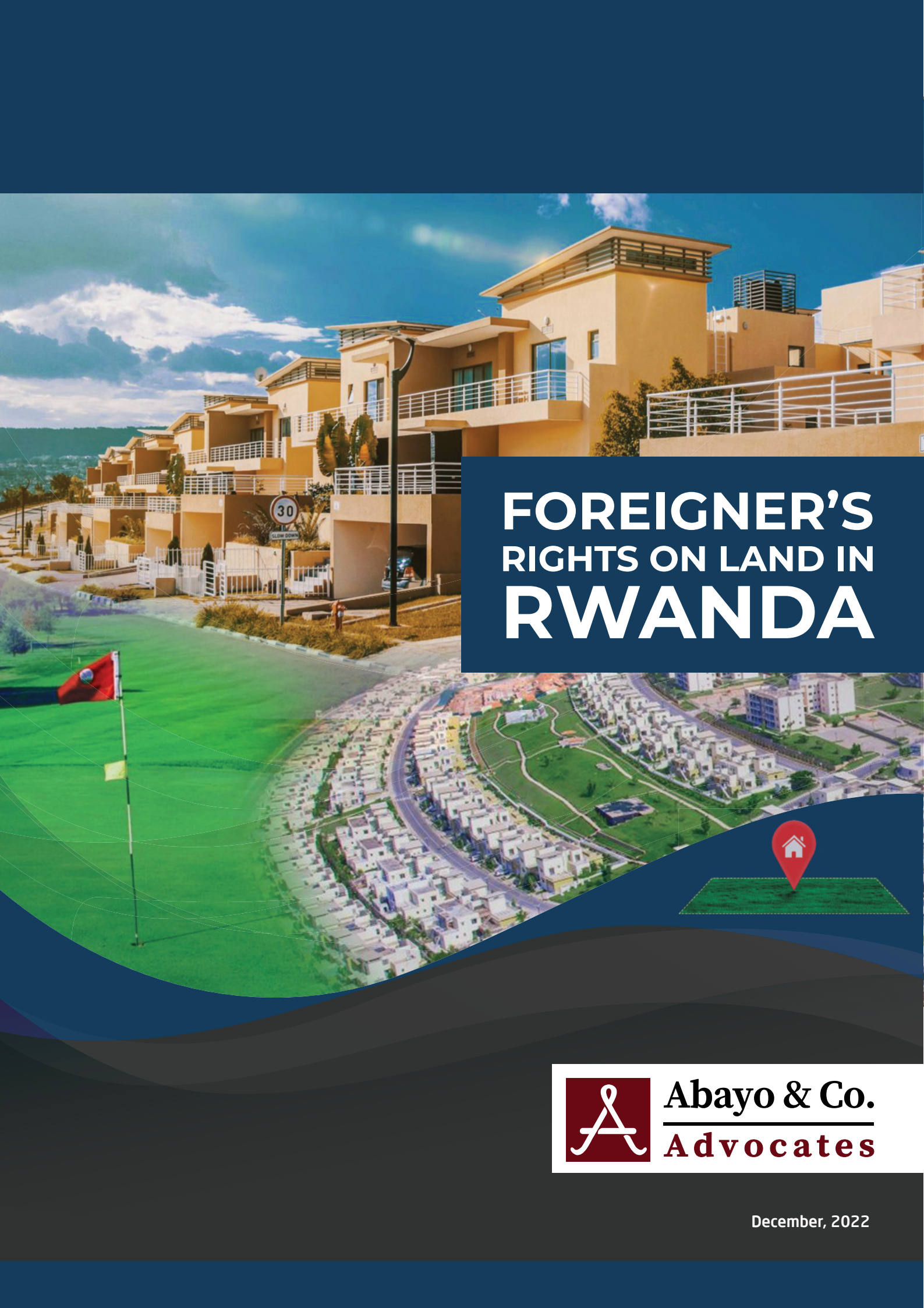




# FOREIGNER'S RIGHTS ON LAND IN RWANDA



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## 1. INTRODUCTION

Rwanda has had several reforms with regard to the rights of people on the land. Basically, the reforms aimed at eradicating the old norms concerning land related rights that has been part of the history of Rwanda. In the beginning, the reforms resolved the issue of women and females in general who were denied their rights on land under the umbrella of culture and tradition. The reforms went on with repealing the laws that seemed to be outdated and enacted new laws that brought about new changes with regard to the rights on the land and other related aspects.

The most recent law concerning land rights in Rwanda was enacted in 2021 and it provides for the rights of people on land both Rwandan citizens as well as foreigners among others. This time, the newly enacted land law of 2021 did not introduce a lot of changes with regard to the holders of rights on land. However, among the changes made, the foreigners' rights on land in Rwanda were reformed. Article 2 of the law n° 27/2021 of 10/06/2021 governing land, defines a foreigner as an individual without Rwandan nationality, individuals who co-own land, a company, an international organisation or cooperative, with legal personality from a foreign country.<sup>1</sup>

This article therefore discusses the rights of the foreigners on land in Rwanda as captured within the legal framework that governs land in Rwanda.

## 2. FOREIGNER'S RIGHTS ON LAND IN RWANDA



Rwanda is a country that openly welcomes foreigners who come in the Country for various reasons including for investment purposes. For this purpose, Rwanda has worked on many aspects that are likely to affect the investments. In this regard, the foreigners are entitled to the rights on the land for both investment and residential purposes. This section demonstrates the rights that the foreigners have on land in Rwanda as provided for by the newly enacted **Law n° 27/2021 of 10/06/2021 of law governing land in Rwanda**.

Article 16 of the law n° 27/2021 of 10/06/2021 governing land in Rwanda provides that the foreigner has right to an emphyteutic lease and a land concession. However, it adds that these rights are only allocated for the investment purpose. It also provides that a Presidential Order may determine other modalities of land possession by a foreigner.<sup>2</sup>

Article 10 of the mentioned law governing land in Rwanda also provides for the period of land ownership where it states that both the emphyteutic lease and the land concession period cannot exceed ninety-nine (99) years which may be renewed. When the emphyteutic lease period expires, the lease period for a Rwandan is

### 2.1. Foreigner's rights on land for the purpose of investment



<sup>1</sup> Article 2, degree 30 of Law n° 27/2021 of 10/06/2021 governing land, *Official Gazette n° Special of 10/06/2021*

<sup>2</sup> *Id*, article 16





renewed automatically,<sup>3</sup> unlike the lease period for a foreigner whose renewal is not automatic but rather subject to the application for renewal.

### 2.1.1. Concession on a state land

The law n° 27/2021 of 10/06/2021 governing land under article 11 illustrates that land belonging to the state may be subject to concession for reasons of improvement of social welfare of the population and strategic investment. In this case, a concessionaire of a State land signs a land concession and acquires a concession title in accordance with the requirements determined by a Prime Minister's Order.

The land concession lasts for a certain period of time which depends on the nature of the project and it may be renewed upon consent between the State and the concessionaire depending on the nature of investment and the way he or she exploited the land during the previous concession period.

Land concession is granted to an investor to whom a land has been conceded for strategic investment for agricultural use, livestock, forestry, tourism, social welfare activities, sports and leisure, mining and quarrying and scientific research activities.<sup>4</sup>

The law n° 27/2021 of 10/06/2021 governing land, in its article 2 defines a strategic investment as an investment approved as such by the competent authority.<sup>5</sup> This definition lacks details as to which kind of investment should fall under the category of strategic investment. To understand strategic investment clearly, people should refer to the law on investment promotion and facilitation that states that strategic

investment projects are investment projects of national importance, which have a strategic impact on the development of the country and which meets a number of criteria including an anchor investment with first-mover demonstration effects; impact on the value chain; development of a proof of concept established in Rwanda for Rwanda, the rest of Africa or global markets to validate the feasibility of a new way of doing things, either to solve existing problems or to execute new strategies; other criteria focus on creation of market, innovations, job creations and mass production.<sup>6</sup> This definition should be used for the purpose of understanding the concept "strategic investment". However, for the purpose of obtaining land concession, strategic investments should be understood as an investment approved as such by the competent authority, in respect of the principle of "*lex specialis derogate legi generali*", which literally means that 'a special law overrides a general law'.

#### 2.1.1.1. Land concession resulting into emphyteutic lease

According to article 11 of the newly enacted law governing land in Rwanda, land concession might end up resulting into emphyteutic lease which may be granted to the investor to whom a land has been conceded for agricultural use depending on the state of infrastructures that he or she has installed on that land.<sup>7</sup>

This prerogative was provided to attract the investors to invest in Rwanda as it is the priority for the government of Rwanda which has put in place significant investment incentives for investors under the law on investment promotion and facilitation and it established the Kigali

<sup>3</sup> *Id.*, article 10

<sup>4</sup> *Id.*, article 11

<sup>5</sup> *Id.*, article 2, degree 14

<sup>6</sup> Article 5 of law n° 006/2021 of 05/02/2021 on investment promotion and facilitation, *Official Gazette* n° 04 bis of 08/02/2021

<sup>7</sup> Law N° 27/2021 of 10/06/2021 governing land, article 11, *supra* note 1



International Financial Centre (KIFC) for transforming Rwanda into an international financial destination for investors seeking opportunities across the African continent.

### 2.1.1.2. Restriction to the concession of a state land

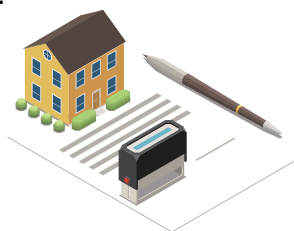
According to article 11 of the land law, an investor to whom a land has been conceded for strategic investment has no right to sell, transfer or mortgage the land.

He or she can only sell, transfer or mortgage the concession rights on the property on that land in accordance with the land concession and the remaining land concession period. However, an investor or a person to whom the rights referred to under the previous paragraph have been transferred is not allowed to transfer his or her rights on the land or to change the investment activities for which the land was conceded to him or her without prior approval of the organ in charge of investment.<sup>8</sup>

## 2.2. State land lease

As per article 12 of the mentioned law governing land in Rwanda, state lands lease is a lease agreement between the state and an investor whereby an investor leases State private domain land for strategic investment in construction of infrastructures for commercial purposes. The buildings that are considered to be for commercial purposes are the following:

- > Trade centres
- > Hotels
- > Real estate



- > Restaurants
- > Public parks
- > Tourism sites
- > Schools
- > Hospitals
- > Passengers or goods transportation stations
- > Industries.



The term of lease for state land lease varies depending on the nature of the project and the land use plan, however, in all circumstances, it cannot exceed ninety-nine years.

An investor granted land lease for strategic investment in accordance with the law, has no right to sell or transfer that land. However, he or she has the right to mortgage the land and activities developed on that land in accordance with the agreement signed with the State and other relevant laws.

In case of default of payment, the mortgage creditor or buyer is required to use the mortgage in respect of the requirements and specific use of the land to serve the investment purpose for the remaining lease period. The investor granted State land lease is not allowed to change the activities related to his or her initial purpose for State land lease without prior approval of the competent organ.<sup>9</sup>

## 2.3. Exact duration of emphyteutic lease and state land concession and lease

### 2.3.1. Exact duration of emphyteutic lease

Pursuant to article 18 of the Prime Minister's Order n° 008/03 of 03/07/2022 determining modalities for land allocation and acquisition,

<sup>8</sup> *ibid*  
<sup>9</sup> *Id*, article 12





emphyteutic lease, and state land concession and lease, the exact duration for emphyteutic lease depends on the purpose for which the land was designated to be used. The exact duration is forty-nine (49) years for the land designated for residential use; commercial activities; industrial use; public facilities; public utility; administration buildings; open space; transportation. The exact duration is ninety-nine (99) years for the land designated for forestry; agricultural; livestock; wetland; water body; buffer zone.<sup>10</sup>

### 2.3.2. Exact duration of State land lease or concession

The Prime Minister's Order determining modalities for land allocation and acquisition, emphyteutic lease, and state land concession and lease stated above also illustrates that the exact duration of State land lease for investment or concession of State land is generally forty-nine (49) years.

However, depending on the nature of the specific project, it can be below forty-nine (49) years and it may exceed forty-nine (49) years but without exceeding ninety-nine (99) years, after approval of the minister in charge of land basing on advice of the organ in charge of activities underlined in that specific project.<sup>11</sup>

### 2.4. Renewal of exact duration for emphyteutic lease, State land lease or concession

Starting with emphyteutic lease, article 20 of the mentioned Prime Minister's Order illustrates that for a foreigner to have the exact duration of emphyteutic lease renewed, he or she applies for

it in writing to the Registrar of land titles at least ninety days' prior before the expiry of the duration of emphyteutic lease.

In case the application is successful, the registrar of land titles renews the exact duration of emphyteutic lease and if the application is not accepted or if the foreigner does not apply for the renewal of emphyteutic lease, he or she automatically loses the rights on the land and the latter is converted to the State land in private domain.<sup>12</sup>

On the other hand, article 21 of the mentioned Prime Minister's Order provides for the modalities for renewal of exact duration of State land lease or concession which is the same procedure with renewal of emphyteutic lease. It is renewed upon request of the lessee or the concessionaire on basis of the State land lease contract or concession.

The lessee or the concessionaire lose their rights over the land in case their request is rejected or in case they do not request for the renewal of the exact duration of State land lease for investment or concession of State land.<sup>13</sup>

### 2.5. Right to free hold land ownership

As per the provisions of article 6 of the land law, it is apparent that Rwandan nationals are the only ones entitled to freehold tenure. However, as further stipulated in the same provision, a foreigner may also acquire land on free hold tenure under exceptional circumstances.

Article 6 of the law governing land in Rwanda

<sup>10</sup> Article 18 of prime minister's order n° 008/03 of 03/07/2022 determining modalities for land allocation and acquisition, emphyteutic lease, and state land concession and lease, *Official Gazette n° Special of 03/07/2022*

<sup>11</sup> *Id*, article 19

<sup>12</sup> *Id*, article 20

<sup>13</sup> *Id*, article 21



demonstrates that freehold title may be granted to the foreigner after approval by presidential order under exceptional circumstances of strategic national interest.<sup>14</sup> However, the concept “circumstances of strategic national interest” was not defined by the law hence causing the ambiguity in its interpretation. This therefore leaves room for uncertainty by foreigners on whether or not they fulfil the criteria for being granted the freehold title. In the author’s view, the circumstances of strategic national interest should be understood as situations that involves the exceptional projects or investments with huge economic impacts to the state and which responds to the needs of the state in regard with its strategic vision.

Article 3 of the Ministerial Order n° 003/moe/22 of 15/02/2022 determining categories of land subject to freehold and modalities for granting freehold specifies that the application for freehold is addressed to the Registrar of land titles of the zone in which land is located. Any person who applies for freehold fills the appropriate form established by the institution in charge of land management and use.<sup>15</sup> The foreigner who applies for freehold, submits a copy of Presidential Order approving grant of freehold for a foreigner among other documents.<sup>16</sup>

## 2.6. Foreigner’s right on land for residential use

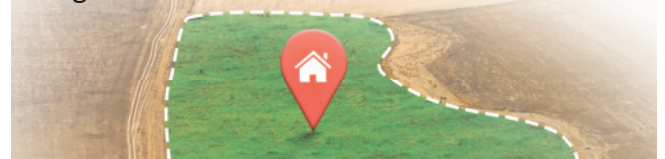
Article 16 of the land law provides that “A Presidential Order may determine other modalities of land possession by a foreigner”. Although the Presidential Order referred to in the land law is yet to be published, a Ministerial Instruction n°. 001 of 09 September 2021 determining the

modalities of the possession of residential land by a foreigner has in the meantime been published to provide clarity on the issue of foreigners being able to own land for other purposes other than for investment. The Ministerial Instructions will therefore be implemented until such a time when the Presidential Order referred to in article 16 of the land law will be published.<sup>17</sup>

The above mentioned ministerial instructions under article 2, provide that a foreigner has right on emphyteutic lease for residential use<sup>18</sup> however, under article 3 of the same instructions the size of the residential property that a foreigner can own is limited to a plot of land for a single family residential house in a residential area not exceeding the size and standards provided in accordance with relevant laws.

In circumstances where a foreigner intends to exceed the size above mentioned, or to own more than a single unit in condominium building, he or she must submit a business plan for investment approved by the competent authority.<sup>19</sup>

Based on the above mentioned provisions of the Ministerial Instruction n°. 001 of 09 September 2021 determining the modalities of the possession of residential land by a foreigner, it suffices to note that although the newly enacted land law restricts foreigners to ownership of land for investment purposes, the ministerial instructions have thus provided room for foreigners to own land for residential use pending the publication of the Presidential Order that will set out other modalities pursuant to which a foreigner will be able to own land in Rwanda.



<sup>14</sup> Law n° 27/2021 of 10/06/2021 governing land, article 6, *supra* note 1

<sup>15</sup> Article 3 of Ministerial Order n° 003/moe/22 of 15/02/2022 determining categories of land subject to freehold and modalities for granting freehold, *Official Gazette n° Special of 22/02/2022*

<sup>16</sup> *Id.*, article 4

<sup>17</sup> Article 1 of ministerial instructions n° 001 of 09 September 2021 determining modalities of the possession of residential land by a foreigner

<sup>18</sup> *Id.*, article 2

<sup>19</sup> *Id.*, article 3





### 3. CONCLUSION

In synopsis, it suffices to note that although the newly enacted Law n° 27/2021 of 10/06/2021 governing land under article 16 land appears to restrict the foreigner's rights to ownership of land in Rwanda for only investment purposes, the same law however still provides room for foreigners to own land through other modalities which are not investment related and thus this will entail the publication of a Presidential Order determining other modalities through which a foreigner will be able to possess land in Rwanda. For this particular purpose, a ministerial instruction n° 001 of 09 September 2021 determining the modalities of the possession of residential land by a foreigner was published shortly after the enactment of the new land law as a means of providing clarity on the ownership of land by foreigners whereby the ministerial instruction under article 2, provided clarification that a foreigner can own land for residential use, although the size of a residential plot that can be owned by a foreigner is restricted to a single family residential plot size as per article 3 of the Ministerial Instructions.

Therefore as per the provisions of the current land legislation in Rwanda including the Law n° 27/2021 of 10/06/2021 governing land and the Ministerial Instruction n° 001 of 09 September 2021 determining the modalities of the possession of residential land by a foreigner, it suffices to conclude that a foreigner can own land in Rwanda either for investment or residential purposes with unfettered ownership.

### REFERENCES

1. Law n° 27/2021 of 10/06/2021 governing land, ***Official Gazette n° Special of 10/06/2021***
2. Law n° 006/2021 of 05/02/2021 on investment promotion and facilitation, ***Official Gazette n° 04 bis of 08/02/2021***
3. Prime Minister's Order n° 008/03 of 03/07/2022 determining modalities for land allocation and acquisition, emphyteutic lease, and state land concession and lease, ***Official Gazette n° Special of 03/07/2022***
4. Ministerial Order n° 003/moe/22 of 15/02/2022 determining categories of land subject to freehold and modalities for granting freehold, ***Official Gazette n° Special of 22/02/2022***
5. Ministerial instructions n° 001 of 09 September 2021 determining modalities of the possession of residential land by a foreigner



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