



STARTING MINING OPERATIONS IN TANZANIA: WHAT YOU SHOULD KNOW

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Minerals are the number one forex earner for Tanzania. The Government's plan is to have the sector contribute 10% of GDP by 2025. The mining sector contains several medium scale companies and a cluster of small-scale mining companies. Various initiatives have led to considerable number of changes in policies and laws governing the mining sector in Tanzania. These changes focused on ensuring Tanzanians benefit from their natural resources by inserting clauses that depicting that indigenous people participate in ownership and management of mining firms.

Governing Laws

- The Mining Act, 2010 (Act No. 14/10)
- The Mining (Mineral Trading) Regulations, 2010
- The Minimum (Minimum Shareholding and Public Offering) Regulations 2016
- The Mining (Local Content) Regulations, 2018
- The Mining (Mineral Trading) Regulations, 2010
- The Natural Wealth And Resources (Permanent Sovereignty) (Code Of Conduct For Investors In Natural Wealth And Resources) Regulations, 2020. G.N No.58 Of 2020
- Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Regulations, 2020 (the Unconscionable Terms Regulations)

All gemstone exploration and mining is reserved for locals except for cases where skills, technology or huge capital is required to develop the ore body. In consideration of this, the minister may authorize some projects to run jointly by locals and foreigners, and the participation of a foreign investor would have to be below 50%. To ensure the requirement of ownership of mining firms in Tanzania is observed, the Mining Act, 2010 requires that a mining license holder who wishes to transfer equity shares to another person to seek the consent of the minister if the transfer is likely to alter ownership from the license holder to the prospective shareholder.

Mandatory requirement of local content in providing of goods and services to a contractor, subcontractor or holder of a mining license

Under The Mining (Local Content) Regulations, it is clearly provided that any foreign company that intends to provide goods or services to a contractor, a subcontractor, licensee, the Corporation or other allied entity within Tanzania shall incorporate a joint venture company with an indigenous Tanzanian company; and afford that indigenous Tanzanian company an equity participation of at least 20%.



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It is also further provided that any non-indigenous Tanzanian company that is required to provide goods and services to a mining license holder or other allied entity, they shall incorporate a company in Tanzania and operate it from in association with an indigenous Tanzanian company in Tanzania. The laws stretches further to elaborate what an indigenous Tanzanian company entails in this regard

- Has at least 51% of its equity owned by a citizen or citizens of Tanzania; and
- Has Tanzanian citizens holding at least 80% of executive and senior management positions and 100% of non-managerial and other positions.

Minimum local shareholding for special mining license holders

All holders of special mining licenses are mandatorily required by the Minimum (Minimum Shareholding and Public Offering) Regulations to offer shares to the public and list with the stock market exchange in Tanzania. On top of that they are required to have a minimum local shareholding of 30% of the total issued and paid-up shares. However, if the holder fails to secure a minimum local shareholding due to an unsuccessful public offering, the minister may upon application and recommendation of the authority grant a waiver to the holder from the local shareholding requirement.

Mineral Trading license

Mineral trading in the United Republic of Tanzania can only be conducted by locals or jointly by locals and foreigners. However, locals must hold not less than 25% shares in the joint venture.

In a nutshell to ensure ownership Mining firms in Tanzania are devised for participation by Tanzanians, the Government requires foreign firms to grant them a 16% carried interest and paid-up equity.

Mining Laws Legal Update

Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Regulations, 2020 (the Unconscionable Terms Regulations) and the Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations, 2020 (the Code of Conduct Regulations)

The new Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Regulations, 2020 (the Unconscionable Terms Regulations) and the



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Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations, 2020 (the Code of Conduct Regulations) were published in *Government Notices* No. 57 and 58 on 31 January 2020 pursuant to section 8 of the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act, 2017 (the Unconscionable Terms Act) and section 13(2)(a) of the Natural Wealth and Resources (Permanent Sovereignty) Act, 2017 (the Permanent Sovereignty Act) respectively.

The amendments to Tanzania's Mining Act in 2017, as well as changes introduced by the Unconscionable Terms Act and the Permanent Sovereignty Act, ushered in a significantly altered regime for the regulation of mining and oil and gas operations in Tanzania.

Among other things, the Unconscionable Terms Act mandates the Government of Tanzania to interrogate and, where deemed appropriate, renegotiate the terms of existing investor-state agreements where Parliament considers those agreements, or aspects of them, "unconscionable".

In terms of the Unconscionable Terms Act, a provision of an investor-State agreement is unconscionable where it:

- restricts government authority over foreign investment;
- is inequitable to and onerous on the State;
- secures preferential treatment of, or creates a separate legal regime to be applied to, the investor;
- deprives Tanzanian citizens of economic benefits arising from beneficiation in Tanzania; and
- subjects the State to the laws of foreign jurisdictions.

Further, the Permanent Sovereignty Act requires, among other things, Parliamentary approval for all investor-State agreements, which must fully secure the interests of Tanzanian citizens.

Moreover, the Act restricts the export of raw minerals, the repatriation of proceeds arising from extraction activities and changes the permissible approach to international dispute resolution for disputes arising in relation to Tanzanian natural resources*.

The Unconscionable Terms Regulations and the Code of Conduct Regulations are intended to provide greater detail and certainty in relation to certain of the requirements introduced in the earlier legislative amendments and reform. Some of the key aspects of this are discussed below.



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The Code of Conduct Regulations

The objective of the Code of Conduct Regulations is to ensure that arrangements or agreements on natural wealth and related or connected business or activities are conducted in a manner consistent with the highest ethical principles at all times, and within the requirements of the Constitution of the United Republic of Tanzania, 1977 (the Constitution) and all applicable national policies and laws.

The Code of Conduct Regulations are applicable to an entity, consultant, supplier, contractor, investor, partner and agent, including their employees, involved in any arrangement or agreement on natural wealth and resources. This makes the potential scope of application very broad.

Regulation 5 of the Code of Conduct Regulations states that an investor who enters into any arrangement, agreement, business or activity in natural wealth and resources shall at all times comply with all applicable policies, laws, regulations and other binding instruments and decisions based upon such instruments.

Regulation 6 of the Code of Conduct Regulations effectively requires every entity, consultant, supplier, contractor, investor, partner and agent governed by the Code of Conduct Regulations (including their employees) to operate in good faith, transparently and in the general interest and welfare of the people of the United Republic of Tanzania, to whom the natural wealth and resources belong.

Such persons are further required to report to the Government any conduct that is likely to deny the people of Tanzania any benefits accruing from the prospecting, exploration, or utilization of these natural wealth and resources. However, it is unclear how this report should be made and to whom in the Government, it should be addressed.

Among other things that will be of particular interest to investors in the extractive sector in Tanzania is that the Code of Conduct Regulations provide new compliance requirements for investors in the sector.

These include:

- to include the Code of Conduct Regulations in all employment contracts and in the company's policies and procedures from 31 January 2020 and create procedures for adherence to the Code of Conduct Regulations. In practice this can be adhered to by investors by incorporating the Code of Conduct Regulations by reference in all the employment contracts and in the company's policies and procedures;



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- the signing and submission of the integrity pledge prescribed in the Schedule to the Code of Conduct Regulations to, among other things, confirm compliance with ethical business practices in order to support the national campaign against corruption. The integrity pledge is to be signed by the chief executive officer and director of the company and submitted to the sectoral Ministry as well as displayed at the investor's place of business;
- investors are obliged at all times be conscious of possible conflicts of interest and to address such matters in good faith and transparently and exercise care and diligence to prevent a conflict of interest from arising. Further, a failure to address a conflict of interest is a breach of the Code of Conduct Regulations. It is unclear how this will work in practice, however, Regulation 5(3) of the Code of Conduct Regulations requires an investor to seek guidance from the Attorney General if the provisions of any legislation, the requirements of the Code of Conduct Regulations or other instruments related to natural wealth and resources are, or become, ambiguous or unclear or otherwise cause uncertainty;
- not engage in any activities amounting to corruption, bribery, trading in influence, the making of facilitation payments as well as another form of economic and organized crimes;
- respect and uphold basic rights as set out in the Constitution;
- not in the course of implementing any activity, discriminate against any person on the basis of gender, age, disability, sex, tribe, religion, marital status, union membership or political belief and affiliation;
- observe workers' rights and child rights protection;
- ensure that all activities are consistent with environmental best practice; and
- avoid any breach of applicable competition laws and regulations.

It is therefore very important for the investors in the extractive sector to review the Code of Conduct Regulations and to engage the Government on areas that cannot be complied with immediately, as a breach of the Code of Conduct Regulations can lead to termination of the relevant investor-State agreement.

Natural Wealth and Resources Regulations are aimed at making sure that the Tanzanian benefit from the God-Given Natural resources. It is evident that the Government intends to monitor investment in Tanzania quite closely by ensuring that there are no terms that are unconscionable and do not protect the natural wealth and resources of Tanzania.