includes a property registration, to the occupant. The purpose of the agreement form is to demonstrate the right of the occupant to apply for a license. The form will be attached to the Occupancy License and is approved by the Supervising Officer.¹⁹⁰ The agreement form states for example that development must commence within eighteen months and the building must be completed within nine months or the plot will be repossessed. Furthermore, the occupant undertakes to provide adequate toilet facilities, to pay monthly ground rent of K5 000, and to get the consent of the council before transferring the property.¹⁹¹ The Housing (Statutory and Improvement Areas) Act 1974, Terms of Occupancy will be attached as well.

The Peri-Urban Section also prepares an application form to receive a clearance certificate of payment, signed by the Field Team Leader, Supervising Officer, and Chief Housing Officer, and approved by the Director of Public Health and Social Services. The application form is shown at the Collection Unit of the Finance Department and is signed by the Group Accountant as proof that the applicant has no debts such as ground rents to the council. In case of debts, only sums unpaid for the last four years have to be repaid.

The applicant turns to the Deeds Registry at the Legal Services Department, bringing the documents needed to apply for an

¹⁸⁶ Mr Mabuku, 2003, interview

¹⁸⁷ Matibini², 2003, p 8

¹⁸⁸ Mr Mabuku, 2003, interview

¹⁸⁹ Matibini², 2003, p 7

¹⁹⁰ Mr Mabuku, 2003, interview

¹⁹¹ Lusaka City Council, 2002

Occupancy License: agreement form, application form, the clearance certificate of payment, and a copy of the National Registration Card. An administration fee of K100 000 must be paid, and finally, the license must be signed by the Director of Legal Services and the Town Clerk.

Related information about the Occupancy License will be noted in the presentation book:

- time and date of the lodgement
- serial number
- brief description of the property
- type of transaction
- name of the holder
- signature of the officer or the assistant
- date uplifted
- signature of the officer or the assistant uplifting
- other comments

The license will be registered in the Deeds Registry, which contains:

- registration number
- date of the document
- date of the registration
- names of the parties
- considerations
- type of document
- area of the land
- brief description of the property
- reference number¹⁹²

7.2.3 Council Certificate of Title

When the council opens up an area of new land classified as a Statutory Housing Area, advertisement is made in the press to invite members of the public to apply for the plots. To obtain a Council Certificate of Title of 99 years, a plot application fee of K35 000 must be paid. Documentary evidence to prove applicants' ability to build on the plot, such as a bank statement or a letter from an employer, must be attached to the forms. From this point on, the procedure for obtaining a Council Certificate of Title is much the same as the one for obtaining an Occupancy License.

The Peri-Urban Section prepares an application form to receive a clearance certificate of payment, signed by the Field Team Leader, Supervising Officer, and Chief Housing Officer, and approved by the Director of Public Health and Social Services. The application form is shown at the Collection Unit of the Finance Department and signed by the Group Accountant as proof that the applicant has no debts to the

¹⁹² Mr Mabuku, 2003, interview

council. In case of debts, only sums unpaid for the last four years must be repaid.

The applicant turns to the Deeds Registry at the Legal Services Department with the documents needed to apply for a Council Certificate of Title: application form, the clearance certificate of payment, and a copy of the National Registration Card. An administration fee of K100 000 must be paid, and finally, the license must be signed by the Director of Legal Services and the Town Clerk. A sketch plan showing the area and dimension of the land and the Housing (Statutory and Improvement Areas) Regulations, Terms of Lease will be attached to the title deed.¹⁹³

7.3 Repossession

Four of the five titles have been examined with regard to the paragraph covering breach of contract with repossession as a consequence.

7.3.1 Land Record Card

If the lessee fails to pay the ground rent within the specified time or commits any other breaches of contract, the council has legal authority to repossess the property.¹⁹⁴

7.3.2 Occupancy License

An Occupancy License will be revoked by notice of the council in the following situations:

- at the end of the contract
- if the payment is more than three months delayed, with or without a reminder notice
- if the lessee has failed to compensate any breach of contract within three months' written notice by the council of the breach and of which measures must be taken
- in case of a breach of contract where the lessee is considered to be incapable of being remedied and notice about the same has been given. The lessee must immediately vacate the property, remove buildings and restore the land to its original state. If not implemented within 90 days of revocation of the contract, the council has the power to perform this action and no appeal is possible.¹⁹⁵

7.3.3 Council Certificate of Title

The Council Certificate of Title states that if the ground rent is unpaid 15 days after the due date or other breaches of contract have been

¹⁹³ Mr Mabuku, 2003, interview

¹⁹⁴ Land Record Card, condition 11

¹⁹⁵ Occupancy Licence, condition 4

made, the council has the authority to repossess the property though no formal reminder has been made.¹⁹⁶

7.3.4 Land and Deeds Certificate of Title

In case of default on ground rent 28 days from the due date or other breaches of contract, the Ministry of Lands has legal power to repossess the property and manage it as if it never had been leased.¹⁹⁷

7.3.5 Discussion

Unpaid ground rent as breach of contract is stated in all four title deeds and it is clearly defined that ground rent must be paid or the contract will be annulled. For the Lands and Deeds Certificate of Title, the annulment will take effect after 28 days of delay, after 3 months' delay for the Occupancy License and after 15 days' delay for the Council Certificate of Title. For the Land Record Card no specified time is stated. In all four title deeds the ground rent is specified and is prescribed by the Ministry of Land or the council.

In case of breach of contract, such as unpaid or delayed ground rent or failure of the lessee to improve the property within the specified time, the lessor has the legal power to repossess the property, which means banks have no protection as mortgagees.

The Zambian lease can be compared in some respects to the Swedish site-leasehold right. The Government in Zambia and the Councils in Sweden own the property, the title itself is conveyed, a ground rent must be paid and there is a possibility to use the property as collateral. However, a Swedish site-leasehold right cannot be repossessed; in the case of failure to pay the ground rent, the council may request a foreclosure. Thus, the mortgagee in Sweden has greater protection.

The condition stating the right of the Government to repossess the property in case of breach of contract, such as failure to pay the ground rent or improve the land within specified time, will now be compared to the situation where the condition of repossession is revoked. The comparison is made both from the point of view of the Government and the mortgagee.

The Government

Advantages the Government has under the current rule are the possibility to prevent increasing ground rent debt and reduced risk that the property will be improperly utilised. On the other hand, it seems impossible for the Government to collect the debt of the ground rent. As mentioned before, repossession of the property only prevents an increasing debt. In addition, the process of repossessing is laborious.

¹⁹⁶ Council Certificate of Title, condition 12

¹⁹⁷ Lands and Deeds Certificate of Title, condition 4(2)

Furthermore, a holder of an Occupancy License must remove buildings and restore the land to its original state by the time of repossession, and this may decrease the value of the property. However, if the Government offers the property as new land to a new lessee, the amount received will cover only administration costs, which have nothing to do with the value of the property.

In a situation where the repossession clause is not applied, it is possible for the Government to collect the ground rent debt through a foreclosure, and the process will be less laborious. A disadvantage is the reduced possibility to influence the allocation of the land.

If the Government cannot repossess the property except by a compulsory acquisition, then the system is more of a freehold system than a leasehold system. The reason the Government keeps the current system is to be able to control and allocate the land.

The Mortgagee

A disadvantage for the mortgagee in the current situation is insufficient protection, since the Government may repossess the property. If repossession is not applied, the collateral will be more secure, since the bank will be a beneficiary in case of a foreclosure on the initiative of the Government.

8 The Conveyance Procedure

The information in this chapter is based on an interview with an advocate dealing with conveyances of properties. A description of the conveyance procedure for a Lands and Deeds Certificate of Title, such as parties involved and documents required is presented. The last section contains a discussion about the distinctive features of the conveyance procedure.

Most conveyances are performed through two advocates: one who acts for the vendor and one who acts for the purchaser. Regarding conveyances of properties, advocates deal with the legal transactions. An advocate may act for both the vendor and the purchaser as long as no conflict occurs. If a conflict arises between the parties, the advocate must cease acting for both.

The documents of the conveyance are listed below together with the parties responsible:

- *standard contract of sale*: the advocate acting on behalf of the vendor
- *final contract (engrossed)*: the advocate acting on behalf of the vendor
- *application for state's consent for assign*: the advocate acting on behalf of the vendor
- *state consent to assign*: Ministry of Lands
- *draft assignment*: the advocate acting on behalf of the purchaser
- *tax form*: the advocate acting on behalf of the vendor
- *tax clearance certificate*: Tax Office
- *final assignment*: the advocate acting on behalf of the purchaser
- *completion statement*: the advocate acting on behalf of the vendor

The conveyance procedure starts when the vendor approaches an advocate and gives the advocate instructions in writing to act on behalf of the vendor in the sale of a property. Usually, the advocate will not investigate the property but may advertise, or an estate agent may be approached to do the advertising.

The advocate will inquire into the property at the Ministry of Lands and investigate any encumbrances, for example Caveats and Deeds of Mortgages. In case of a mortgage, the vendor needs approval from the bank to sell the property, and the vendor must also pay the loan. In this case, the advocate gets the title deed from the bank instead of from the vendor since the bank keeps the title deed until the loan is repaid. Furthermore, the advocate must print the computer file to check for mortgages. If no mortgages exist, the advocate asks the vendor for the original title deed.

If everything is in order, the vendor's advocate will write to the purchaser's advocate to inform the advocate about the instruction to act for the vendor in the sale of a property. The purchaser's advocate must respond in writing with a confirmation, and ask the purchaser whether the property has been investigated. If not, the advocate will investigate the property on behalf of the purchaser.

The vendor's advocate prepares a *Law Association of Zambia standard contract of sale* and the draft is sent to the purchaser's advocate for approval. Upon approval, the purchaser's advocate signs the top of the contract and marks it "approved" or "approved as amended" and sends it back to the vendor's advocate. In case of amendments, the vendor's advocate will meet with the vendor to go through the changes, and if the vendor agrees with the amendments, the advocate will prepare the *final contract, engrossed*.

The final contract will be sent to the purchaser's advocate for signing by the purchaser in the presence of a witness. The purchaser's advocate returns the contract to the vendor to sign in the presence of a witness and the vendor's advocate will date the contract. The purchaser pays a deposit, 10 % of the purchase price or whatever is agreed and the vendor's advocate has the right to hold the deposit until completion. Then one of the copies will be sent back to the advocate of the purchaser.

The vendor needs to apply for the consent of the president before conveying and the vendor's advocate must complete the *application for state's consent for assign*. If the applicant hears nothing for forty-five days, the consent is considered granted. If the president refuses to give consent, the applicant may appeal to the Lands Tribunal.

The Commissioner of Lands will prepare a *state consent to assign* at a cost of K60 000. Any outstanding ground rent must be paid as well. The vendor's advocate will inform the purchaser's advocate about the consent granted. A copy will be sent to the purchaser's advocate, who will be asked to prepare the *draft assignment* and send it to the vendor's advocate.

In the meantime, the vendor's advocate may prepare the *tax form* for the vendor to sign and bring the tax form together with a copy of the consent to assign to the tax office for the stamp duty, 2.5 % of the sale price of the property, to be paid. If the property tax is in order as well, the tax office issues a *tax clearance certificate* to the vendor; otherwise, the property will not be registered in the name of the purchaser.

The vendor's advocate gets the draft assignment from the purchaser's advocate and the vendor either accepts it or makes amendments and sends it back to the purchaser's advocate. The purchaser's advocate

prepares the *final assignment* and asks the purchaser to sign it in the presence of a witness. Then the purchaser's advocate sends the document to the vendor's advocate to get the vendor's signature.

To complete the transaction, the vendor's advocate must prepare a *completion statement* and arrange a date for completion. Only the two advocates need to be present. All the documents and keys are handed over to the purchaser's advocate in exchange for a cheque. The purchaser's advocate then deposits the documents with the Lands and Deeds Registry at the Ministry of Lands for registration.¹⁹⁸

8.1 Discussion

The conveyance procedure described above involves only a Lands and Deeds Certificate of Title. The conveyance procedure for the other four kinds of titles is similar, but not all titleholders have the financial means to engage an advocate.

One distinguishing characteristic for the conveyance procedure is the requirement of consent of the President, whose power is delegated to the Ministry of Lands and the Councils. Another characteristic is the stamp duty and the property tax, which must be paid for the conveyance to be valid.

¹⁹⁸ Anonymous advocate from Lusaka, 2003, interview

9 Definition of Legal Measures

In this chapter three different aspects of legal problems in the land registration system will be investigated on the basis of the written document “Land registration and cadastral systems, Tools for land information and management”, by Gerhard Larsson. These aspects include the definition of basic rights in land; legal powers of land registration; and legislation for registration proceedings. Both general views of the aspects as well as analyses of the situation in Zambia are presented.

To obtain a well-functioning land administration system, it is important to have an enduring legal basis for initiating, running and supporting the system. Changing legal systems related to land is a long, difficult process since it is a sensitive issue.¹⁹⁹ Zambia’s goal is to build a multipurpose system of legal land registration which means a cadastral system combined with a reliable land registration system.²⁰⁰

9.1 The Definition of Basic Land Rights

9.1.1 Are the Rights Clearly Defined?

Land rights seem to be unclear in many developing countries, but a registration system may solve the problems if registration leads to secure rights in land.²⁰¹

The Situation in Zambia

The issuing of title deeds was introduced at the end of the 19th century by the colonists, and presumably a kind of registration system was established at the same time. In 1914 a law called The Lands and Deeds Registry Act was enacted to provide for the registration of documents such as Provisional Certificates of Title and Lands and Deeds Certificates of Title. The Housing (Statutory and Improvement Areas) Act was established in 1974 to regulate the registration of Council Certificates of Title and Occupancy Licenses, especially for urban settlers. The Land Record Card, is also registered but the law does not regulate the registration.

The title registration system covers only about 6 % of the area of the country called State Land. The colonists reached an agreement with traditional leaders that this land, located along railways, was to be set aside for colonisation. For the remaining land, the customary tenure system still prevails, and differs between areas. In 1995, the customary rights were formally recognised in the new land law, together with the claim of the State that all land is vested in the name of the President. In practice, the local chief allocates land to members

¹⁹⁹ Larsson, 2000, p 83

²⁰⁰ Larsson, 2000, p 80

²⁰¹ Larsson, 2000, p 85

of a tribe. Non-tribe members may be allocated land, which will be registered with a 99-year lease, by the local district after consultation with the local chief.

9.1.2 Does Occupancy Create Land Rights?

In several developing countries, the growth rate of the population is high, especially in urban areas. This leads to a high demand for land, which together with the scarcity of land creates unplanned settlements.²⁰² The situation generates questions concerning the rights in land of the occupant. After living on the land for a period of time, the occupant usually enjoys legal rights, but people working with land issues generally do not consider the occupants to have the same rights as the legal lessees. However, for occupants take part in the development and improvement of the area, some security of tenure must be granted.²⁰³

The Situation in Zambia

Mass migration to the larger towns has generated unplanned settlements. There are no provisions in the law, giving an occupant living for a certain period of time on non-customary land certain rights to that land.

The Housing (Statutory and Improvement Areas) Act handles occupancy rights in development areas. A Lands and Deeds Certificate of Title is issued to the local council, which will issue occupancy licenses to the settlers in a faster and a more simplified way than for the Council Certificate of Titles. However, this system does not work well at present and few occupancy rights have been obtained.

9.1.3 What is the Legal Status of Unregistered Rights?

To avoid independent examinations outside the register, all rights must be lodged and frequently updated in the register itself. In particular, the registration of deeds on transfers of rights in properties is of great importance, in order for them to be valid against a third party in good faith. Thus, a compulsory registration must be established. On the other hand, a land register usually contains only major rights, such as ownership and rights of occupancy, and encumbrances such as mortgages and easements. This means that despite a compulsory registration, not all rights are included in the registry.²⁰⁴

The Situation in Zambia

The registration is compulsory within State Land and the law stipulates what kind of rights must be registered to have legal status; such as grant, conveyance or transfer of land or any interest in land.

²⁰² Nordin, 1998, p 3

²⁰³ Larsson, 2000, p 85

²⁰⁴ Larsson, 2000, p 85

The registration system is supposed to be reliable, which ought to make searches outside the register unnecessary. There are no requirements for registration of customary land.

9.2 Legal Powers of Land Registration

The registration system may be of two types, title registration system or deed registration system. A title registration system guarantees all titles registered, and in case of errors in the register, parties in good faith have the right to compensation. However, the dependability of the system hinges on whether the rights in actual fact are recorded in the register. A deed registration system acts only as proof, for example in a dispute over a double transfer. On the other hand, if there is a practice of always enrolling rights and the registrar always examines the rights carefully, a high reliability may be attained in this system as well.²⁰⁵

The Situation in Zambia

Zambia is headed for a title registration system for State Land. It is unclear whether the present registration system guarantees all titles registered, but since the banks do accept the property as collateral, an assumption is that the system is reliable. In case of errors or omissions in the register, corrections must be made if approved by the registrar. A party may appeal to the court for correction to dispute the decision of the registrar.

9.3 Legislation Concerning Registration Proceedings

9.3.1 Surveying and Demarcation of the Property

The survey of the boundaries is preceded by a determination of the boundaries on the ground and is primarily a technical matter²⁰⁶. After the survey, a demarcation must be done, which is of two types and includes both legal and technical matters. In the first method, the parties witness the accurate demarcation of the boundaries, which are legally fixed and marked, for example with beacons on the ground. This method is normally used in cases where new boundaries need to be settled. The second method is less expensive, involving only recognition of the boundaries on the ground. Thus, the boundaries are neither legally fixed nor permanently demarcated.²⁰⁷

The Situation in Zambia

The survey act was enacted in 1960 to regulate the surveying and demarcation of property. According to the act, physical demarcation of the boundaries as well as an accurate survey and mapping of these boundaries must be done.

²⁰⁵ Larsson, 2000, p 86

²⁰⁶ Larsson, 2000, p 88

²⁰⁷ Larsson, 2000, p 98-99

9.3.2 Examination of Title

The examination of title deed is a prerequisite for registration of title and the aim is to obtain a great level of legal validity in the land register.²⁰⁸

The Situation in Zambia

The land registration system is influenced by the Torrens system, which means for instance that title searches in principle must be undertaken. On the other hand, the registry is organised in such a way that no searches must be performed in practice.

9.3.3 Registration of Title

Rules concerning registration must carefully define the tasks of the registrar, efficient registration procedures and appropriate documentation. Additional conditions may regulate issues such as registration districts, responsibility of the registrar, form of register and register map, effects of registration, the obligation to register, appeals, rectification and compensation. It may also be advantageous to introduce a land law regulating dealings in land, such as purchase, inheritance, mortgage, and easement.²⁰⁹

The Situation in Zambia

The Lands and Deeds Registry Act and the Housing (Statutory and Improvement Areas) Act are the two laws regulating the registration process.

The Lands and Deeds Registry Act has defined rules concerning the obligation to register, the tasks and the responsibility of the registrar, form of register and register map, effects of registration, registration proceedings, rectification, appeals, purchase, mortgage and easement.

The Housing (Statutory and Improvement Areas) Act has defined rules, although not as detailed as the Lands and Deeds Registry Act, concerning the obligation to register, the tasks and the responsibility of the registrar, form of register, effects of registration, registration proceedings, rectification, appeals, purchase, mortgage and easement. As for form of register map, compensation, and inheritance, the law has no defined rules.

²⁰⁸ Larsson, 2000, p 86

²⁰⁹ Larsson, 2000, p 87

10 Mortgage Conditions

The four banks visited – Zambia National Commercial Bank Plc, Zambia National Building Society, Indo-Zambia Bank Ltd and Barclays – will be presented in this chapter. Each section starts with a general description of the bank followed by sub-sections based on interviews with employees of the respective banks. The interviews examined the possibility of obtaining a loan on the basis of the different kinds of titles with property used as collateral. The sub-sections describe lending conditions, different types of loans, interest, collateral, default and concerning the Zambia National Building Society companies are treated as well. Finally, a discussion about the differences among banks is presented.

Apart from the Bank of Zambia, which is the Central Bank, fourteen commercial banks are operating in the country. Of these, eight are foreign-owned, four are owned by local private investors, one is owned by the government and one is a co-operation between the governments in Zambia and India.²¹⁰

10.1 Zambia National Commercial Bank Plc

The Zambia National Commercial Bank Plc was formed in 1969 and has over forty branches all over the country, and one located in London.²¹¹ The bank has contact with international banks throughout the world, such as Skandinaviska Enskilda Banken and Handelsbanken in Sweden.²¹²

10.1.1 Conditions

To apply for a loan, the applicant must have been a customer of the bank for at least three months and have an account with the bank. A monthly administration charge must be paid for the account. The client must have an acceptable balance which must be about the same amount as for the loan, acceptable account activity, and regular deposits that indicate a steady income.

The client must present a good business proposal, which shows the capacity of the business or individual to generate income with which the loan can be paid back. Even if the applicant is not employed, but has business activities sufficient to raise enough money for repayment, a loan may be granted. A cash flow will be set up to calculate the expected monthly income, which will serve as a basis of the amount of the loan. Those who can afford to borrow in Zambia are usually big companies or large-scale farmers.

²¹⁰Bank of Zambia, 2003, p 4

²¹¹ <http://www.zanaco.co.zm/about%20us.htm>, 2004-01-27

²¹² http://www.zanaco.co.zm/correspondent_banks2.htm, 2004-01-27

10.1.2 Different Types of Loans

Three different kinds of loans are offered: short-term, medium-term and long-term loans. The amount of the short-term loan is up to K10 000 000 and it must be repaid within three months. The amount of the medium-term loan, which must be repaid within six months to one year, is between K10 000 000 and K50 000 000. Finally, the long-term loan is of an amount exceeding K50 000 000, and can be taken for a period more than one year. Both the medium-term and long-term loans are renewable and the sum may be increased if the borrower has fulfilled the obligations associated with the loan.

10.1.3 Interest

The lending rate for the long-term loan is 46 % with an addition of 10 %, which leaves the interest at a level of 56 %, and for savings the interest is 2 %. The Bank of Zambia, the National Bank, determines the interest rates.

The high interest rates are a result of interbank lending and borrowing at very high interest rates, and the costs of borrowing are transferred to the customers. This hampers development since many business companies are afraid of borrowing when just a small mistake may put them in default. Once in default, a company often finds it impossible to solve the resulting economic problems. The government has financial problems as well when borrowing from other countries or international institutions, which reduces government prospects for affecting domestic interest rates.

10.1.4 Collateral

Property can be used as collateral to get a loan, but the land must be developed. This means that bare land does not give security unless improvements such as buildings or crops have been made. Nowadays, the credit department makes visits to ensure the property is adequately developed before granting a loan. Earlier, no visits were made, and upon loan default the bank sometimes ended up with land worth less than the calculated value. The value of the property must be 20 % higher than the amount applied for as a loan.

It is not possible to borrow for the purpose of building a structure and then use this building as collateral, since there is no guarantee the building will be completed and thus it represents uncertain collateral. On the other hand, the bank will lend money to its employees, since loan payments can be automatically deducted from an employee's monthly salary.

The five different kinds of titles are treated equally, but the value granted differs depending on the type of leasehold. The Occupancy License and the Land Record Card are used in high population density areas, and the loan amount applied for should be less than the value of such properties. Title deeds given out by the Ministry of Lands are normally in medium to low density and farming areas, which raises

the value of the properties in these areas. Hence, the loan amount granted will be higher than for properties in high density areas.

Upon receiving a loan, the borrower must give the bank the title deed for a mortgage registration. The Ministry of Lands or the City Council must be notified of the bank's interests and register the mortgage. This procedure serves as proof of the loan before the court. The lending bank or another bank may grant a second mortgage if the value of the property is sufficient, but the title deed remains with the first mortgagor.

10.1.5 Default

About 75 % of borrowers default on their loans which makes banks very careful about ensuring correct valuation and proper registration of the collateral. 1992 was a rough year because of the drought, which gave rise to a very difficult economical situation for the farmers since they had invested a lot in cultivation.

In case of a default, the borrower will be formally requested by letter to pay the amount in default. If no response is received, the case will be sent to the bank's legal department. The legal department will send a second notice, stating that payment must be made within fourteen days or the case will be sent to court. Interest will not be charged from this point since the amount can easily skyrocket, making collection even more difficult.

The borrower sometimes asks the bank to sell the property held as collateral, or the court will order the bank to sell the property. Normally, the bank advertises the property in the papers and upon conveyance, if the purchase price exceeds the loan amount, borrower receives the difference. Administrative charges related to the conveyance, for example transfer tax and unpaid ground rents, will increase the debt.²¹³

10.2 Zambia National Building Society

In 1970 the Zambia National Building Society was established by the government. The Society provides property financing, real estate and banking services. The business concept is "To be leaders in the provision of property, finance, deposit taking and real Estate management for our Customers".²¹⁴

Property financing, the greatest income source for the bank, is divided into three categories:

- outright purchase
 - a loan granted to an individual or company to defray a purchase of a property

²¹³ Mrs Mwanza, 2003, interview

²¹⁴ <http://www.znbs.co.zm>, 2004-01-27

- construction
 - a loan granted to finance constructions
- home improvement scheme
 - a mortgage scheme intended for lessees wanting to renovate, extend or make other improvements on the property²¹⁵

Real estate management rents out and manages both commercial and residential properties on behalf of clients.

The bank also handles survey and valuation for rent determination, market value assessment, and mortgage application appraisals, and assists in conveyances of properties.²¹⁶ The Society has a total of 300 employees divided among seventeen branches countrywide.²¹⁷

10.2.1 Conditions

The applicant must have had an account with the bank for a certain period of time before applying for a loan, and the minimum balance of the account must be K100 000. In order to receive a loan, the applicant's collateral must consist of a developed property. When purchasing a property and using it as collateral, the applicant must present the offer letter, which shows the offering to purchase a certain property at a certain price.

The income and savings of the applicant are taken into consideration when determining the amount of the loan. The higher the income and savings, the greater the chances of getting a bigger loan. In this respect, a high income is considered to be about K5 000 000 or \$1000 per month, something which few people attain. One reason a loan is not granted though all the requirements such as a good collateral and income are met is the high number of applications. The low capacity of liquid assets of the bank is a contributing reason as well.

In February 2003 149 applications were made, at a total value of K6.2 billion; only two of these were approved with a total amount of K140 000 000.

10.2.2 Different Types of Loans

The bank offers three different kinds of loans: short-term, medium-term and long-term loans. The short-term loan involves a repayment period of about six months. The long-term loan may be granted for a period between 5 and 25 years, but in practice the period does not exceed 10 years. The period of the medium-term loan lies somewhere between those for short-term and long-term loans.

²¹⁵ <http://www.znbs.co.zm/property.htm>, 2004-01-27

²¹⁶ <http://www.znbs.co.zm/estates.htm>, 2004-01-27

²¹⁷ <http://www.znbs.co.zm/profile.htm>, 2004-01-27

10.2.3 Interest

For the short-term loan, the lending rate is approximately 56 %, whereas the lending rate for the long-term loan is about 40 %. For savings, the interest rate is in the range of 7 %.

10.2.4 Collateral

To be granted a loan, the applicant must hold a title deed and all the different kinds of titles will be treated equally. A valuation of the property used as collateral of the applicant must be done by inspecting the particular property. The amount of the loan granted will be a maximum of 65 % of the value. A mortgage deed must be signed and registered at the Ministry of Lands or at the City Council, but the bank will keep the title deed until the loan is repaid.

It is possible for the bank to grant a second mortgage, but if another bank serves as the first mortgagee, that bank must give consent to the arrangement. The first bank ensures that the borrower will fulfil the obligations of the loan. The second mortgagee must register the interest as an additional charge for that particular piece of land at the Ministry of Lands or at the City Council.

Theoretically, it is possible to be granted a loan with collateral of just bare land as long as the intention is to build structures on that particular piece of land. The bank will require the applicant to present diagrams of the planned structures, and calculations of the value of the land before and after the improvements will be made. The location of the parcel is of great importance for these calculations, and a loan will represent a maximum of 65 % of the value after the improvements are made. In practice, because of the uncertainty of repayment in such cases, the bank usually only grants loans to applicants with developed property.

10.2.5 Default

In most cases of default, the bank will send reminder letters and invite the borrower to discuss the problems with repayment. If the borrower defaulted for at least two months, the bank may proceed to foreclosure; however, the bank normally assists the borrower to the greatest possible extent to avoid such a procedure. The borrower may get three months' further notice.

Before foreclosure the bank must apply for permission from the court. The court hears one side of the story without necessarily hearing the other. The judge will revise all the documents related to the case; for instance, the mortgage, the title deed and any records of non-payment. The judge will sign the order for the bank to legally take possession of the property. Thereafter, the bank advertises the property in the press, interested purchasers make offers, and the bank proceeds to sell the property to the highest bidder.

In cases where more than one mortgagee is involved, registered parties take priority over unregistered ones. If the money released by the foreclosure is less than the total debt, two registered parties will share according to the percentages of the money they have lent with the property in question as collateral. That is why the first registered mortgagee must be informed before giving consent to a second mortgagee.

10.2.6 Companies

A company applying for a loan is treated almost the same way as an individual. The bank will take ability to repay into consideration, but will attach more importance to a well-known, credit-worthy company as opposed to an individual. The property used as collateral for granting a loan must be registered in the name of the company applying for the loan.

A loan to a foreign company with collateral in the country in which that particular company is based will not be advanced because the process of foreclosure will fall outside the jurisdiction of Zambia. To grant a loan, the bank requires the company to be registered in the Company Register in Zambia. The company must own properties in Zambia and two of the directors must be residents of Zambia as well. Few foreign companies apply for a loan and most of those applying come from South Africa.²¹⁸

10.3 Indo-Zambia Bank Ltd

Indo-Zambia Bank Ltd is a commercial bank and a product of co-operation between the Zambian government and three Indian banks. Its purpose is to promote growth and development.²¹⁹ Established in 1984, the bank has 202 employees²²⁰ and is focused on foreign exchange dealings, treasury operations and proper risk management functions.²²¹

10.3.1 Conditions

To apply for a loan, the applicant must have an account with the bank and proper collateral as well as a stable income. Business proposals used as a basis for a loan application must be deemed feasible.

10.3.2 Different Types of Loans

The Indo Bank offers short-term, medium-term and long-term loans. The short-term loan must be repaid within one year, and when lending to individuals, this is the most preferable from the bank's point of view. The medium-term loan is offered for three years, whilst the duration of the long-term loan is five to six years.

²¹⁸ Mr Besa, 2003, interview

²¹⁹ http://business.zambezeitimes.com/fulltxt.php?id_news=1437, 2004-01-27

²²⁰ <http://www.izb.co.zm/xaboutus.htm>, 2004-01-27

²²¹ http://business.zambezeitimes.com/fulltxt.php?id_news=1437, 2004-01-27

10.3.3 Interest

The interest rate will be 10 % above base rate, currently 45 %, regardless of whether the loan is short-, medium- or long-term. The savings interest is 22 % to 25 %.

10.3.4 Collateral

An applicant with a Lands and Deeds Certificate of Title has the greatest possibility to be granted a loan with a maximum of K25 000 000. Other kinds of titles are sufficient only for granting of a smaller amount. The property used as collateral must be improved to provide adequate collateral and the value of the property must be 50 % to 75 % higher than the amount applied for in the loan.

10.3.5 Default

About 15 % of the borrowers default. A reminder notice is sent to the borrower, and after 90 days of non-payment the case will be filed in court. In connection with the filing, the bank will stop charging interest. After permission from the court, the bank will repossess the property, make an advertisement in the press, and convey the property to collect the overdue sum.²²²

10.4 Barclays

Barclays is a British bank operating worldwide, with business in Zambia for over eighty years. Thirty offices with a total of 750 employees are spread throughout Zambia.²²³ Usually, the bank offers credit services to business customers, but individuals may be customers as well.

10.4.1 Conditions

To apply for a loan, the applicant must have had an account with the bank for at least 12 months. Before granting a loan the bank will examine the applicant's repayment history.

10.4.2 Different Types of Loans

Three different kinds of loans are offered: short-term, medium-term and long-term loans. The short-term loan is for a period of one year, the medium-term loan is up to five years, and the long-term loan exceeds five years. A long-term loan is granted mostly to companies; an example is a newly established coffee plantation investing in heavy equipment, where it will take at least about four years to get an income from the harvest.

If the bank account is properly maintained by the applicant, an amount between K4 000 000 and K25 000 000, that is to say a short-term loan, may be granted without any other security than the bank account of the applicant. For a medium-term loan up to K125 000 000 and for a

²²² Mr Shukla, 2003, interview

²²³ http://www.barclays.com/africa/zambia/barclays_in.htm, 2004-02-04

long-term loan up to K185 000 000, the applicant must provide security in the form of property. Overdrafts are normally considered as short-term loans without security.

10.4.3 Interest

The interest varies over time and from customer to customer, depending on how well the customer account is maintained and the best interest rate available at the time. A valued customer with a reasonably high-potential account and all the necessary collateral to make the account risk-free may get an interest rate of 47 %, and others may get over 50 %. The interest rate for savings accounts is about 8 %.

10.4.4 Collateral

The location of the property is more important than improvements on the land, which means that unimproved land in a prime area is more likely to be approved as collateral than improved land in a less attractive area. The applicant must have a title deed for the property as well, and the bank makes investigations at the Ministry of Lands or the City Council to ensure the property is registered in the name of the business or the individual. No encumbrances are allowed on the property.

An approved appraisal agency must appraise the property. The appraisal report will be evaluated by the bank, and serves as a basis for determining the amount of loan. The loan can be up to 80 % of the property value, but is seldom this high.

All titles are accepted but the Lands and Deeds Certificate of Title and the Council Certificate of Title are the most preferable.

10.4.5 Default

For loans granted without security other than a bank account, the bank will take out insurance with an insurance company. The bank handles all the administrative work but the borrower pays the insurance fee, which is quite minimal and depends on the amount of money involved. In case of default the insurance company will provide the repayments.

Overdrafts are not insured but after repeated overdrafts, the bank will suggest that the customer convert the debt into a short-term loan with the customer's bank account as security. Upon default on a medium-term or a long-term loan, the bank will have the property as collateral to convey if necessary.²²⁴

²²⁴ Mr Mwitumwa, 2003, interview

10.5 Discussion

When it comes to lending practices, there are no great differences between the banks. All of them accept the five different kinds of titles and require the property used as collateral to be developed. Barclays is an exception, since this bank accepts undeveloped land as collateral in cases where the bank considers the location of the property to be more important.

A statement to make is that a credit market exists and the compulsory auction works in a satisfactory way. Obviously the banks must rely on collateral and the compulsory auction, since the solvency of many mortgagors is probably poor. For instance, only 15 % of Zambia National Commercial Bank Plc customers manage to make their repayments on time, which means a great risk for the bank. In the case of a foreclosure it seems to be quite simple to find a purchaser for the property used as collateral; thus, residential buildings are easy to convey.

It was difficult to find information about how the high and fluctuating inflation rate affects property values, and in turn loan conditions such as fixed or flexible rate of interest. Information about any form of statistics was impossible to find.

11 Conclusion

In this chapter the questions presented in the Purpose section of this thesis will be answered. The conclusions are based on the theory and the discussions presented in the thesis.

The Ministry of Lands handles the allocation of land and advertises the land in the local press. Anyone may apply and the most suitable candidate will be chosen. The two kinds of title deeds issued by the Ministry of Lands are the 14-year Provisional Certificate of Title and the 99-year Lands and Deeds Certificate of Title. The Lands and Deeds Certificate of Title for a larger area will also be issued to the Lusaka City Council, which in its turn approve leases to applicants. Occupancy Licenses are issued for 30 years within Improvement Areas and Council Certificates of Title are issued for 99 years within Statutory Housing Areas. Land Record Cards are not issued any longer but remain in use in certain areas.

A well-functioning judicial system exists for registration of properties on State Land, which covers about 6 % of the land mass. Properties are described and information about the property is lodged in the register.

The Government has the power to repossess the property irrespective of the kind of lease, in case of a breach of contract such as unpaid ground rent or failure to improve the land within the specified time. This condition allowing repossession enables the Government to avoid any increase in ground rent debt and reduce the risk of poor utilisation of the property. However, the repossession will make the collateral of the mortgagee more insecure.

For the conveyance procedure, it is recommended to engage an attorney who will deal with the legal transactions. On the other hand, not many people are able to afford the expenses of such an advocate. The most important aspect of the conveyance procedure is the approval of the president. Indeed, conveyances are performed via a complicated procedure, but through an enduring legal model.

It is possible to use property as collateral to obtain a loan, and the judicial model for mortgages is reliable. The banks accept all of the five titles as collateral and require the property to be improved. The possibility of repayment of the applicant will be considered as well, but since the solvency of the applicants in general is low, the banks rely on the property as the only security. Many applicants fulfil the conditions to be granted a loan. However, the banks do not have adequate financial resources to grant all loans for which they receive applications.

In case of default, the mortgagor informed in writing and requested to pay the overdue amount. If payment is not made within the specified time, the case will be sent to court, which in turn may issue an order of foreclosure. The bank will advertise the property in the press and convey the property through a compulsory auction. As far as the banks are concerned, the procedure of foreclosure is a functioning one.

The poor economy of Zambia probably has a greater negative influence on the land market than any shortcomings in legislation. An improved economy would surely result in an upturn for the land market, since the possibility to obtain a loan would increase; with that, the ability to purchase and develop properties would increase as well.

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