

## **A WARNING TO DEVELOPERS OF TRIBAL LAND – Oratile Gaopotlake (Associate)**

Tribal land is one of the three tenures under which land may be held in Botswana. It is administered by various land boards established under the Tribal Land Act Cap32:02.

The primary functions of land boards are:

- To allocate tribal land, this includes survey and mapping functions within the specific territory;
- Registration of land owners and transactional data;
- Plan use of the land; and
- Monitor use of the land.

Tribal land is generally acquired through a grant of a common law lease from the Tribal Land Authority (respective land board). Most common law leases granted by tribal land boards only permit the cession or transfer of such lease or the leasehold interest created once the underlying land has been developed.

Recently there has been a high level of financial speculation in tribal land by Batswana, particularly Batswana who are for the first time, more so now, acquiring tribal land and are doing so primarily for the purpose of quickly selling it for profit. In tribal areas near or adjacent to Gaborone this is often done through “development agreements” which have as their purpose and effect the cession of the said rights to a developer following development of the land to which such rights attach.

Where tribal land is so ceded, one of the supporting documents to be submitted at the Deeds Registry is a compliance certificate from the land board. This is filed to prove that the land board has satisfied itself that the land has been developed in accordance with the development covenant in the lease.

As a measure to curb speculation in tribal land as aforesaid, some land boards have now implemented a policy under which they will not issue a compliance certificate unless they receive proof that the cedent has acquired or holds other tribal land. In this respect it is pointed out that the cedent will have had to have purchased such other plot in the open market because the land board will not allocate a second plot to that cedent for so long as he holds the plot initially allocated to him.

The above policy will result in a developer of tribal land not being able to obtain transfer thereof where the cedent of such land is a first time acquirer of tribal land. Developers should therefore first assess whether a prospective cedent is a first time acquirer of tribal land before they enter into any development agreement with that cedent. In the event that it is determined that a prospective cedent is a first time acquirer, then it is our advice that the developer should not enter into development agreements with that cedent.