

CAN ZANZIBAR BORROW DIRECTLY?

Introduction

Zanzibar is an autonomous part of Tanzania made up of two main Islands, Unguja and Pemba. It also has **59 small islands** located within Zanzibar's territorial waters.

In April 1964, the Presidents of Tanganyika (also referred to as Tanzania Mainland) and Zanzibar, signed the Act of Union, forming the United Republic of Tanzania ("**Tanzania**") while giving semi-autonomy to Zanzibar.

The semi-autonomous nature of Zanzibar is restricted to non-union matters while all union affairs are regulated and exercised by the Government of Tanzania. Respective union matters are listed under the Tanzania Constitution of 1977, as amended from time to time ("**Tanzania Constitution**"), under the First Schedule. Any other matter not so listed under the said schedule is considered a non-union matter and falls within the autonomy of the Government of Zanzibar.

The Government of Zanzibar's capacity to borrow

According to the Tanzania Constitution, external borrowing and trade is a union matter and falls under the mandate of the Government of Tanzania¹, with the Minister of Finance and Planning of Tanzania ("**Minister of Finance**") authorized to negotiate the terms and conditions of loans (both domestic and foreign loans) for and on behalf of Tanzania and Zanzibar. Therefore, Zanzibar cannot borrow on an independent basis.

Under the changes made to the Government Loans, Guarantees, and Grants Act of 1974 ("**Loans, Guarantee and Grants Act**"), as amended by the Written Laws (Miscellaneous Amendments) Act of 2017, the Government of Tanzania is empowered to "*borrow from external or domestic sources and thereafter passes on the loan to another entity such as the Revolutionary Government of Zanzibar, parastatal organizations, local Government or any other public body corporate*". Accordingly, the government of Zanzibar may undertake external borrowing through on-lending whereby the Government of Tanzania enters into a lending arrangement with a foreign lender for a loan and thereafter passes the loan amount (or a portion thereof) to Zanzibar.²

Resultantly, should an entity wish to enter into a sovereign loan facility with Zanzibar, it would be required to enter into the sovereign loan facility with the Government of Tanzania, as the borrower then passes on the loan to Zanzibar. This is the process that is used by Zanzibar when sourcing for foreign loan facilities.

¹ Refer Annexure 1, Item 8 of the First Schedule to the Tanzania Constitution

² Section 12 of the Written Laws (Miscellaneous Amendments) Act of 2017, which amended the Government Loans, Guarantees, and Grants Act of 1974

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Note: This is not a legal opinion and the contents hereof are not meant to be relied upon by any recipient unless our written consent is sought and explicitly obtained in writing.