FOREIGN INVESTORS' PARTICIPATION IN THE PRIVATIZATION AND INVESTMENT IN DEVELOPING COUNTRIES: A CASE STUDY OF TANZANIA

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by

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DEDICATION

To my husband
Fonsa Etoke Andrew Atabong

To my son
Fua-Atabong Kaninyoge Fonsa-Etoke,
with love and appreciation
ACKNOWLEDGMENTS

Very sincere gratitude to Professor Gabriel M. Wilner for his directions, support and most of all assistance in making this possible. Many thanks to my friends Generosa Kagaruki-Kakoti and Rashid Shaban Mruttu for their assistance. Finally to my family, the Mwanjisis, may you always be blessed. And all the ancestors before me, I thank you.
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INTRODUCTION

As we enter the twenty-first century there are nations still working on untying themselves, from what Thomas Jefferson once called, "dead hand of the past". This has manifested itself in the form of dictatorial regimes, controlling government institutions, utopian political phenomena, and in most cases just plain poverty. Developing countries from the former Eastern Europe to Asia, Africa to Latin America, have tended to lag behind economically due to various internal and external factors. Internal factors which have included political, social, environmental as well as leadership problems have operated hand in hand with external factors such as world market prices for commodities, fluctuation of exchange rates and lessening demand for certain products. It is the view of this research that it is no longer valid to cast the blame of underdevelopment on old reasons such as colonialism alone as it is too late for such a reason to prevail. The situation has been made worse by the fact that most of these countries have for long depended on agriculture. Some of these countries even depend on specific crops. Where a government supports the wrong type of crop, for example, a country's economy can easily be affected in the event world prices fall.

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2 This was the case for the Ivory Coast with cocoa in the early 1980s and Zanzibar with cloves in the late 1970s when Thailand also began producing and exporting cloves in large quantities: Tunga, Theo, officer of the Tanzania Broad of External Trade. Dar Es Salaam, interview by author, April 12 1999.
Developing countries today are fighting to control their economies after the sharp turn they have taken since the early 1980's, which include trade liberalization, privatization of publicly owned industries and opening up limited investments to the private sector. The economic struggle involves foreign participants as well.\(^3\) Despite the desperate need for capital and technology mainly from developed countries or even the prevailing interest to invest on the part of foreigners however, there are various issues and problems that are either posed by responsible government officials in developing countries, their private citizens or residents as well as the foreign investors. These issues arise more often during the application by private parties to trade and invest in these countries. There are also barriers and obstacles to privatization and investment that I have often found embodied in the legislation, or in practice by institutions involved in the structural adjustment in host countries. This has significantly contributed to the very slow and discouraging rate at which economic changes are taking place in these nations, therefore I feel obliged to write on this subject. It is worth noting that the said, barriers exist in countries of various economic development levels as will be discussed in this paper.

In my opinion it is not a matter of whether or not to liberalize the economies in developing countries or whether not to allow private investors but exactly to what extent. With the ongoing globalization of trade and investment, it is peculiar to find that private individuals, and foreigners in particular, are restricted from participating fully in the said privatization and investment of especially developing countries' enterprises. This paper is

\(^3\) Peter, Chris Maina; *Foreign Investment in Tanzania. The Mainland and Zanzibar*, Dar Es Salaam Fredrick Ebert Stiftung and the University of Dar Es Salaam, 1994.
written with the hope of pinpointing problems, and giving suggestions which may assist in bringing speedier economic changes to the countries in question. Even though other countries are cited for comparative purpose, my focus is on Tanzania as a case study whose current preoccupation is the marketization of its public sector. Tanzania represents the many other struggling, yet determined, countries of the world.
Politics play a major role in determining economic structures of many nations. Depending very much on the political stand most developing nations have adopted, especially after independence, their economies have tended to vary significantly. In some countries private ownership of property, which had existed during colonialism for example, was abolished after independence. Leaders in countries like Tanzania, Guinea and Ghana, inspired people to believe that everything was once communally owned.\footnote{The Social economic set up of most African countries before colonialism is still unclear.}

This has been the situation in some aspects such as land ownership in Tanzania. To date land in Tanzania belongs to the President on behalf of the Republic and not to individuals. This concept is believed to originate from the British legislature.\footnote{Under British Law Land belongs to the Crown: Mukoyogo G.W.; \textit{Constitutional Law “the British unwritten Constitution"}, University of Dar Es Salaam, 1991.}

Countries like Kenya that allowed private ownership of property still exercised control over land and the importation of most locally produced goods. To a good extent,
Private property existed in the Ivory Coast among others especially where the private owners were foreigners (mainly French).  

Political and Economic Diversity in Africa  
The common preoccupation by independent African governments, mainly in the 1960s, was the consolidation of political affairs and social emancipation. Economic aspects came later. Political and economic diversity in Africa as was the case in many other countries of the world, was not a matter of choice, however, they adopted directions closely connected to the former colonial regime. Countries once ruled by France, such as Ivory Coast, Senegal, Mali, part of Cameroon and others, adopted French economic structure and pegged their union currency CFA to the French franc until the early 1990's when the CFA was devalued by 50% leading to catastrophic economic results in the former French colonies of West Africa. British colonies like Tanzania, Kenya and Uganda, had similar problems with a difference, as they remained somehow closely related to Britain. Several others like Congo and Burundi were Belgian colonies and tried to adopt the latter's economic structure.

While some countries tried to adopt a clear capitalist path of economic development however, as in Kenya and the Ivory Coast, Tanzania and Guinea among

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8 Communaute Financiere Africaine
9 By December 1999 the CFA in Cameroon was at the rate of 700 per US $1.
others, adopted an African variety of socialism (not Chinese model, not Russian model) and/or belonged to the non-aligned movement behind strong leaders like Sweden, India and the former Yugoslavia.\(^{11}\) This was in my view, partly to enable these countries to detach themselves from any colonial influence and also to avoid a situation where they would have to choose between the then two main sides of the cold war. Ultimately however, most of these countries were to remain and produce and politically support the economic interests of their former rulers.\(^{12}\)

African governments' main objectives after a few years of independence were to engage in peasant agricultural production for food and economic growth and to earn foreign exchange through available means\(^{13}\). Exports of such crops were mainly to their former rulers. Cameroon's principle agricultural export to France for example, was cocoa until 1977 when it was replaced by the discovery of oil.\(^{14}\) Tanzania's exports to date include tea, coffee, sisal, pyrethrum and minerals such as gold and diamonds exported primarily to Europe and other African countries.\(^{15}\) To achieve economic control and development, African governments embarked on public ownership of major means of economic development by taking over all key sectors and enterprises in their respective

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\(^{12}\) McFadden F, Class political discussion.; Department of Development Studies, University of Dar Es Salaam, Tanzania January 1990.

\(^{13}\) It is during the 1980's that consensus among developed nations was reached on the globalization of trade in services: See Benz, S.F., Trade Liberalization and the Global Service Economy, *Journal of World Trade Law*, vol. 19, England 1985, p.95

\(^{14}\) Oil in Cameroon today contributes 40% to the economy – Research findings SONARA (*Societe National de Raffinerie*) Limbe, Cameroon January 1998.

\(^{15}\) Research findings, Bank of Tanzania, Department of Economic Research Policy, Dar Es Salaam, January 1996. There has been an increase in diamonds, gold, and Tanzanite exports from Tanzania recently thereby generating more revenue than agricultural products.
countries at different times. Industrial production during this time however was quite insignificant and not developed. Governments nevertheless inherited the few weak enterprises formed mostly by foreigners. In Tanzania for example, by 1965 out of 508 industrial establishments:

225 were 100% foreign owned
95 were 51% - 99% foreign owned
67 were 1% - 50% foreign owned
121 were owned by, the government and other Tanzanians (Both of African, Indian, Arabic and even Somali origin)^16

Tanzania - Economic Background

In Tanzania the first six years of Independence, marked the beginning of the era of industrialization within the framework of the already existing first five-year economic development plan. The plan covered the period between 1964 -1969 as an IMF and Tanzanian government move to encourage trade and investment, with emphasis on private participation. It was with this aim that the government passed the Foreign Investment Protection Act, 1963. To the surprise of both the IMF and the encouraged private investors, the government in 1967 passed the famous Arusha Declaration of socialism and between 1967 and 1975, the government nationalized and/or acquired of

51% or more shares in different privately owned entities. Whereas nationalization went as a type of developing countries trend at one time as far as to affect US plantations in Colombia. In the 1967 Tanzania experience, even private buildings were taken. When asked why there was nationalization in the first place, Tanzania's former President Julius K. Nyerere once said:

"I took the decision to launch the country into action in order to escape a trap permanently laid by a hostile world, organized by the powerful nations for their own benefit, to ensure the development of our countries'. . .we had to seize the right moment, a brief opening, to urge forward and escape the trap. . . . Today I could have done it a little more differently, economically, politically. Meanwhile we opted our own unique stand, it did not matter that the US, USSR or China did not trust us, we trusted ourselves. And we still do."^{21}

The distinguished features of the 1967 industries were that they were made monopolies and/or dominant in their areas of production. This aspect led these enterprises to engage in concerted practices with the government's blessing as it fixed prices for most items produced by these enterprises. The move eventually served to get rid of the just encouraged private investment.^{23}

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^{20} The exercise was being practiced in some countries until recently. The banking system in Mexico for example, was nationalized by former President J. Lopez-Portillo on September 1st, 1982 through the 'Decreto que Establece La Nationalizacion de la Banca Privadas', as part of the "Mexican Revolution." Exchange controls were also introduced in the same year. The justification by Portillo was that he wanted to defend the peso 'like a dog.' The peso however dropped even further and as recent as September 4th 98 Mexico stock fell by ½ and interest rates sore – see Litchman Joan, CBC News, Canada report of September 4, 1998.

^{21} Nyerere J.K., September 30th, 1994, New York returning from the South South Commission Conference in Acapulco, Mexico; The same kind of words were given by President Lopez Portillo of Mexico when justifying his actions. See Ewell B. Murphy Jr., Expropriation and Aftermath: The Prospects for Foreign Enterprise in the Mexico of Miguel de la Madrid, 18 Tex International L.J. 431,436 1983.

^{22} This was carried out by the now defunct, Tanzania Price Commission.

Over the years the government invested billions of shillings in public enterprises in hope that they would effectively mobilize and utilize resources for the benefit of all Tanzanians and in return pay dividends to the government. Instead however, in Tanzania for example, by 1990 public enterprises accounted for less than 10% gross domestic production and they were indebted to the tune of one trillion Tanzania shillings. This was further assisted by their under capitalization as the government could no longer bail them out, outmoded technology and an uncompetitive environment were among other reasons. The above reasons have contributed to the failure of Tanzania's and many other countries economies. This has resulted in trade imbalances, fluctuations in exchange rates, poverty and eventual disruption of peace in many other parts of the world and Africa in particular. Revolutions and coup d'etats, in my opinion, may well be traced to economic failures and not merely politics.

Tanzania's economic changes did not end within the adoption of socialism, in the early 1986 the government under the leadership of former president Ali Hassan Mwinyi and after years of economic failure under socialism, went along with many other developing nations in the structural adjustment program through the:

- Liberalization of its trade in goods and services within and with other nations
- Opening up new investment opportunities to private local people and foreigners

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25 Also emphasized by then President Ali Hassan Mwinyi announcing Privatization procedure and outline, in Tanzania: “Parastatal privatization and Reform Master plan”, Dar Es Salaam, government of the United Republic of Tanzania, 1993, p.1
- Privatization and reform of existing government industries.
- Formation of Capital Markets

This meant a restructure by which government controlled sectors of the economy public corporations became altered partly or wholly in favor of private participants. Many other countries also faced poverty and economic stagnation. Cameroon for example, between 1986 and 1991 alone incurred $4.5 billion in external debt, a chronic budget deficit of 4.2% GDP and a national unemployment rate estimated at 15 - 20% among other problems.

While this research focuses mainly on investment in privatized sectors, it is essential to note that such sectors include not only producing industries, but also service rendering enterprises. The resulting products of these enterprises need to reach certain markets, both local and international, hence calling for trade liberalization. There is a customary segregation between trade and investment, research proves this to be a mistake as the two are inseparable and must co-exist. Success in privatization and investment in my view depends on the freedom to trade. Promoting the two concepts simultaneously has allowed developed countries to analyze progress in practice and to differentiate the problems being faced accordingly.

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26 Section 2, Tanzania Public Corporations Amendment Act, no 16 of 1993: On the Political side Tanzania had to guarantee investors by maintaining peace and amending the Constitution of the United Republic in 1987 to reflect important features such as multipartism, democracy and presidential terms being limited to two.

27 President Paul Biya: "A New Era Dawns on Cameroon", Cameroon Tribune, Younede, January 2nd, 1991, Column 4 - 5: Tanzania on the other hand incurred a US$ 4 Billion in debt during this same period.

CHAPTER II

PRIVATIZATION OF GOVERNMENT ENTERPRISES AND INVESTMENT IN DEVELOPING COUNTRIES

Recently the world has faced a significant global shift away from state socialism towards entrepreneurial capitalism where governments have sold their state-owned enterprises to private investors. After 1987, privatization programs spread rapidly around the world, especially in developing countries, even though such a concept had existed in western countries since the 1950s.\(^{29}\) The concept of the International Monetary Fund aid, on the other hand, has in recent times changed from balance of payment funding to aiding developing countries "grow" their way out of their extreme debt. By 1990, the World Bank had made clear the imperative to create a market economy in Africa, Latin America, Asia, and the then Eastern Europe almost regardless of the social cost entailed.\(^{30}\) The idea of Privatization came about in the 1980s when the Fund and the World Bank Group designed a series of country programs labeled "structural adjustment programs", "economic recovery" and "restructuring programs" (ERP) or even "National Economic

\(^{29}\) Professor Meggisson W.L, University of Georgia, Business Administration, interview by the author Athens, Georgia, 1995: The term privatization in this context means the transfer of a company or it’s assets from public to private control.

Survival Programs’ (NESP). The programs aim at efficient utilization of domestic resources, reducing both household and government expenditures, moving the economy from consumption to production and saving, with the aim of achieving restoration of equilibrium and balance of payments. This was to restrain developing Countries from spending what they do not earn. The IMF and World Bank engineered and even helped finance these programs. In Cameroon for example, the program was financed by an eighteen-month stand-by arrangement of Special Drawing Rights (SDR), 69.525 million (approximately $90 million) and a $150 million adjustment loan from the World Bank, to be disbursed in three installments.

With the drying up of "official" development assistance and the increasingly limited possibilities of raising capital through commercial bank loans, debt – burdened African countries have focused their attention on the private sector initiative as the key to industrial and commercial development.

Privatization and investment in developing countries, today means liberalization by the reduction of government intervention and control in economic matters. This is through the sale of shares and assets of public enterprises and opening up new liberal
private investment opportunities as opposed to nationalization. It is the means by which the state divests itself of ownership in an enterprise and releases control of enterprises to private parties.

Developing countries have also adopted new investment codes and laws to govern privatization. This also means implementing sector reforms to improve management and ultimate production in retained “sensitive” sectors. The ultimate hope of developing countries is to:

- Improve export capacities and increasing producer prices, income taxes and expand tax bases
- Dampen the rate of inflation and enhance governments’ capacity to provide essential economic and social services
- Decrease government control over foreign exchange transactions, trade and interest rates
- Attain better living standards

In countries like Tanzania, it also means putting an end to consumers' nightmares from the long utilization of defective goods and services formerly produced and sold by the almost unaccountable government enterprises. The aim of the Tanzania government is to reach an economic growth rate of 5% per annum before the middle of year 2000.

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35 In the case of Tanzania, by 1995 sensitive enterprises were said to include the Power Supply Company, Water Authority, Post and Telecommunications as well as government ministries. By 1998 this list had been shortened to cover only government ministries, mining operations petroleum exploration, production/distribution of hazardous chemicals and armaments. See Tanzania investment act No 26 of 1997.
37 Bank of Tanzania 93-94 Yearly Report – Department of Economic Research and Policy – Dar Es Salaam, January 1996. By June 1999 it was clear that the result has been slow coming.
Reasons Behind Privatization and Investment

Reasons behind privatization and investment include the IMF/World Bank conditionality for privatization and liberal investment and trade prior to the receipt of any further loans by developing countries. This is for both the development of these countries and mainly for debt payment.

The mentality in developing countries is also changing towards the need for cooperation with developed countries and not dependency but building the global economy in which both sides will benefit. It is, in my view, an end to fighting and bonding in groups based on economic levels and the beginning of world economic cooperation.

"Groups of 77, 24 or 7 are no longer the game in our current days. Our energy is focused on the need for private capital, private persons participation and input in economic activities irrespective of whether such capital is foreign or domestic. We are now working on reviving our failing economies, reviving them for good."

The end of the cold war has contributed to setting up a conducive investment atmosphere in both the former Eastern block countries and its allies as well as in countries belonging to the non-aligned movement. The unsatisfactory economic performance of public firms though, is also intended to be improved through the discipline of private ownership.

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38 Dr. Gondwe W. International Monetary Fund, interview by the author, Washington D. C July 1995.
39 Professor Mahalu, C., Former dean Faculty of Law, University of Dar Es Salaam, 1991.
40 It is interesting to note that Tanzania has just completed its role as the chairperson for the Group of 77. Tanzania’s Foreign Policy however is now fully geared towards a Market economy.
41 Kikwete, J.M. Tanzanian Minister of Foreign Affairs, interview by the author, Dar Es Salaam, Jan 1995: this aspect was also emphasized by former President Necephore Sogholo of Benin during his visit to Atlanta, July 1995.
42 These in my opinion, no longer have a cause to retain the name since they are all moving towards the direction of a market economy.
In Tanzania for example, the reasons and intended objectives of privatization and reforms as defined in the government's policy statement of 1992 include;

- To improve industrial operational efficiency,
- Reduction of burden on government budgetary costs,
- Expansion of the role of the private sector,
- To broaden direct private ownership create a more market oriented economy,
- To sustain employment
- To increase revenue, improving fiscal balance
- To secure enhanced access to foreign market's capital and technology
- To promote development

Methods of Privatization - A Focus on Tanzania

In pursuing the developmental objectives previously discussed, governments must decide on the method to be used with respect to each enterprise ear-marked or "specified" for privatization. Countries without a developed capital market use the direct sale of shares to individual investors. Countries with capital markets sell the shares of public enterprises through a stock exchange. Tanzania lacks a developed capital market to cater for the sale of shares in the stock exchange. It's newly opened Dar Es Salaam Stock

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44 In the case of Tanzania, A “specifies public cooperation,” means a public corporation so declared by the president under section 1 of the Tanzania public corporations Act No. 2 of 1992 and or by the minister of finance under section 38 of the Tanzania Public Corporations Amendment Act No. 16 of 1993 for purpose of privatization.

45 Countries that have succeeded with this method include Bangladesh, Malaysia, and Singapore. Research finding universities of Dar Es Salaam, Faculty of Law Tanzania January 2000.
Exchange, so far has three companies registered with it. Tanzanian industries have been on the edge of collapse with little capital and few meaningful assets in value. Research reveals that very few enterprises would be able to sell in the stock exchange. It is for this reason that Tanzania mainly uses the direct sale method to privatize the shares of its Enterprises while continuing to develop the new Stock exchange to facilitate, among others, the raising of capital by investors and sale of shares for future successful industries.

**Privatization by Direct Sale**

The direct sale method of privatization involves the feasibility of industries, where each parastatal or enterprise scheduled for privatization is assessed in terms of

- Its present financial viability and asset value as well as need to minimize costs and to preserve the said value.

- The nature of the industry and its existing need for technology

- Medium and long term business prospects and need to maximize eventual proceeds

- Consumer interests including effects of divestiture in product prices, intended competitive markets and impact on employment

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46 By January 2000, the only companies registered with the Dar es salaam Stock Exchange. Were Tanzania Oxygen Ltd., Tanzania Breweries Ltd. and Tanzania Tea Parkers Ltd. More information on the Dar es salaam Stock Exchange can be found at [http://www.darstock.com](http://www.darstock.com) on the world wide web.

Direct sale of shares can be made through several means. These include among others:

Trade sales - these may be sales of shares or assets sold to another company or person and it can be carried out by direct negotiations between the government and investors.

Joint ventures - they combine components of other methods and they include partial trade sales and may include management contracts. This is common where an enterprise requires technical partnership and new investment.

Public auction and tender - providing quick mechanisms for the rapid privatization of especially small enterprises. Sales here are mainly of assets not shares.

Private placement - with institutional investors by negotiation

Buy outs - by management and/or employees

Liquidation - where an enterprise is closed down.

Most governments have realized that a successful privatization is only possible if a combination of the above methods are used.\(^48\) Foreign investors in Tanzania are mainly interested in joint ventures and trade sales.\(^49\) There are also methods that are mostly preferred by the Governments in Developing countries especially where the area to be


invested in is considered sensitive or crucial to the economy. These options would only be relevant in selected cases and would include:

- Lease Contracts with or without option to purchase
- Commercialization of Key services within an Enterprise, to improve performance
- Management Contracts involving a change in the leadership of the enterprise.\(^5^0\)

Through these methods the government intends to achieve:

- reduction of production and operating costs of enterprises which have for long depended on direct and indirect government subsidies
- enforcement of tax payments since not all enterprises have been paying taxes.
- removal of preferential access to finance and foreign exchange
- increase in enterprise autonomy through decontrol of price, wages and distribution
- full accountability of Boards and managers
- closure or merger of public enterprises
- increase in production powers of their holding corporations
- improved accountability through performance contracts and

\(^5^0\) This method is currently very common in Tanzania where companies such as the French NOVOTEL have taken over various local hotels to improve services.
- reducing uncertainties in the relationship between enterprises and the Governments whose role is to set the objectives, monitor performance, reward success and penalize shortfalls and to ensure implementation of efficient economic policies.\footnote{Research findings, Parastatal Sector Reform Commission, Dar Es Salaam, January 2000.}

Currently, most of Tanzania’s ministries, as well as the retained holding companies in certain sectors of the economy, are finally undergoing some reforms. These include public utilities such as public water, the power company Tanzania National Electric Supply Co. TANESCO, the Tanzania Harbors Authority and the Railway system.

The government has also been ensuring liquidation of all non-productive public enterprises since 1992.

Preparation and implementation of divestiture involves time and money depending on the method selected. It involves preparation of memoranda, targeted advertising, and searchers search to identify buyers or leasers. It also involves invitation and evaluation of bids, negotiation, obtaining governmental approval for the sale, preparation of the appropriate contractual documents with the investor and completion of the sale transaction.

**Methods of Investment**

This may be direct investment whereby the investor brings in direct capital of 25% or more and/or participates fully in the domestic investment. The investor may buy an existing company or start up a new one. Investment may also be indirect investment,
which is not part of this discussion. Most developing countries prefer direct investment and Tanzania specifically allows dealings with private parties and foreign governments directly.

**Economic Areas Open to Investment in Tanzania**

The new privatization and investment policy in Tanzania acts as a springboard or the private sector to exploit business opportunities in industrial and agricultural enterprises as well as other economic infrastructure which have for more than thirty years been a prerogative of the government. Areas open to investment include:

1. Agriculture and Livestock Development
2. Natural Resources
3. Tourism
4. Manufacturing Industries
5. Petroleum and Mining
6. Construction
7. Transport
8. Transit Trade
9. Computers and High Technology
10. Finance (Banking)
11. Telecommunication
CHAPTER III

PREVAILING LEGISLATION AND INSTITUTIONS RELATING TO PRIVATIZATION AND INVESTMENT IN TANZANIA

Various laws have been adopted or amended by different countries so as to accommodate the changes in the public sector that include investment opportunities. This chapter deals mainly with the legislation that articulates the organizational and legal principles for the transformation of state ownership to private ownership. Tanzania is not the only one engaged in making new Laws and opening up opportunities for private investment.\(^5^2\) Malaysia enacted the Promotion of Investment Act in 1986. Cameroon, as another example, adopted a new investment code in 1990. The new code provides under Chapter 1, Section 2 (1) that persons natural or corporate residents or not may engage in economic activities in Cameroon.

In addition to privatization laws and investment codes, there are also bilateral and multilateral agreements recently entered into for the protection of investors especially in the formerly ‘foreign investor strict’ countries like those in the Latin American continent. The US, for example, has a bilateral investment treaty on encouragement and protection

\(^5^2\) In Poland, for example, there has been adopted the privatization law of July 13, 1990, thereby reviving the once dead Polish Commercial Code of 1934: Ecuador enacted Regulation no. 786 of June 17, 1991, based upon decisions 291 and 292 of the Commission of the Catagena Accord, to regulate foreign investment in Ecuador; Mexico’s President Carlos Salinas de Gortari enacted a law and privatized the banking system in 1990. See Iniciativa Presidencial D.O. June 27, 1990 Branigin, William Mexico to repeal 82 Bank take overs, The Washington Post, May 3, 1990 at p. 33-34: See also Mexico’s Ley Organica del la administracion public and lay general de Inversiones Extranjeras.
of investors with Argentina since 14 November 1991. The treaty ensures Argentina's abandonment of the more than a century old Calvo Doctrine under which many Latin American countries as host countries asserted exclusive jurisdiction over their territories, and a foreign investor would have no other rights than the nationals of the said host country.

Legislation in Tanzania

In Tanzania, the Public Corporations Act of 1992 and its Amendment Act of 1993 are the main Laws dealing with privatization. The Tanzania Investment Act of 1997 governs mainland Tanzania in investment matters while the Zanzibar Investment Protection Act of 1986 deals with the Tanzania Islands. Other relevant legislation to this research includes the Foreign Exchange Act, the Banking and Financial Institutions Act, and the Companies Ordinance.

The Public Corporations Act

In relation to privatization, Section 22 of the Public Corporations Act, grants the President powers to reorganize or reform public corporations and to closedown non-functioning corporations. The President is to follow procedures stipulated under Section 1 of this Act. Under Section 26, existing monopoly public enterprises are to be entered into performance contracts with the Treasury Registrar for better performance.

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53 No. 2 of 1992 and No 6 of 1993 respectively, replacing Act No. 4 of 1969 (Tanzania)
54 No. 26 of 1997 and No. 2 of 1986 respectively
55 No. 1 of 1991
56 No. 12 of 1991
57 Cap 212 of 1932
58 No. 2 of 1992
Section 29 repeals all laws that placed enterprises and other sectors of the economy in public hands after the Arusha Declaration. The Public Corporations Act of 1969 is among those repealed. Holding companies responsible for the currently being privatized corporations cease to act as holding companies with respect to such corporations upon privatization, this is in accordance with Section 27 of the Act.

The Public Corporations Amendment Act

This Act, provides under Section 2 for the restructuring of “specified” public corporations through,

"any forms of restructuring as a result of which ownership, structure or control of that specified public corporation or specified government share holding is altered."

The Act does not go into any further details on privatization as such, but grants Powers to the Minister of Finance under Section 38 to specify public enterprises for the purpose of Privatization and report to the President of Tanzania.

The Tanzania Investment Act

This Act applies to Tanzania mainland only. It provides useful information on eligibility requirements for doing business in the country, steps to be followed and acceptable judicial form through which private capital can be channeled. Section 15, for example, provides an opportunity for both local and foreign investors to invest in

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59 Of 1967-a declaration of Socialism and Self Reliance
60 No 4 of 1969
61 No 4 of 1969
63 Section 17-26, Tanzania Investment Act
Tanzania, in the areas determined by the Investment Center in Liaison with relevant ministries and other authorities, Investments not covered by this act are:

a) Those in areas other than mining operations governed by the mining Act of 1979.

b) Petroleum exploration under the petroleum (Exploration and Production) Act, 1980.64

c) Manufacture, marketing or distribution of hazardous Chemicals, or moments or any type of Explosives.65

Businesses which, may enjoy the benefits and protection under the Tanzania Investment Act 66 are:

a) If Wholly owned by a foreign Investor or if a Joint Venture, the minimum investment Capital is not less than Tanzania shillings equivalent of USD 300,000 or

b) If locally owned the minimum investment capital is not less than Tanzania shillings equivalent of USD 1000,000.67

Section 17 of the Tanzania Investment Act provides for the application procedure to do business in Tanzania. Application is to be made to the Tanzania Investment Center.68

Sections 19 and 20 provide for benefits to be enjoyed by investors. Section 21 provides

64 See section 2-(1) and (2), Tanzania Investment Act, of No. 26 of 1997
65 Refer to chapter 11 of this paper for a list of areas available for Investment.
66 No 26 of 1997
67 Section 2-(2)
68 The section provides for all the requirements needed in the application for a new Investment, an expansion of existing Investment, equity Investment, shares or stock in an Enterprise
Investment Incentives such as unconditional transfer of:

- Net profits or dividends
- Payment in respect of loans abroad,
- Royalties, fees and charges in respect of technology,
- Remittance of proceeds net of all taxes in the event of sale or liquidation of the business
- Payment of emoluments to foreign personnel employed in Tanzania.

Section 22 (1) Provides Investment guarantee against expropriation except as per section 22 (2) under the due process of Law. In the event of expropriation, investors will be entitled to:

a) Payment of fair, adequate and prompt compensation and

b) Right of access to the court or a right to arbitration for the determination of the investors’ interest or right and the amount of compensation to which he is entitled.\(^6\)

The section also provides that, any compensation payable under this section shall be paid promptly and authorization for its preparation in convertible currency where applicable, shall be issued.\(^7\)

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6 Section 22 (2) of the Tanzania Investment Act No. 26 of 1997.
7 Section 22 (3); In addition to this provision Article 24 of the Constitution of the United Republic of Tanzania of 1977 as amended in 1992 also requires compensation to be “prompt”. These provisions were drafted basing upon the General Assembly Resolution on permanent sovereignty over natural resources adopted by the General Assembly on December 14th 1962. The resolution declares under section 4 that nationalization, expropriation or requisition “shall be based on grounds or reasons of public utility, security or national interest which are recognized... In such cases the owner shall be paid appropriate compensation in accordance with the rules in force in the state taking such measures... and in accordance with international law...” The section is also the basis for the objective of the Multilateral Investment Guarantee Agency, established by a UN Convention on October 11th, 1985 in Seoul to which most countries developed and developing are members. The agency entered into force on April 12th 1988.
Section 23 stipulates a procedure for settlement of disputes. Disputes under this act are to be settled in accordance with the rules and procedure for arbitration of the International Center for Settlement of Investing disputes. Under section 25 of the Tanzania Investment Act, Foreign Investors are allowed to obtain credit for doing business from domestic sources. It was also the intention of the Legislatures for the Tanzania Investment Act to serve as the framework upon which investments agreements between investors and the government are based.\textsuperscript{71}

\textbf{The Investment Protection Act} \textsuperscript{72}

This Act is applicable to the Tanzania Islands of Zanzibar and Pemba only and not the mainland Tanzania. The act deals with foreign investors alone or in joint venture with Zanzibaris, with the government and between Zanzibaris and ex-Zanzibaris. The act does not deal with local investors alone. The provisions of this act however, are similar in content to the mainland Act although the word local or national investor does not appear in the Zanzibar Act. The Zanzibar Investment protection Act has six main parts. The main parts deals with issuance of certificate to foreign investors permitting them to invest in Zanzibar,\textsuperscript{73} incentives to investors, such as repatriation of capital and dividends.\textsuperscript{74} Investment guarantees (protection),\textsuperscript{75} and obligation to investors.\textsuperscript{76}

\textsuperscript{71} Mruttu, R. S., Legal Counsel, Bank of Tanzania, interview by the author, Dar Es Salaam, January 2000.
\textsuperscript{72} No. 2 of 1986.
\textsuperscript{73} Part II, Sections 3-6 of the Zanzibar Investment Protection Act, No 2 of 1986.
\textsuperscript{74} Part I, Sections 7-14 of the Zanzibar Investment Protection Act, No. 2 of 1986.
\textsuperscript{75} Part IV, Sections 15-17 of the Zanzibar Investment Protection Act, No. 2 of 1986.
\textsuperscript{76} Part V, Sections 18-24 of the Zanzibar Investment Protection Act, No. 2 of 1986.
The Foreign Exchange Act 77

This act provides for freedom in dealing with any specified foreign currency and gold. It is provided under Section 5 (b) of Part II that

"any person whether resident or not . . . may hold any amount of foreign currency within the United Republic of Tanzania." 78

This freedom is granted to anybody in Tanzania, nationals, residents as well as visiting foreigners. Regulations made under Section 7 of this Act include the Foreign Exchange (Bureaux de change) Regulation of 1992 under which foreign exchange shops were formed. Foreign investors no longer have to queue at the Central Bank in order to buy or sell foreign currency as these transactions, are now carried out by the numerous Foreign exchange shops in Tanzania. The Foreign Exchange Act repeals the old Exchange Control Ordinance, 79 under its Section 17. There is no more exchange control in Tanzania.

The Companies Ordinance 80

All companies have to be established or registered within the provisions of part two of the Companies Ordinance. No foreign company (banks included) may carry on business in Tanzania without the approval of the registrar of companies. This is provided under section 320 (a) of the Companies Ordinance

77 No 1 of 1992
78 Sections 6-8 of the Foreign Exchange Act, No 1 of 1992
79 Cap 294
80 Cap 212 of 1932
The Banking and Financial Institutions Act

After meeting the requirements of the Companies Ordinance, the Banking and Financial Institution Act is the main legislation dealing with investments in the banking sector in Tanzania. Section 5 gives the power to grant banking license to the Bank of Tanzania. Foreign as well as local investors may, after establishing an Investment Company in Tanzania, apply to the Bank of Tanzania to do Banking business. Section 7 states the requirements in the application and considerations to be taken into account by the central Bank. Section 13 provides for minimum capital to start up a bank in Tanzania the minimum core capital required under Section 13 is to be not less than Tanzania Shillings 1,000,000,000. Section 5 provides that the Governor of the Bank of Tanzania may make regulations for carrying out the Banking and Financial Institutions Act. Among the already issued regulations, are the Banking and Financial Institutions Regulations of 1997, of which Regulation 13 provides that application for banking license from the Bank of Tanzania should be made after a pre-filing meeting between investment promoters and Bank of Tanzania officials. Section 47 on international banking provides that Foreign Banks and Financial Institutions moreover may, with the

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81 No 12 of 1991  
82 Cap 212 of 1932  
83 By January 2000, the Tanzania shilling was valued at 680 to USD 1; Financial Institutions which do not receive deposits could start with minimum capital of not less than 500,000,000 Tanzania shillings unless the minister Prescribes Otherwise.  
84 There is an implied requirement that all Investors, foreign and local will have a business promoter prior to engaging in any business in Tanzania: The application moreover shall be submitted together with documents listed under the third schedule of the Regulations. Such documents include a memorandum and Articles of Association of the proposed Bank.
authorization of the Bank of Tanzania, establish representative offices in Tanzania. This may be the case even if such a Foreign Bank does not wish to transact business in Tanzania.

**The Capital Markets and Securities Act**\(^5\)

This establishes the Capital Markets and Securities Authority that oversee the functions of the Dar Es Salaam Stock Exchange. The Stock Exchange was incorporated as a company limited by guarantee under the Companies Ordinance of Tanzania.\(^6\) Sections 1-10, provide for the application and procedure to form companies both public and private. The Act further provides for working permits to carry on business in Tanzania from the Immigration Services in the case of foreign participants.\(^7\)

**Institutions in Tanzania**

Various institutions, in Tanzania, carry out negotiations and implementation of both privatization and investment. Some are confined to specific areas while others deal with privatization generally.\(^8\) These institutions are mainly autonomous arms of the Government and include those discussed hereunder.

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\(^5\) Of 1994.
\(^6\) Cap 212 of 1932.
\(^7\) Permits are now taken care of by the Investment Promotion Center in Dar Es Salaam.
\(^8\) In Mexico for example, a Bank privatization Committee, ‘Comite de Desincorporacion Bancaria’ was formed in 1989 under the Ministry of Finance to implement privatization of the banking sector.
The Parastatal Sector Reform Commission – PSRC

The PSRC is the main organ dealing with privatization.\(^89\) It has 18 professionals including a Legal Department and is assisted by many foreign consultants.\(^90\) It oversees all programs relating to divestiture, commercialization, reform, accountability and performance of retained public enterprises. The Commission, as provided by Section 22, of the public corporation Amendment Act, prepares and maintains an up-to-date list of all public corporations and recommends to the minister for finance all those enterprises eligible for privatization. The basic document upon which the commission relies is the Tanzania Parastatal Privatization and Reform Master plan of August 1993.

The commission derives its legal mandate in relation to identifying and restructuring a corporation under the Public Corporations Amendment Act.\(^91\) It prepares and maintains an up to date list of all public enterprises and recommends to the minister for finance, enterprises suitable for privatization. The Commission cooperates closely with the Local Advances Realization Trust (LART), a debt settlement organization, established in 1991 to clear all bad debts of parastatal organizations upon liquidation.\(^92\) The commission also works in consultation with the Treasury, the Attorney General's Chambers, the Tanzania Investment Center, the Bank of Tanzania and other responsible ministries.\(^93\)

\(^{89}\)This was set up by a cabinet directive under a policy statement of January 8th, 1992 and it was formally established by the public Corporations Amendment Act of 1993 no. 6 of 1993 sections 21-27
\(^{90}\)Mainly from the World Bank and the British Overseas Development Assistance.
\(^{91}\)Sections 22, 23 and 43: Under sections 38 and 39 of the Public Corporations Amendment Act, the Minister for Finance can also declare a parastatal specified for privatization after getting authority from the president.
\(^{92}\)LART was established under Act no 6 of 1991
\(^{93}\)In the case of divestiture options which require the approval of the government, the procedure to be followed is provided under Part V of the Public Corporations Amendment Act.
The Tanzania Investment Center - TIC

The TIC was established under Section 4 of the Tanzania Investment Act of 1997. It is provided under section 5 of the Act that:

The center, which shall be a one-stop center for investors shall be the Primary agency of government to coordinate, encourage, promote and facilitate investment in Tanzania and to advise the government on Investment policy and related matters.

Section 5 (d) empowers the Tanzania Investment Center to assist all investors including those not bound by the Tanzania Investment Act. It is the center, which obtains all permits and licenses necessary to set up an Investment in Tanzania.

The Bank of Tanzania

The Bank of Tanzania is the fiscal agent of the Government. It works with the Tanzania Investment Center and the Parastatal Sector Reform Commission in drafting contracts for sale of enterprises or reviewing constitutions submitted by foreign investors. In particular in relation to tax provisions, transfer of profits, etc. to ensure the investors conform with Tanzanian laws. It is the Bank of Tanzania which receives, reviews all applications and which has the final authority on licensing investments in the banking sector as provided under Section 5 of the Banking and Financial Institutions Act. Under Section 17 of this Law, the control and supervision of all banks is also vested in the Bank.

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94 The Center also provides investment information to all commercial and trade Officers of the Tanzania Diplomatic missions in foreign Countries.
95 No 26 of 1997
96 Section 5 of the Tanzania Investment Act.
97 Formally established under section 4 of the Bank of Tanzania Act no 1 of 1966.
98 No. 12 of 1991
of Tanzania. Where foreign exchange is involved the Bank of Tanzania is still the banker to all other banks and the ultimate, money lender. In addition, all foreign banks have to maintain accounts and assets with it.99

**The Registrar of Companies**

Under the Ministry of Industries and Trade, the Registrar has power granted by the Tanzania Companies Ordinance100, to receive applications for incorporation of private as well as public companies. The former being of less than 7 directors and not more than 50 employees while the latter may have more than 50 employees as provided under Section 7 of the Companies Ordinance.101 Currently the registrar incorporates even those companies with foreign capital provided the incorporators have working permits from the Tanzania ministry of home affairs.

**Parent Ministries and Holding Companies**

All sector ministries work hand in hand with the above institutions in the current privatization and investment. There are still a number of existing holding companies for the various enterprises currently being privatized in Tanzania. New investments therefore will indirectly have to cooperate with these holding companies or boards. Holding companies still in existence include:

- Board of External Trade
- Board of Internal Trade

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100 Section 7
101 Cap 212 of 1932
National Agricultural & Food Corporation
National Chemicals Industries
National Development Corporation (for small industries)
National Housing Corporation
National Milling Corporation
National Poultry Company
National Ranching Company
National Transport Corporation
Small Industries Development Organization
State Mining Corporation
State Motor Corporation
Sugar Development Corporation
Tanzania Cashewnut Marketing Board
Tanzania Coffee Marketing Board
Tanzania Cotton Marketing Board
Tanzania Hotels Investment
Tanzania Karatasi Associated Industries (paper Products)
Tanzania Leather and Associated goods Industries
Tanzania Petroleum Development Corporation
Tanzania Saruji Corporation (cement and related products)
Tanzania Sisal Authority
Tanzania Tea Authority
The Dar Es Salaam Stock Exchange

Established in 1997, the Dar Es Salaam Stock Exchange provides a forum for investors to raise capital and buy shares in available enterprises. The Stock exchange began its operations in April 1998 and will soon be listing two-year government bonds.

Start up Investment Protocol in Tanzania

The protocol on investment is usually governed by both legal provisions as well as procedural matters not under the Law. In Tanzania, a foreigner or national intending to invest, in either a currently being privatized area or any other, is first of all presumed to have a promoter. Whether upon receipt of an advertisement, notice from the Parastatal Sector Reform Commission or the Tanzania Investment Center or not, the investor may lodge an application for a certificate of approval with the Tanzania embassies abroad or the Tanzania Investment Center as provided under Sections 16 and 17 of the Tanzania Investment Act. The investor will then obtain immigration permits and thereafter Register the new company under the companies Ordinance. To simplify the procedure

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104 Research finding, Tanzania Investment Center, Dar Es Salaam; January 2000.
105 No 26 of 1997.
106 Cap 212 of 1932.
investors both local and foreign start with the Tanzania Investment Center. The Center takes care of the rest of the running around to obtain all the relevant permits.\textsuperscript{107} This is an incentive especially to foreign participants who cannot afford to be in Tanzania chasing for permits and licenses.

\textsuperscript{107} As per section 16 of the Tanzania Investment Act.
CHAPTER IV

ANALYSIS OF OBSTACLES TO PRIVATIZATION AND PARTICIPATION
OF FOREIGN INVESTORS

Despite the need for private capital, developing countries have, in my opinion, been experts in putting obstacles to private investment. Obstacles are said to be worse where the investor is a foreigner. Complaints are heard from the developed nations as well as from fellow developing nations with what are considered less harsh conditionalities to investment. This chapter looks at whether such obstacles are anomalies unique to developing countries by analyzing the deemed negative legislative provisions as well as institutional practices towards investors. A comparative analysis between the Tanzanian and US Banking Systems shall be made for this purpose with a view towards finding suggestive solutions.

Obstacles to privatization and investment are found in many countries' laws. Foreign capital participation in Brazil for example, was until 1994 limited to 40% of voting shares in specific industries. The Cameroonian Investment code as another example provides for strategic industries only to be invested upon by foreigners. These may not always attract foreign investors and they may become an obstacle to

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108 Research finding. United Nations Development Program, Dar Es salaam, Tanzania Dec. 1998: Research also revealed that, the UNO has statistics on all major Nationalization/expropriation incidents so far.
109 Through Law 8031 (90) and Decree 724 (93)
110 Chapter 5.
investors freedom of choice in areas of investment ultimately leading to loss on the part of the host government. Among the conditions of eligibility to invest in Cameroon is that the plan of the proposed investment must also include the creation of permanent jobs for Cameroonians to the tune of at least one job for every investment of 10 million CFA francs by the undertaking. In Guyana, as another example, only 15% of workers in a firm may be foreign and an increase after scrutiny may only be permitted if local skill is not available. Tanzania Currently does not have this condition.

**Legislative Obstacles in Tanzania**

In Tanzania the very, first obstacle is political. This begins with the quite unclear union between Tanzanians, a factor that legislatively may create confusion to investors. It is not easy to know which laws apply to mainland or Islands Tanzania and to what extent exactly. Even though finance and foreign affairs are union issues, investment is not. It is not listed as one of the union matters under schedule 1 to the Articles of the Union under the Constitution of the United Republic of Tanzania. The fact that Zanzibar Investment Protection Act does not apply to local investors per se has not created a more conducive atmosphere as a matter of reality foreign investors have been scared to invest. There is a current debate on Zanzibar's capacity to enter into

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111 See article 2(1) of the Cameroon Investment Code of 1990. See also Article 20: Similarly, Section 32 provides for a 20% periodic increase of local staff prior to any reinvestment.
113 To be practically on the safe side however most foreign businesses are employing local consultants in addition to regular employees. Research finding, Bank of Tanzania, Dar Es Salaam January 2000.
114 Peter, Chris Maina, Foreign Investments in Tanzania; The mainland and Zanzibar Fredrick Ebert Stiftung and University of Dar Es Salaam 1994 p. 83
116 No 2 of 1986
117 Part II and IV of Zanzibar Investment (Protection) Act.
International Agreements as Zanzibar is not a state under International law. Investors know that they may never really sue the government of Zanzibar under International law as a state and they are not sure to what extent Tanzania will accept liability on behalf of Zanzibar in practice. The above situation is made worse by the fact that the Key Legislation, the Tanzania Investment Act, which does deal with foreign investors as well as local, apply to mainland Tanzania only and not Zanzibar. Investors in Zanzibar therefore cannot rely on it.

Areas for private investment are currently not listed under any law of Tanzania. Investors have no easy way of knowing what areas are available other than by looking at Tanzania Investment Web Sites. Investors, moreover, want to invest in the areas of mining and tourism that bring quick returns. Foreign investment in these areas is in practice very limited. Large well to do Enterprises such as the Tanzania Breweries Limited, Tanzania Oxygen Limited are still either half or wholly owned by the public sector or the government. To foreigners this indicates the presence of the Government in economic activities a factor that poses a threat to their investments. Foreigners are still scared of nationalization.

Areas such as public utility moreover, otherwise reserved for the public or government, do attract private parties as well especially because the government so far in these areas has not been working towards consumer satisfaction. In practice certain areas are only open to local entrepreneurs. These areas are not sensitive to national

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security but are protected because they involve less capital and technology enough for the
ordinary Tanzanian to afford. These areas have been open to Tanzanians for over 30
years. So far not much investment has been made therein. In my view, it is these same
areas however which if made available to foreign investors, can assist in bringing in fast
economic development to Tanzanians, their exposure to the outside world and ultimate
development.

The Government of Tanzania, through the Investment Act, imposes
immigration quota. Every business covered by the Act can only employ up to 5 foreign
persons. Any additional person is subject to scrutiny and approval of the Immigration
Department. Although this is seen as a barrier, research also proved that in the past few
years, the clause was being abused leading to an influx of foreigners who were there
merely to enjoy themselves.

Land ownership and value is another obstacle to investors in Tanzania. Land
being public there is no concept of private ownership. Corporations and individuals may
receive leases. Currently almost all businesses being privatized, involve the transfer of
right to use land to new owners. Moreover, land is in most cases the best asset there is.
In practice, however, new enterprises may wish to use land for construction of new
buildings. Where foreign investors are involved the government only permits land use
where there is a joint venture between the foreign investor and a national or village.

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121 These include car hire services, building repairs and decoration, Beauty Saloons and most retail services.
123 Research finding, Embassy of the United Republic of Tanzania, Washington D.C., February 2000: Where a
company genuinely needs people from abroad whoever, it may obtain approval through the Investment Center.
124 Research finding, University of Dar Es Salaam, Faculty of Law, Dar Es Salaam. January 2000.
Several other divestitures are delayed because land leases cannot be located, were never issued, or were issued to more than one person, as Tanzania still has the problem of double allocation. Land may be allocated to one person under the Tanzania Government Land law while it has been allocated to someone else under customary laws.\textsuperscript{125}

In Zanzibar, research revealed that legal provisions relating to remittance of foreign funds through banks do not apply to foreigners, foreign currency which is a union matter, is still in demand. Foreigners investing in Zanzibar therefore may only depend upon Bureaux de Change in purchasing at high rates and remitting their funds abroad not banks. Investors may receive foreign currency, however, through banks and in most cases its equivalent in Tanzania shillings.\textsuperscript{126} Section 26 of the Zanzibar Investment Act\textsuperscript{127} requires investors to open accounts with the Peoples Bank of Zanzibar, which is the island's central bank. Knowing the said bank's role in planning the Tanzanian economy of the islands, investors believe they are not adequately protected and are hesitant to open accounts with it. Investors prefer maintaining accounts with foreign banks most of which are located in Dar Es Salaam. For this and other reasons, investors prefer investing on the mainland Tanzania rather than in Zanzibar.\textsuperscript{128}

Provisions of dispute settlement are narrow in Zanzibar. They only address disputes arising out of the amount or compensation granted by the government after for example an acquisition. There is no real mention of disputes between the government of

\textsuperscript{125} In 1989 for example Zanzibar granted a 10 year lease of 20 hectares to Arches, an Italian firm for hotel construction, the firm failed to compensate the villagers, a step conditional to the lease claiming that it had already paid the government. The high court ordered payment on the part of the foreign investors. See \textit{Daily News Tanzania}, May 4th, 1990, p. 3, "Isles Government Clarify on Mnemba Island Plot".

\textsuperscript{126} Research finding Bank of Tanzania, foreign Department, Dar Es Salaam, Tanzania January 2000.

\textsuperscript{127} No 2 of 1986.

\textsuperscript{128} Research finding, Bank of Tanzania, Economic Research and policy Dar Es Salaam January 2000.
Zanzibar for example and a foreign investor for the actual acquisition, nationalization or taking of the property, or in the case of misconduct under international law by the Zanzibar government.\textsuperscript{129} Despite several legislation, providing for protection against nationalization, investors' confidence remains low for this reason among others.

Foreign investors in Tanzania have also greatly contributed to the list of barriers to privatization and investment. Investors have at times demanded total control of an enterprise and even the handling of its financial aspects. This has been due in my view to the fact that such investors do not always trust developing nations governments' handling of economic matters and would like to be in control in case of any future risks of nationalization. Due to this attitude, most foreigners have even preferred to use foreign banks in financial matters than Tanzanian Banks for example.\textsuperscript{130}

Even though the Public Corporations Act\textsuperscript{131} was enacted to facilitate privatization by returning government industries to private owners, Sections 4-13 provide for the establishment of public corporations by the president. Private investors may perceive the possibility of future public corporations. The absence of fundamental legislation such as laws relating to antitrust create fear on the part of small, yet necessary investors. This is also due to the fact that while privatization is continuing, there are corporations with the government as the major shareholder. Private investors are not many in such areas because the government still has substantial control.\textsuperscript{132}

\textsuperscript{129} See section 17, Zanzibar Investment Protection Act, No 2 of 1986.
\textsuperscript{130} Research finding, Bank of Tanzania statistics Department Dar Es Salaam. January 2000.
\textsuperscript{131} No. 2 of 1992.
\textsuperscript{132} The Tanzania Breweries Limited is one example with 50% shareholding by the Government of Tanzania and 50% by South African Breweries Ltd. It is worth noting that there are no other investors in the Brewery area except Importers. Research finding Tanzania Breweries Limited, Arusha, Tanzania. January 2000.
Institutional Obstacles in Tanzania

Investors complain that despite the given number of days by the Tanzania Investment Act applications take far too long, at the Tanzania Investment Center, the Parastatal Sector Reform Commission as well as at the ministries. Section 28 (8) of the Public Corporations (Amendment) Act provides for the commission to regulate its own procedure. The commission moreover is only accountable to the president of Tanzania. The only practical limitation upon the commission's activities is that it is required under Section 41 to cooperate with responsible ministries and relevant institutions such as the Loan and Advances Realization Trust, the Bank of Tanzania, the Attorney General's Chambers and the Tanzania Investment Center. In practice, the commission is said to sometimes take too long in its decisions on Investment matters referred to it by the Tanzania Investment Center. The filing procedure is also said to be very poor as files do get lost and they are not yet computerized. It has happened that investors have had to re-file application forms.

Research methods and communication systems have not yet been developed in Tanzania and this is an obstacle to investors' as it takes time for the Tanzania Investment Center for example, to find information on areas yet in need of investment and eventually to communicate with relevant ministries. The general institutional autonomy, capacity

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133 No. 26 of 1997.
134 No. 6 of 1993.
135 Established under Act No. 6 of 1991.
136 Research finding Tanzania Investment Center, Dar Es Salaam January 2000.
and support for divestiture however is also questionable. It is difficult to determine how committed the relevant institutions are as they are headed mainly by conservative ex-government officials or political appointees.

The payment of debts in all public enterprises is also slow as most of the debts are too big. The recently established Loans and Advances Realization Trust (LART), created to take over non performing assets of these state enterprises, especially in the banking area, cannot handle these debts. Despite the World Bank/IMF support, the financial infrastructure to support privatization is still insufficient.\(^{138}\)

Other general obstacles or problems include the absence of strong products in the stock exchange market, which is essential for both the generation and utilization of resources, facilitating sales as well as transparency in investment. More companies are needed to trade in the said market. The strength and capacity of the domestic private sector to participate in privatization and investment moreover is currently "quite" limited. Most regular Tanzanians do not have the capital, as they have not been able to raise it during all the years they have lived under socialism.

Foreign investors moreover still complain that the start up protocol, in practice, is ambiguous. The transparency of the bidders' screening process is also not clear. Bidders are requested by the Tanzania Investment Center to provide information on their financial strengths, experience and skill in the area as well as their access to overseas markets and

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technical know-how among other requirements.\textsuperscript{139} It is also not always true that an investor or interested buyer will only buy enterprises within his area or skill, many bid even for areas they know little about. Tanzania in addition has very few enterprises, which can attract a significant price as most are still encumbered by debts. For this and all the above reasons, Tanzania has to work even harder on attracting investors.

**Foreign Investors’ Participation in the Banking Sector: An Illustrative Example of Tanzania and the United States of America**

**Tanzania**

The Banking and Financial Institutions Act\textsuperscript{140} extends to Zanzibar as stated under Section 2 (1). Incorporation of a subsidiary bank, of a foreign bank in Tanzania or opening up of a branch is not considered in terms of nationality of the applicant as such, and no legal provision Limits any type of banking business to nationals. Existing procedure for application, capital requirements and control are the same for foreigners as well as for nationals.\textsuperscript{141} All the banks must be incorporated under the Companies Ordinance\textsuperscript{142} and obtain license from the Bank of Tanzania as per the Banking and Financial Institutions Act.\textsuperscript{143}

The exception is on Part VII of the Act on Restrictions on Banks and Financial Institutions. Section 37 (3) (e) provides for a prohibition on purchase/acquisition of

\textsuperscript{139} Most of these requirements are not provided for by the Tanzania Investment Act. The Center has a lot of prerogative on the line of questioning the investors. See also Section 17 of the Tanzania Investment Act No. 26 of 1997.

\textsuperscript{140} No. 12 of 1991

\textsuperscript{141} See. Section 13 of the Banking and Financial Institutions act No. 12 of 1991

\textsuperscript{142} Cap 212 of 1932

\textsuperscript{143} No. 12 of 1991
immovable property by any bank except as may be necessary for the conduct of its business.\textsuperscript{144} Section 37 (3) (e) proviso (i) states that Section 37 (3) (e) will not apply to insurance companies and mortgage financing companies. It is worth noting that these activities are in practice usually carried out by Tanzanians. This is a privilege to nationals therefore and not foreigners. Part IX, Section 47 provides that subject to permission from the Bank of Tanzania and subject to conditions necessary, a foreign bank may establish representative offices of that foreign bank or financial institution to operate in Tanzania. The Banking and Financial Institutions Act\textsuperscript{145} does not however require investors to ever state origin of the capital or their own Nationality as such.\textsuperscript{146} Research further revealed that the Bank of Tanzania has been reviewing positively most foreign applications to incorporate banks in Tanzania\textsuperscript{147} and that proof of a certain type of citizenship whenever necessary has been helpful in giving Tanzania opportunity to execute its right of choice over investors.\textsuperscript{148} When a bank is either incorporated in Tanzania, or opens up a Subsidiary therein, it may also as a matter of practice open such branch offices anywhere in the country. There is no regional limitation as would be found in a country like the USA, for example.

\textsuperscript{144} Immovable property in question is mainly Land.
\textsuperscript{145} No 12 of 1991.
\textsuperscript{146} Section 7 of the Tanzania Investment Act No. 12 of 1991.
\textsuperscript{147} Tanzania Currently has 29 Banks and non Banks Financial Institutions. Out of these, 11 are Foreign Banks. Foreign Banks Include: Standard charted Bank, Citibank, Eurafrcan Bank, Trust Bank, Diamond Trust Bank, Greenland Bank, Kenya Commercial Bank, Exim Bank International Bank of Malaysia and ULC Finance Ltd: Domestic Tanzanian Banks also have foreign Investors such as the Danish International Development Agency and Bank of South Africa.
\textsuperscript{148} Dr Kimei. C.S., Director of Research and Economic Policy, Bank of Tanzania, Interview by the author Dar Es Salaam, January 1995: In practice however research revealed that the central Bank of Tanzania has seen Investigating the origin and legality of each Capital brought into Tanzania for Investment; Research finding Bank of Tanzania, Dar Es Salaam January 2000.
Under Federal Law

The US has a dual banking system. Like many other economic sectors, banks may be governed either by federal law and/or by state law respectively. The dual banking system is mainly to permit diversity in the powers and functions of the banking institutions, to foster competition and broaden economic opportunities in the US. The types of banks or depositories existing in the US include:

- Commercial banks
- Savings bank, stock corporations or organs specialized in loans/home finance
- Credit unions, mutually owned by members sharing common interests
- Savings and loan associations, mutual organizations, etc.

Participation in the banking system of the USA under national or federal law, is governed by, among other legislation, Title 12 of the US Code on Banks and Banking. Under Sections 1 – 4001 of the said Title the major banking activities covered include:

- National Banking in the US
- International Banking in the US
- US Foreign Banking abroad
It is International Banking in the US, which is examined in this chapter for the purpose of Comparison with the position of Tanzania in the same area of Investment.\footnote{149}{It is worth noting however that details on the specific types of banking activities which may be carried out under the International Banking are not discussed in details.}

A foreigner, with foreign capital, may operate a Bank in the US. This is under the International Banking Act of 1978.\footnote{150}{Of September 17, 1978, P.L. 95-369, 92 Stat 607-12 USCS Sections 3101 et seq.}

Section 3101 et seq of the International Banking Act specifically provides for foreign bank operations of a branch, agency, or subsidiary. That foreign existing banks abroad may form branches, agencies and/or subsidiaries in the US. Applicants must obtain approval from the Comptroller of Currency to establish such branches and agencies.\footnote{151}{Section 3101 (7) defines a foreign bank to be one incorporated under foreign law.}

To operate a banking company in the USA, there must be a holding company as provided and defined under the Bank Holding Company Act.\footnote{152}{Of 1956: See also section 1841 of Title 12.}

Despite the fact that International banking is provided under Federal Law, state approval however is inevitable.

It is also worth noting that freedoms and rights conferred by states to citizens are not the same as those conferred to foreigners. Whereas US citizens may operate interstate banking upon registration and approval, it is provided under Section 3103 that foreign banks may not operate outside their home states except under specific conditions.\footnote{153}{See Section 3104 (a) and b of the International Banking Act. See also section 611 er seq, 12 USC.}

Foreign persons' capability to acquire existing US banks is also subject to strict regulation under the Foreign Control of United States Financial Institutions Act of 1980.\footnote{154}{Title IX of March 31st 1980, Sections 901, 902, (94 Stat 192).}
Research revealed that banking is among the most complicated areas of the US economy. Investment therein is highly regulated. The institutions involved in the regulation of both national and foreign banks at the federal level include:

- The Office of the Comptroller of Currency, OCC (Treasury), established under the National Banking Act of 1863.

- Federal Reserve Board of Governors established under Federal Reserve Act of 1913.

- Federal Deposit Insurance Corporation (FDIC) – which among other functions, provides loans and insurance under the Federal Deposit Insurance Act.

- Office of thrift supervision for control (savings institutions).

- Resolution trust corporations, disposing insolvent banks.

- Federal Savings Association - Banks and Loan Associations.

Sections 1-220 of the National Banking Act provide for the organization and functions of a bank. The start-up procedure is to file form CC 7022-10 which completes the application to the Comptroller of Currency, to incorporate a bank. An application includes the names of the board, cashier, secretary of the bank, president and description

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155 See also OECD The Internalization of Banking, Paris 1983, p.63. The paper discusses foreign banking presence in selected OECD nations.
156 12 Stat 665.
157 38 Stat 1913.
158 38 Stat 1913.
159 Banking Act 1933, 48 Stat 168.
160 See Section 3108 of the International Banking Act of 1978; The first three of the above authorities are empowered to issue such rules, regulations and orders as each of them may deem necessary in order to perform their duties under the federal Banking
161 Title 12
162 Bank of Augusta vs. Earle 38 US 13 Pet 519, 10L. Ed. 274 (1839): Application documents 75 may be filed through the district officer of the area in which the bank is to be located. In the case of Georgia for example it is the south east district with an office located in Atlanta.
of Directors as well as shares involved. Every director however, under Section 21, shall be a US citizen. Under Section 22.04 (5), investigations on the background of applicants are conducted by the Comptroller of Currency.^{163} This assists the US to have control over banking activities as, the intention is to have US control over capital and finance generally.^{164} The controlling institutions over the financial sector ensure from the time of application to incorporate a bank in the US that such control is in US hands. The origin of the capital as well as that of the investors is determined even by the Federal Bureau of Investigation, which carries out investigation matters for security purposes.

US banks moreover are reluctant to support foreign investment in the USA due to past experience whereby US banks are said to have lent money to foreign, especially developing countries, which have not yet repaid their loans. US banks have lost interest to invest in these countries and do not particularly find any reason to support investors from such countries. Such failure to repay has ended in numerous US bank claims abroad. In the 1980s for example, US bank claims in developing countries including Eastern Europe amounted to 135 billion in US dollars.^{165}

**Under State Law - Georgia**

The Financial Institutions Code of Georgia^{166} is the main legislation dealing with banking activities in Georgia. Section 7-1-392 provides for the submission of articles of

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^{163} The comptroller may under section 72 waive the citizenship requirement except where an association is a subsidiary of a foreign bank. See Axon Florion Amendment to title VII on executive powers over interstate commerce where foreign investors are involved.

^{164} Research finding, Georgia Chamber of Commerce, Atlanta, Georgia December 1994.

^{165} Research finding, Georgia Department of Banking and Finance, Atlanta, June 1995: See title 14 for investment in other economic areas under Federal Law.

^{166} Of 1933, Section 41A-3304 Enacted by Ga. L. of 1974 P. 705.
incorporation by the applicants stating among other things names and residency of the
incorporators as well as citizenship.\textsuperscript{167} Approval for an application may be given after
scrutiny with respect to non-violation of the Code and it is during the investigation period
that information concerning the origin of the capital and citizenship of the incorporators
may be revealed.\textsuperscript{168}

It is also provided under Section 7-1-480 that, "All Directors must be US
citizens."\textsuperscript{169} Article 5 of the Georgia Code permits international banking as the provisions
of the Georgia Code apply to both domestic as well as international or foreign banks.
Sections 7-1-713 (b) requires economic reciprocity by the foreign bank’s country prior to
the foreign bank obtaining a license to operate in Georgia as it provides that, "The
department shall not issue a license to an international banking corporation unless it is
chartered in a country which permits banks chartered in the United States of America or
any of its states to establish similar facilities therein."\textsuperscript{170}

Another clear obstacle to foreign bankers is the requirement under the Georgia
Law for the application of a license to do banking business to state the whole value of the
international banks assets which should be at least to the tune of U.S. $50 million in

\begin{footnotes}
\item[167] The same requirements are to be provided under Section 7-1-392 in respect of each of the first directors. The
forms and fees are then submitted to the Secretary of State under section 7-1-862.
\item[168] Application forms are to be obtained from the Georgia Department of Banking and Finance established under
Article 2 of the Georgia Code. The required capital under the Georgia banking law is 3 million dollars, an amount
higher than the federal minimum required capital. (This is only applicable where the bank is to be situated in a
county of more than 200,000 people. Where the population is less, the capital required is 2 million dollars.)
\item[169] And that 60% must reside in Georgia, in a county of the registered office of the bank or within 40 miles of the
office vicinity. The department of banking may only waive this condition in respect of banks established for a
specific purpose as stated under section 7-1-394 (c). The capital in question may be 100% foreign. Practice
reveal however that it does matter where such capital originates from.
\item[170] Investigation for reciprocity is carried under section 7-1-39 of the code.
\end{footnotes}
excess of its liabilities. Research revealed however, that since 1976 when foreign bank offices were allowed to operate in Georgia, there has been $7-8 billion worth of foreign investment in Georgia. It is in my view clear that banking investments are different because the risks of their activities are greater than in most other areas of investments. This has lead banking to be typically subject to more regulation than other sectors of the economy in many countries including the US as it has been discussed.

Other Arguments Against Privatization and/or Foreign Investment Generally

Nationalistic and politically oriented tendencies may take precedence over economic interests at times. Some Tanzanians, for example, who are mainly former officials of the socialist regime, have all along been skeptic in criticizing private property ownership. The few, who are not against privatization, do go along so long as the process does not involve foreign ownership and control. It is the mainly local investment, surrounded by government control, however, which has led to the fall of most developing countries' economies. Such nationalistic tendencies view foreign investment as a

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171 Section 7-1-715 of the code
172 Research finding, Georgia Chamber of Commerce, Atlanta Ga. 1995: Research revealed that New York and California Banking Laws tend to be more lenient with less obstacles than most other states. Texas for example, to date limits under its constitution foreign corporations from engaging in the banking business in the state. See Texas constitution.
173 Tanzania being a good example.
lingering form of colonialism.¹⁷⁴ That it leads to dependency by developing countries upon foreigners especially "where the foreign firm has a monopoly or dominant position in the field in which it transacts business."¹⁷⁵

In Tanzania, issues relating to unemployment are currently perceived by the public as the result of privatization. This makes a great majority of the people formerly employed by the government to strongly oppose privatization. Research further revealed that, fear of capital flight due to past experiences causes anxiety on the part of many developing countries, and among Tanzanians in particular as they are scared of being stripped of the little wealth they have.¹⁷⁶ Tanzanians moreover, feeling that they may never even invest in countries like the USA or UK, do not see the reason to support foreign investment. The situation is made worse in my opinion by the fact that not all ordinary Tanzanians will by now have been exposed fully to the essence of foreign investment and also its benefits. Lastly Tanzanians view the Tanzania Investment Act¹⁷⁷ as granting freedom to foreigners to invest and get all incentives but that no legal duty relating to environmental protection for example, or consumer protection or even workers' rights, is imposed on such investors.¹⁷⁸

¹⁷⁵ Mwanyika, D., Legal Counsel, Parastatal Sector Reform Commission, interview by the author, Dar Es Salaam, Tanzania January 2000.
¹⁷⁶ It is the feeling among Tanzanians that foreigner' interest may be to continue developing foreign nations through Tanzanian wealth as was the case during colonialism.
¹⁷⁷ No 26 of 1997.
¹⁷⁸ Lawyers at the bank of Tanzanians cite the relevant provisions of the Cameroonian Investment Code of 1990 and even the Zanzibar Investment Act No. 2 of 1986 section 19 ( 1) as being useful in dealing with this concern if adopted by Tanzania Mainland.
In the US among developed countries on the other hand, arguments against foreign investment especially in the service industry, include national security (transportation, telecommunication), financial stability (banking) and cultural identity (motion pictures and television programming). Past experience due to unclear investments as it was in the case of the BCCI whereby a seven nation operation closed down a $20 billion banking group which was the largest private bank in the world due to its involvement in illicit activities including drug money laundering. Fear of foreign banks taking over US banks and other competition related reasons prevail in US business minds. Other arguments include the belief that foreign investment may lead to capital flight and tax evasion. It is my view in this chapter however, that some of the obstacles, problems and arguments raised above may easily be resolved if made in a form of recommendations to the governments concerned.

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180 Research finding, Georgia Chamber of Commerce, Atlanta, Georgia. December 1999.
CHAPTER V

THE STATUS OF ECONOMIC REFORMS IN TANZANIA

Most developing countries economies today show a promising future as a number of divestitures are now in place. In Brazil, for example between 1991/93 alone, 24 companies were privatized involving US $9.57 billion in resources. 181 In addition to the new Investment Code, Cameroon as another example created an industrial Free Zone Law in January 1990 182 with the assistance of overseas private investment corporations and the USAID. Cameroon also greatly streamlined its investment protocol as all the procedures are now carried out by one office, the Ministry of Economy and Planning. 183

In Tanzania today, several inhibiting laws have been repealed while new and more comprehensive ones have been enacted. New laws include those governing the financial sector reform, capital markets development and the coming up law governing the control of restrictive trade practices. 184 Administrative time machinery and procedures are close to being streamlined to facilitate privatization and investment. 185 At the same time, foreign and domestic financial and technical resources have been mobilized to facilitate reforms.

182 Ordinance no. 90/001 of January 1990.
183 Embassy of the Republic of Cameroon.
184 Under discussion at the Central Bank of Tanzania in Consultation with Legal assistants from the World Bank and the World Trade Organization.
185 This is yet to be seen however. Research finding Tanzania Investment Center, Dar Es Salaam, January 2000.
Reforms in Tanzania have recently even included the selection of cabinet ministers to suit certain sectors rather than being merely political appointees. This is likely to contribute positively to the wider outlook on the need for privatization and investment as well as in increasing the speed of the process. Other most notable changes in favor of a capital market economy, include the elimination of exchange control and price control since 1992. There is now a Capital Markets Legislation\textsuperscript{186} forming a stock exchange while background studies on unit trusts have been completed. Unit trusts are to help savers handle the returns from privatized companies.

A number of divestitures have taken place or are in progress in Tanzania, in the industrial, agricultural, communication, Mining and Tourism Sectors as seen on the table below. Lease and management contracts have been reached, while other enterprises such as public utilities are meanwhile being commercialized or placed under performance contracts to improve their performance. The power company (TANESCO), for example, has begun permitting use of power from private generators and plans to divest its transmission pole plantation and impregnation plant. It has also carried out a major revision of its rate structures.\textsuperscript{187} In post and telecommunication private investors are participating in the installation of a cellular network and card operated call boxes as well

\textsuperscript{186} Capital Markets and Securities Act of 1994
\textsuperscript{187} Research finding, Tanzania Electrical Supply Company. Dar Es Salaam, January 2000.
as expedite mail systems, by opening D.H.L. and EMS offices among others. The following tables show some of the different public enterprises that have been sold, leased, placed under receivership or were under preparation for divestiture by June 1999.

Table 1: Agriculture

<table>
<thead>
<tr>
<th>Name of Parastatal</th>
<th>Action Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>TANITA – Cashewnut Company</td>
<td>Leased to Oltramare - 100% Italian</td>
</tr>
<tr>
<td>Rift Valley Seeds Company</td>
<td>Returned in part to former owner - 60% British</td>
</tr>
<tr>
<td>Mbozi coffee farms</td>
<td>Sold to district councils and cooperatives.</td>
</tr>
<tr>
<td>Tangold - fruit, canning</td>
<td>Leased to Azania Investments Limited - (South African)</td>
</tr>
<tr>
<td>Tanzania Sisal Authority</td>
<td>8 estates sold: 3 in 1992, 5 in 1993 (To Canadians)</td>
</tr>
<tr>
<td>TAFICO - fisheries</td>
<td>Part leased to Mwananchi Marine Products (T) Limited - Local company</td>
</tr>
</tbody>
</table>

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188 Investors in these areas are mainly foreign. Research finding. Tanzania investment Center, Dar Es Salaam, January 2000.

189 It is important to note that the full current list for the year 2000 is yet to be submitted to the legislature in July and to the public thereafter. It is expected therefore to be longer than the one submitted. Source, Parastatal Sector Reform Commission, Dar Es Salaam, January 2000: This list does not include enterprises placed under receivership or closed, It is a list only to show the readers the ongoing progress of privatization and Investment so far as complied by the Parastatal sector Reform Commission of Tanzania.
### Table 2: Communication and Transportation

<table>
<thead>
<tr>
<th>Name of Parastatal</th>
<th>Action Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tanzania Harbors Authority</td>
<td>Placed under performance Contract</td>
</tr>
<tr>
<td>Tanzania Railways Corporation</td>
<td>Lease of hotels and sale of buses and trucks to private investors.</td>
</tr>
<tr>
<td>Air Tanzania Corporation</td>
<td>Operating as a joint venture with south African Airways on trial basis.</td>
</tr>
</tbody>
</table>

### Table 3: Industry

<table>
<thead>
<tr>
<th>Name of Parastatal</th>
<th>Action Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iringa Maintenance Company</td>
<td>Leased to Maintec - a Swedish company</td>
</tr>
<tr>
<td>Arusha Metal Industries</td>
<td>Sold to employees - Tanzanians</td>
</tr>
<tr>
<td>Moshi Hand Tools</td>
<td>Sold to employees - Tanzanians</td>
</tr>
<tr>
<td>Tanzania Breweries Limited</td>
<td>50% of shares sold to joint venture partner – Indol South Africa</td>
</tr>
<tr>
<td>Carnaud Metal Box (T) Limited</td>
<td>Joint venture partnership 43% - Norwegian partner</td>
</tr>
<tr>
<td>Morogoro Tanneries Limited</td>
<td>Joint venture with Africa Trade and Development Limited - 50% foreign</td>
</tr>
<tr>
<td>Morogoro Shoe Company Limited</td>
<td>70% of shares sold to Guled (T) Company Limited - joint venture with</td>
</tr>
</tbody>
</table>
Table 3: (continued)

<table>
<thead>
<tr>
<th>Name of Parastatal</th>
<th>Action Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tanzania Pharmaceuticals Industries</td>
<td>Sold to pharmaceutical investments 60% and national chemicals 40%-local</td>
</tr>
<tr>
<td>Tanzania Electrical Goods Manufacturing Company</td>
<td>50% sold to ABB sub Sahara of Norway</td>
</tr>
<tr>
<td>Tanzania Cigarette Company</td>
<td>51% sold to R. J. Reynolds-American.</td>
</tr>
<tr>
<td>Friendship Textiles</td>
<td>51% sold to Dievue-Chinese</td>
</tr>
<tr>
<td>Mwanza Tanneries Limited</td>
<td>Joint venture with Africa Trade and Development Limited - 50% foreign</td>
</tr>
<tr>
<td>Tanzania Tanneries Limited</td>
<td>Joint venture with IPS - 70% foreign</td>
</tr>
<tr>
<td>Tanzania Starch Manufacturing Company</td>
<td>Restructured and sold to local company</td>
</tr>
<tr>
<td>Dodoma Brick and Tiles Limited</td>
<td>Leased to a partnership - (Foreign and local)</td>
</tr>
</tbody>
</table>

Table 4: Mining

<table>
<thead>
<tr>
<th>Name of Parastatal</th>
<th>Action Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>Williamson Diamonds LTD.</td>
<td>Sold 75% to Willcroft Africa</td>
</tr>
<tr>
<td>Pugu Kaolin Mines</td>
<td>Joint venture with M/S Portman Mining Limited - American</td>
</tr>
<tr>
<td>Buck Reef Gold Mine Limited</td>
<td>Joint venture with M/S Portman Mining Limited - American</td>
</tr>
<tr>
<td>New Almasi Corporation</td>
<td>100% subsidiary of Williamson Diamonds-South Africa.</td>
</tr>
</tbody>
</table>
Table 5: Tourism

<table>
<thead>
<tr>
<th>Name of Parastatal</th>
<th>Action Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Africa Hotel</td>
<td>77% of shares sold - to a foreign company – Danish</td>
</tr>
<tr>
<td>Mt. Meru Hotel</td>
<td>Leased - to Novotel - French</td>
</tr>
<tr>
<td>Mafia Island Lodge</td>
<td>Leased - to Novotel - French</td>
</tr>
<tr>
<td>Kunduchi Beach Hotel</td>
<td>Leased - to Novotel - French</td>
</tr>
<tr>
<td>Serengeti Safari Lodges</td>
<td>Leased - to ACCOR - French</td>
</tr>
</tbody>
</table>

Total worth in US dollars obtained by these sales is U.S.$22.5 million.

In the banking sector, by January 2000, Tanzania had a total of twenty banks of which 10 are foreign and 9 non-bank financial institutions of which 1 is foreign.\(^\text{190}\) The National Bank of Commerce (the main commercial bank) is allowing private investors participation. Its establishing act, the Tanzania Vesting of the Assets and Liabilities Act,\(^\text{191}\) has been amended and Section 4A currently permits private investors to subscribe for and be allotted shares in the commercial bank. Recently 70% of the banking shares were sold to ABSA a South African Banking Firm.\(^\text{192}\) The Tanzania Investment Bank has similarly been amended, the chief investor being no longer the government solely but, private parties as well as foreigners are similarly welcome.\(^\text{193}\) The bank has now to carry

\(^{190}\) Research finding Bank of Tanzania, Directorate of Bank Supervision, Dar Es Salaam, Tanzania January 2000.

\(^{191}\) No. 1 of 1967.

\(^{192}\) ABSA is Almagated Banks of South Africa.

\(^{193}\) See Section 4 of Act No. 20 of 1970, as Amended in 1998.
out many of the activities related to the coordination of investment activity in Tanzania. The Cooperative and Rural Development Bank\textsuperscript{194} originally serving cooperative unions and villagers while being wholly owned by the government, has now been privatized and the Danish International Development Agency is now among the new shareholders in cooperation with local companies and cooperatives.

For general administrative purpose, boards and management have been vested with accountability for the remaining public enterprises thereby practically implying significant changes in the roles of former holding companies, parent ministries, and other institutions.\textsuperscript{195} A Tanzanian Chamber of Commerce, Industry and Agriculture has been created as well, to invite and encourage the private sector to participate in the development efforts of Tanzania. In the area of broadcasting for example, Tanzania's media has been privatized. New television channels introduced free from government censorship while formerly government owned radio stations are now 50% privately owned.\textsuperscript{196}

Despite the above successes however, Tanzania like many other countries still faces problems due to the slow speed of investment. In the utilities sector for example, electricity is currently being given per specific number of hours in the major cities of Tanzania. The main reason being that the government has no money to maintain the water dams upon which it depends.\textsuperscript{197} This is sad considering that Tanzania is the

\textsuperscript{194} Established by act No. 7 of 1971.
\textsuperscript{195} Research finding Bank of Tanzania, Dar Es Salaam, January 2000.
\textsuperscript{196} The abandonment of the state radio, Television monopoly in Tanzania. Tanzania Daily News - December 20, 1994, p.4.
\textsuperscript{197} Research finding, Ministry of Water and Energy Dar Es salaam, Tanzania January 2000.
country with the most rivers and lakes than any other in the continent. In the area of mining, diamonds, gold, and others are still awaiting more investors. Oil is still on its coastal side of the Indian Ocean and other parts due to lack of capital.
CHAPTER VI

CONCLUSION AND RECOMMENDATIONS

Even though foreign investors complain about barriers to invest, it is my conclusion that the issue of obstacles to investment especially where foreign participation is involved, is not an anomaly that occurs in Tanzania, Uganda or Colombia, obstacles are put by both the most developed nations as well as developing as exemplified by the case of Tanzania and the USA. As a matter of empiricism developing nations may at times tend to put obstacles to reciprocate to what is done by developed countries.198

Getting rid of obstacles and enabling foreign investor participation is not to be looked at from the fact that developing countries are in need and therefore in a weak and desperate position alone. It is a subject to be worked upon by both developed and developing nations each at the national level then together. Until that is done, barriers to investment may in my view continue. Many other developing nations, for example, are also working hard to stand on their feet rather than simply open the flood gates to foreign investment.

The type of economic development methods, currently being adopted by developing nations moreover, are new and it may take some time for countries to succeed. Developing countries need to be open to new changes and to embrace them.

198 Research finding Minister of Foreign Affairs Dar Es Salaam, Tanzania January 2000.
The past experiences should only assist in correcting future mistakes and not frustrate future development. The success in the implementation of privatization as a path to developing countries’ economic improvement also depends on a number of factors as discussed. Among them is the commitment and effort of many branches of government for a significant period of time.

It is highly believed that privatization of the financial sector in Tanzania for example, may ultimately boost the existing regional banks such as the African Development Bank or even the East African Development Bank which is practically dead. Due to development of World Trade and Investments moreover, international banks and other privately owned projects have increasingly become important. Tanzania, Colombia or even the US cannot avoid them by imposing on them strict practices. Similarly people need alternatives to the available banks. Their right of choice can only be exercised if private and especially foreign investments are permitted in as many areas of the economy as possible. It might be important to limit foreigners from participating in a developing country's sensitive sectors of the economy. The fact that developing countries have tended to be overprotective while on the other hand they are privatizing the mostly already dead industries however may not be the solution to developmental problems.

It has also been discussed that both industrial and agricultural sectors being vital components of a functioning economy rely on capital to generate output, replace broken parts and modernize outdated, inefficient processes. In developing countries currently it is both foreign and local capital which is required to make the above tasks possible. Due
to drawbacks such as the insufficient flow of finance from developed nations depending on political inclination, for example, it is time developing nations relied more on the locally generated capital, regionally generated secondly and then global capital lastly. Borrowing from international organizations or industrialized nations has at times brought side effects ultimately contributing to government deficits as well as accumulating debts. This has at times led to the frustration of developing countries economic development programs and it may currently be among the reasons for putting hurdles on investments.199

Tanzania has also enacted a law on capital markets that has lead to the formation of the Dar Es Salaam Stock Exchange. Equity markets as well as stock exchange markets in my opinion do assist investors in raising capital without having the drawbacks associated with foreign aid and borrowing. Tanzania needs to speed up however in enacting more new laws. Work is still underway to enact, for example, a legislation to penalize restrictive trade practices such as fixing prices and other anti competitive behavior. This legislation has been under discussion since 1993. To date nothing has been done.200

Attempts have been made to highlight the most important legal aspects of investors' participation in the privatization and investment in developing countries and in Tanzania in particular. Positive and negative legal consequences have been analyzed in relation to either fostering or preventing a smooth privatization and investment in these

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200 Research finding Bank of Tanzania, Legal Department, Dar Es Salaam January 2000.
countries. Tanzania's legal and institutional system, although affected by the slow incomprehensive political system, in my opinion it is still the most reliable workable, fair and peaceful country in the whole continent so far.

It has also been argued that cooperation between developed and developing nations generally, is possible especially at this point in time when there is no cause for enemity. The European community for example, as a developed block in 1990 entered into mixed agreement with the International Development Agency of the World Bank to restructure and improve the economies of Eastern and Central European countries.\textsuperscript{201}

It is cooperation which promotes economic development and in my view, helps bring peace to many Nations of the world. It has also been discussed that domestic over control of companies, management, employment or even quantitative ceiling on shareholding of certain privatized companies often discourage foreign investors from investing as they view the host governments as hostile to foreign control. This attitude does in my opinion affect host countries economies irrespective of whether such a host country is France or Tanzania, the effect to the two will only differ in degree. If there is open investment in certain areas moreover, then government control in those areas should be withdrawn to the greatest possible extent for this may be among the keys to economic

\textsuperscript{201} PHARE Project entered into in 1992 by the European community, its member states separately and the IDA, on an interest free loan repayable after 50 years. It is worthwhile to note that, Latin America and African countries for example, were not included by the European community here because they already benefit from some other projects such as Lome Conventions for the African Caribbean and Pacific countries: See Bennet, A. Leroy, International Organizations – Principles and Issues, 5th ed., Prentice-Hall International inc. New Jersey, USA 1991, p. 242.
success. The Hungarian Act on business organization for example, permits foreign investors to hold shares in permitted areas without restrictions, only on the condition that they register such ownership.

As long as African governments stick to their end of the bargain their economies may be assured of a steady infusion of private capital and technology, development and peace. The Zimbabwe deputy minister for Trade and the Economy once stated that, "We have put our house in order, the harvest time is coming." Zimbabwe is not the only hope for Africa after privatization. As Babacar Ndiaye also stated that, "Kenya, Ghana, Tanzania and above all South Africa are unlocking their potential. The marginalization of Africa is coming to an end. What is needed now is massive investment which is the only way left to guarantee long term growth in Africa.

Tanzania has a large economic potential and wide spectrum of investment opportunities. Tanzania, as well as other countries', commitment towards economic development moreover reveal that there is hope in Africa. There are several aspects however, which still need to be worked upon by developing countries and Tanzania in particular, some of these are hereby submitted in the form of recommendations in the section hereunder.

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202 Law XCVIII, Section 13 (2), 2 H.R.L.F. 190 of 1990: See also Czech Law, Act no. VI.
203 President of the African Development Bank.
A good business atmosphere is in my opinion based upon peaceful political and judicial systems of a nation. Politically Tanzania is fine but courts still have problems in administering claims against the United Republic of Tanzania due to their failure to distinguish exactly which issues belong to the union and which others are specifically Zanzibar issues. Tanzania could embark on harmonization of its laws and then defining the union structure under international law so as to bring clarity to foreign investors and friends. It could even clear up the matter for its own benefit by admitting for example that the union is a kind of federal situation.

There is a strong need in developing countries like Tanzania, for funds or capital from investors who want to risk their resources in the current environment. It is up to developing nations to work on finding means of not only getting but also of ensuring the said resources through new safer and well protected mechanisms so as to give investors maximum confidence. This is the key to a successful privatization and investment. Governments have to work harder to provide guarantees and security to foreign private investment so as to ensure investors of their lack of intention for example to nationalize. This will make foreign investors even more comfortable. Since Tanzania is a member of both ICSID and MIGA, dispute settlement in my opinion should be by recourse directly to international arbitration without any requirement to exhaust domestic remedies as this method may take too long and may not be impartial enough.

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More bilateral investment treaties should be entered into by Tanzania and other countries, between developed and developing nations and within each group and parties of their own level. Cameroon for example, under the presidency of Ahamadou Ahidjo, entered into a bilateral investment treaty with the USA in 1982.\textsuperscript{207} Since then several US engineering, construction and other firms have opened business in Cameroon. The U.S. - Argentina bilateral treaty on investment provides under Article 11 (4) for example that,

"Companies which are legally constituted under the applicable laws or regulations of one party and which are investments, shall be permitted to engage top managerial personnel of their own choice, regardless of nationality."

The above is the type of provision which should appear even in the actual investment codes, Tanzania' among others should, in my opinion, adopt such a provision.

Since trade is developing fast it is time Tanzania enacted a patent protection law as it is quite late. African countries should join or enforce the law on African and Malagasy Industrial Property Agreement,\textsuperscript{208} and enhance activities of the organization Africaine de la propriateur intellectuelle.\textsuperscript{209} The latter agreement extends protection to ten years renewable on registered copyrighted literary and artistic works.

Frequent meetings and discussions should take place between investors (local and foreign) and the local government officials who are usually in a clearer position as to climactical conditions, types of investment needed and suitable locations for investment. These are likely to be profitable to both the investors, especially foreign and the governments. There is need for Tanzanian missions overseas to do more advertisement

\textsuperscript{207} The treaty is similar to the one between the Us and Egypt. See Sams, Dyane E. The Legal aspects of Doing business in Cameroon. International Lawyer, vol. 17, No. 3, 1983, P. 490.
\textsuperscript{208} Signed in September 1963 in Libreville, Gabon.
\textsuperscript{209} Established in Banqui, Central Africa in 1997
and to encourage institutional investors through their advertisements, as these are a necessary ingredient to take over large but dying projects such as oil refinery in Tanzania. So far Tanzania has been receiving individual investors mostly.

The number of holding companies responsible for other public enterprises is currently too large. Since most of these enterprises have been divested wholly or in part and privatization is gaining ground, holding companies which are largely financed by the government and the enterprises are more than necessary. To save money the government needs to streamline this chain of control and invest on high-end technology such as computers which may even assist in keeping simple cords such as those related to land leases. This may reduce the problem of double allocation.

It is hereby recommended that a version of either the US Antitrust Law or even the European Community's competition law should be adopted so as to prevent and control concerted practices or even abuse of dominant positions by all private companies. This will assist local investors who will not easily be taken over or thrown out by business such as foreign companies for example as well as create confidence in the various businesses investing in Tanzania.

The role of the central bank of Tanzania should be reduced commercial banks should be given more autonomy and full responsibility for the profits and losses they make as this will make them more competitive. To date however, the central bank shapes credit policies and may even decide who the commercial banks may lend money to.\(^\text{210}\) Most of the economic rules and procedures are still made by the Bank of Tanzania. It is

\(^{210}\) Research finding Bank of Tanzania, Banking Department, Dar Es Salaam, Tanzania January 2000.
highly recommended therefore that the role of the central bank be streamlined especially in relation to privatization and investment, which may easily be taken care of by other organizations.

African countries among other developing nations should work on leadership change and/or code of conduct, as Professor Gabriel Wilner once put it.\textsuperscript{211} There are also still too many old leaders in Africa with old mentality.\textsuperscript{212} The solution to this problem may also be found within Africa itself. The continent has for the past two decades experimented with various attempts at different levels of regional integration.\textsuperscript{213} The experiments have amounted to various economic groups. Much as integration has been taking long to succeed, there is in my view great hope for the future.\textsuperscript{214}

The Organization for African Unity, (OAU) if restructured would serve as the organization to monitor leaders code of conduct and politics, other organizations may very easily deal with economic activities if they all work together. Another solution would be for Tanzania to help set up a sub regional stock exchange in conjunction with other African central banks. It may also be easier for Tanzania to use regional organizations such as the Preferential Trade Area, (PTA) or the Southern African

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\textsuperscript{211} Kirbo, Professor of International Law. Associate Dean of the Law School and Director of Graduate Legal Studies, University of Georgia, Athens: See also Hadjor, Kofi Buenor; On Transforming Africa-Discourse with Africa’s leaders, New Jersey. Africa World Press Inc. and London, Third World Communication, 1987.

\textsuperscript{212} President Paul Biya of Cameroon, President Benjamin Mkapa of Tanzania, Daniel Arap Moi of Kenya Yoweri, Museveni of Uganda, are all Leaders who have been part of their governments for more than 20 years out of the above countries Tanzania is the only one with a constitution provision requiring presidential terms to be limited to two 5 year terms.


\textsuperscript{214} Ngila Mwase, the African Preferential Trade Area; Towards a Sub-regional Economic Community in Eastern and Southern Africa., \textit{Journal of World Trade Law}, November-December 1985, 19 no. 6, p. 622-636 at 622.
Coordination Conference (SADCC) as they are already well established. The former even has its own bank payment system and clearing house. The same should apply to western African nations and west central African nations such with their own sub regional economic groups\textsuperscript{215}. There is also the possibility of forming new organizations in Africa with their own mandate in the case where existing groups will not work. Regional Stock exchange markets will not only serve the purpose of the on going privatization but will also greatly improve the dying industries and increase profits through Investment. In the case of Tanzania, it will be an opportunity to attract even more investors. The tables below indicate some of the existing regional groups which may be useful for the above purpose.

It is finally recommended that the privatization process itself should also be privatized. This may be by making government institutions rely to the great extent possible on advice given by domestic and foreign financial institutions and specialized private firms. Remembering that even though the government is the ultimate decision marker it is also ultimately responsible for the outcome. Currently it is government officials who control the tender process and auctions and carry out evaluation of assets etc. Some of these powers should be given to private people or institutions. Until the

\textsuperscript{215} The Banque Des Etats de L'Afrique Centrale has for a long time been a common central bank for the member central states. This to date may also serve well the purpose of opening up a sub regional stock exchange. Ultimately this process will involve parties from outside the continent since capital markets are global.
policy of Ujamaa is completely done away with altogether, thereby paving way to the total liberalization of the economy, investment in Tanzania shall in my view continue to be a work in progress.
<table>
<thead>
<tr>
<th>Organization</th>
<th>Founding date</th>
<th>Member States</th>
<th>Aims</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPCM-Maghreb Permanent Consultative Committee</td>
<td>October 1964</td>
<td>Algeria, Libya, Morocco, Tunisia</td>
<td>Common Market</td>
</tr>
<tr>
<td>UAM-Union of the Arab Maghreb</td>
<td>February 1989</td>
<td>Algeria, Libya, Mauritania, Morocco, Tunisia</td>
<td>Economic, social &amp; cultural</td>
</tr>
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<td>Entente Council</td>
<td>May 1959</td>
<td>Benin, Burkina Faso, Cote d'Ivoire, Niger, Togo</td>
<td>Economic &amp; Technical cooperation</td>
</tr>
<tr>
<td>CEAO-Communaute Economique de l'Afrique de l'Ouest</td>
<td>April 1973</td>
<td>Benin, Burkina Faso, Cote d'Ivoire, Mali, Mauritania, Niger, Senegal</td>
<td>Common market</td>
</tr>
<tr>
<td>ECOWAS-Economic Community of West African States</td>
<td>May 1975</td>
<td>Benin, Burkina Faso, Cote d'Ivoire, Cape Verde, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo</td>
<td>Common market &amp; Economic Community</td>
</tr>
<tr>
<td>MRU-Mano River Union</td>
<td>October 1973</td>
<td>Guinea, Liberia, Sierra Leone</td>
<td>Customs Union</td>
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<td>Union Douaniere &amp; Economique de l'Afrique Centrale-UDEAC</td>
<td>December 1964</td>
<td>Cameroon, Central African Republic, Chad, Congo, Equatorial. Guinea, Gabon</td>
<td>Common market</td>
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</table>
**Table 6: continued**

<table>
<thead>
<tr>
<th>Organization</th>
<th>Founding date</th>
<th>Member States</th>
<th>Aims</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEPGL-Communaute Economique des Pays des Grands Lacs</td>
<td>September 1976</td>
<td>Burundi, Rwanda, Zaire</td>
<td>Common market</td>
</tr>
<tr>
<td>EAC-East African Community</td>
<td>1999</td>
<td>Kenya, Tanzania, Uganda</td>
<td>Common market</td>
</tr>
<tr>
<td>PTA-Preferential Trade Area for Eastern and Southern Africa</td>
<td>December 1981</td>
<td>Burundi, Comoros, Djibouti, Ethiopia, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Rwanda, Somalia, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe</td>
<td>Common market &amp; Economic Community</td>
</tr>
<tr>
<td>SADCC-Southern African Development Coordination Conference</td>
<td>April 1980</td>
<td>Angola, Botswana, Lesotho, Malawi, Mozambique, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe</td>
<td>Project-oriented Economic cooperation</td>
</tr>
</tbody>
</table>

Source: Bank of Tanzania, Department of Economic Research and Policy, January 2000
SELECTED BIBLIOGRAPHY


