

THE MINING LAW  
REVIEW

TENTH EDITION

Editor  
Erik Richer La Flèche

THE LAWREVIEWS

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REVIEW

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This article was first published in October 2021  
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Published in the United Kingdom

by Law Business Research Ltd, London

Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

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ISBN 978-1-83862-806-2

Printed in Great Britain by

Encompass Print Solutions, Derbyshire

Tel: 0844 2480 112

# ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

BERTRAND-GALINDO BARRUETO BARROILHET & CÍA

DENTONS

ESTUDIO MUÑIZ, OLAYA, MELENDEZ, CASTRO, ONO & HERRERA ABOGADOS

FALCON & HUME INC

GENI & KEBE

HERBERT SMITH FREEHILLS

JPAB – JOSÉ PEDRO AGUIAR-BRANCO ADVOGADOS

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SION ADVOGADOS

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VHG SERVICIOS LEGALES SC

# CONTENTS

PREFACE.....	v
<i>Erik Richer La Flèche</i>	
<b>Part I</b>	<b>Mining Law</b>
Chapter 1	AUSTRALIA..... 1
<i>Jay Leary and Geoff Kerrigan</i>	
Chapter 2	BRAZIL..... 15
<i>Alexandre Sion</i>	
Chapter 3	CANADA..... 29
<i>Erik Richer La Flèche, David Massé and Jennifer Honeyman</i>	
Chapter 4	CHILE..... 39
<i>Iván Bertrand-Galindo, José Tomás Barrauto and Milenko Bertrand-Galindo</i>	
Chapter 5	DEMOCRATIC REPUBLIC OF THE CONGO..... 51
<i>Aimery de Schoutheete, Thibaut Hollanders, Joëlle Thambwe Mwamini and Martin Longompulu</i>	
Chapter 6	ECUADOR..... 60
<i>Jaime P Zaldumbide and María Isabel Aillón</i>	
Chapter 7	MEXICO ..... 70
<i>Patricia Vivar Zirate, Juan M Coronado Ávila and Rubén Federico García</i>	
Chapter 8	PERU..... 87
<i>Daniel Palomino and Tony Bustamante</i>	
Chapter 9	PORTUGAL..... 97
<i>Joana Silva Aroso and Olinda Magalhães</i>	

Chapter 10	SENEGAL.....	111
	<i>Mouhamed Kebe, Ismaël Itoua and Mahamat Atteib</i>	
Chapter 11	SOUTH AFRICA .....	124
	<i>Estelle Hayes and Jeandri Cloete</i>	
Chapter 12	TANZANIA.....	140
	<i>Thomas Mihayo Sipemba and Jacqueline Matiko</i>	
Chapter 13	UZBEKISTAN .....	155
	<i>Eldor Mannopov, Bobur Shamsiev and Javokhir Karimov</i>	
<b>Part II</b>	<b>Capital Markets</b>	
Chapter 14	BRAZIL.....	169
	<i>Carlos Vilhena and Filipe Morais Cunha</i>	
Chapter 15	CANADA.....	177
	<i>Erik Richer La Flèche, David Massé and Jennifer Honeyman</i>	
Chapter 16	UNITED KINGDOM .....	187
	<i>Kate Ball-Dodd</i>	
Appendix 1	ABOUT THE AUTHORS.....	199
Appendix 2	CONTRIBUTORS' CONTACT DETAILS.....	213

# PREFACE

I am pleased to have participated in the preparation of the tenth edition of *The Mining Law Review*. The Review is designed to be a practical, business-focused ‘year in review’ analysis of recent changes, developments and their effects, and a look forward at expected trends.

This book gathers the views of leading mining practitioners from around the world and I warmly thank all the authors for their work and insights.

The first part of the book is divided into 13 chapters, each dealing with mining in a particular jurisdiction. These countries were selected because of the importance of mining to their economies and to ensure a broad geographical representation. Mining is global, but the business of financing mining exploration, development and – to a lesser extent – production is concentrated in a few countries, Canada and the United Kingdom being dominant. As a result, the second part of the book has three chapters that focus on financing.

The advantage of a comparative work is that knowledge of the law and developments and trends in one jurisdiction may assist those in other jurisdictions. Although the chapters are laid out uniformly for ease of comparison, each author had complete discretion as to content and emphasis.

At the time of writing, the covid-19 pandemic is unfortunately continuing. The economic impact of the pandemic since March 2020 has been surprisingly uneven with many sectors relatively unaffected while others, such as the travel, leisure and hospitality sectors, devastated.

At this time, the main issue in the mining sector is supply not demand. The pandemic has adversely affected production and exploration in many jurisdictions while the production of manufactured goods has recovered. As a result, the mining industry needs to return to pre-pandemic production as quickly as sanitary conditions permit and thereafter increase production to meet growing demand. In doing so, the industry will need to be mindful of the growing environmental and social obligations imposed on it as the world tries to mitigate the effects of climate change and growing income inequality.

Fortunately, the industry is in good financial shape, helped by relatively high commodity price as well as the managerial lessons and discipline learned during the Great Recession.

Also, due to geopolitical and environmental factors two sub-sectors are expected to see considerable new investment, both private and public in the medium and long term. The demand for minerals critical to the high technology and clean energy sectors is expected to grow manifold over the next decades. These minerals are strategic, and one can expect considerable international competition as well as active participation by states whether as investors, lenders or buyers. It will be the new ‘Oil Game’.

As you consult this book, you will find more on topics apposite to jurisdictions of specific interest to you, and I hope you will find the book useful and responsive.

**Erik Richer La Flèche**

Stikeman Elliott LLP

Montreal

August 2021

Part I

# MINING LAW

# TANZANIA

*Thomas Mihayo Sipemba and Jacqueline Matiko*<sup>1</sup>

## I OVERVIEW

The Mineral Policy of Tanzania was promulgated in 2009<sup>2</sup> by the Ministry of Energy and Minerals,<sup>3</sup> which is charged with the responsibility of formulating a mineral policy, overseeing its administration and coordinating the development of the mineral sector of Tanzania. The Policy is driven by its vision, which is to have an effective mineral sector contributing significantly to the acceleration of socioeconomic development through the sustainable development and utilisation of mineral resources in Tanzania by 2025.<sup>4</sup> Its objectives include, but are not limited to, improvement of the economic environment for the purposes of attracting and sustaining local and international private investment in the mineral sector.<sup>5</sup> According to the Mineral Policy, the government of Tanzania is to remain as regulator and facilitator of the sector while promoting private sector involvement. However, the Policy document makes it clear that the government intends to participate strategically in mining projects and to establish an enabling environment that enables Tanzanians to participate in ownership of medium and large-scale mines.<sup>6</sup>

Another aim of the Mineral Policy is to ensure that the government strengthens cooperation with regional and international bodies for the purposes of taking advantage of facilities, resources and information provided by such organisations. In this context, the government aims to collaborate with regional bodies of which Tanzania is a member to harmonise its own mineral policy with others and to work with regional and international organisations in respect of research, transfer of technology, training and exchange of information.<sup>7</sup>

The other relevant feature of the Mineral Policy is that it underscores the need for a legal and regulatory framework that ensures transparency, predictability, minimum discretion and security of tenure.

Under Mining Act No. 14 of 2010, as amended,<sup>8</sup> and Natural Wealth and Resources (Permanent Sovereignty) Act No. 5 of 2017, the entire property and control of all minerals

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1 Thomas Mihayo Sipemba and Jacqueline Matiko are partners at Dentons EALC East African Law Chambers.

2 Published in September 2009.

3 The energy sector was hived off and there is now a separate Ministry of Energy.

4 Page 6 of the policy document.

5 Page 7 of the policy document.

6 Page 8 of the policy document.

7 Page 27 of the policy document.

8 Amendments to the Mining Act effected by the Written Laws (Miscellaneous) Amendments Act No. 7 of 2017.

on the surface or below the surface, including bodies of water, are public property vested in the President in trust for the citizens of Tanzania. Further, the law currently proclaims sovereignty over natural resources and wealth to the people of Tanzania and the government. The government exercises ownership and control of natural resources on behalf of the people of Tanzania and, for that purpose, all activities related to exploration of natural wealth and resources are to be conducted by the government on behalf of the people. The proclaimed sovereignty cannot be questioned by any foreign court or tribunal. The government thus issues various types of mineral rights that allow interested persons to conduct exploration and exploitation of minerals subject to terms and conditions specified in law or specified in the mineral rights themselves. The types of mineral rights and other relevant matters are discussed below.

## **II LEGAL FRAMEWORK**

The main legislation governing mining activities in Tanzania is the Mining Act of 2010, as amended from time to time, which makes provisions for regulation of mining activities, including prospecting, mining, processing and dealing in minerals. The Act also makes provisions on grant, tenure, terms and conditions, renewal and termination of mineral rights, payment of various taxes, fees, duties, royalties and other applicable charges.

Other legislation that regulates mining activities includes Natural Wealth and Resources (Permanent Sovereign) Act No. 5 of 2017 and Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) Act No. 6 of 2017. As stated above, the Natural Wealth and Resources Act No. 5 makes provisions on the permanent sovereignty of natural resources. The Natural Wealth and Resources Contracts Act No. 6 provides for the powers of the National Assembly to review agreements concluded by the government and for the right of the government to renegotiate the terms that it considers unacceptable in agreements that it has already signed.

There is further legislation and subsidiary legislation that is applicable in regulating the mining sector, some of which are discussed below.

The main body regulating mining activities in Tanzania is the Mining Commission (the Commission), which is established as a body corporate and is vested with functions that include supervising and regulating the sector, issuing, cancelling and renewing mineral rights, and resolving disputes arising out of mining operations or activities.<sup>9</sup> The Minister for Minerals is responsible for formulating policies, strategies and a legislative framework for mineral exploration and exploitation; the Commissioner for Minerals acts as an adviser to the Minister.<sup>10</sup>

It is also important to mention resident mines officers appointed by the Commission. They have various roles, the most important being to monitor the day-to-day production process in mining projects, to verify records kept by miners, authorise entry into storage facilities, and have an overview of the transportation of minerals to government mineral warehouses.<sup>11</sup>

There are various reporting requirements under the Mining Act and the Tanzania Extractive Industries Act No. 23 of 2015 (TEIA). Licence holders are required to keep certain

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9 Sections 21 and 22 of the Mining Act.

10 Sections 19 and 20 of the Mining Act.

11 Section 27 of the Mining Act.

records and provide quarterly reports to the Commission. Thus, licence holders conducting exploration activities are required to provide reports on boreholes drilled, aerial photographs, detailed logs of strata penetrated, minerals discovered, results of seismic surveys, geochemical or geophysical analysis and geological interpretations of the records kept, the number of employees and costs expended. Licence holders conducting mining activities are required to provide technical records of operations, geological reports and their interpretations, aerial photographs, ore logs, analysis and tests, as well as accurate and systematic financial records.

The TEIA establishes the Tanzania Extractive Industries (Transparency and Accountability) Committee (the Committee), which is responsible for promoting and enhancing transparency and accountability in the extractive industry. Some of its functions include (1) developing a framework for transparency and accountability in reporting and disclosure by all extractive industry companies on revenue due to or paid to the government; (2) requiring from any extractive industry company an accurate account of money paid by and received from the company as revenue accruing to the government from that company; (3) requiring disclosure of accurate records of the cost of production, capital expenditure at every stage of investment, volume of production and export data; and (4) conducting investigations on discrepancies in revenue payments and receipts in extractive companies. The Committee is mandated to set a threshold in every financial year for the purposes of identifying companies that qualify to submit reports. The TEIA also imposes a reporting obligation on local content and corporate social responsibility, whereby companies must submit an annual report containing information about these matters.

### **III MINING RIGHTS AND REQUIRED LICENCES AND PERMITS**

#### **i Title**

As already stated, minerals in Tanzania are public property held by the president in trust for all citizens of Tanzania. To engage in any form of activity in the mining sector, whether it be prospecting or mining, one is required to obtain the appropriate mineral right from several that can be issued by the Commission.

Title to minerals cannot be issued or held or be transferred to private persons except through the grant of a mineral right to prospect or mine.

#### **ii Surface and mining rights**

The various mining rights that may be granted in Tanzania include prospecting licences, special mining licences, mining licences and primary mining licences.

A prospecting licence, once granted, allows a person to enter the prospecting area, prospect for minerals to which the licence applies and carry out operations and such work as necessary for that purpose, including the removal and excavation of soil and earth. It may be applied for and issued for minerals falling under groups as specified under the Mining Act (metallic minerals, energy minerals, gemstones excluding kimberlitic diamond, kimberlitic diamond, industrial minerals or building materials) and the licence will state the group and type of mineral to which it applies. A prospecting licence is granted for an initial period of four years and may be extended for a further three years, after which no further extension is possible. At the end of the two aforementioned periods, the area covered by the licence reverts to the government and a prospecting licence is issued to a local mining company, which shall be designated by the Minister subject to approval by the Cabinet. Any person intending to

conduct exploration work in such an area must do so through arrangements made with a local mining company, subject to prior approval from the Cabinet. The conditions that may apply to a prospecting licence include the following:

- a* a restriction to hold not more than 20 licences, provided that the cumulative prospecting areas do not exceed 2,000 square kilometres;
- b* commencement of operations within three months of the prospecting licence being granted or within such period as the licensing authority may allow;
- c* giving notice to the licensing authority of the discovery of any mineral deposit with a potential commercial value;
- d* adherence to the prospecting programme attached to the prospecting licence; and
- e* ensuring expenditure on prospecting operations of not be less than US\$500 per square kilometre during the initial period and of not less than US\$2,000 per square kilometre after the first renewal. Where further prospecting is allowed, the minimum expenditure is US\$6,000 per square kilometre. Minimum expenditure under a prospecting licence is US\$100 for industrial minerals and building materials and US\$250 for prospecting for gemstones.

A special mining licence will be granted for large-scale mining operations in which capital investment exceeds US\$100 million. The licence grants an exclusive right to the holder to conduct operations in the mining area for the minerals specified in the licence. It is granted for the estimated life of the ore body indicated in the feasibility study or any other such period as the licensee request, whichever is shorter. A special mining licence is renewable, and an application for renewal may be submitted at any time, but no later than one year before expiry of the licence. The conditions that may apply to a special mining licence include the following:

- a* to develop the mining area and commence production in substantial compliance with the programme of mining operations and environmental management plan;
- b* to employ citizens of Tanzania and implement a succession plan on expatriate employees in accordance with proposals submitted during application for the licence, which are also appended to the licence;
- c* to demarcate, and keep demarcated, the mining area as prescribed;
- d* to prepare and update mine closure plans as prescribed;
- e* to implement a proposal plan for relocation, resettlement and compensation of people within the mining areas in accordance with the Land Act;
- f* to post a rehabilitation bond if so required by the Ministry responsible for minerals;
- g* to obtain an environmental certificate in line with the terms of the Environment Management Act;
- h* to have a plan with respect to the employment and training of citizens of Tanzania; and
- i* to comply with the terms of a development agreement<sup>12</sup> if one has been entered into.

The government is entitled to have not less than 16 per cent non-dilutable free carried interest shares in the capital of a mining company;<sup>13</sup> this requirement is dependent on the type of minerals and the level of investment. Though the wording of the relevant provision is to the effect that the level of investment and the type of minerals will determine the

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12 These agreements are no longer issued or signed after legislation amendments in 2017.

13 This applies to holders of mining and special mining licences only.

percentage of free carried interest, the provision does not detail how the type of minerals and the investment level will affect determination of the percentage. It would suggest, therefore, that projects for certain minerals may attract a higher percentage of free carried interest. In addition, the government is entitled to acquire up to 50 per cent of the shares of a mining company, calculated on the basis of the total value of tax expenditure extended to the mining company. Tax expenditure is defined as 'the quantified value of tax incentives granted to a mining company by the government'. This means that the more tax incentives that a mining company is granted, the higher the percentage of shares the government will be entitled to acquire in that company, up to a limit of 50 per cent.

The Mining Public Offering Regulations mandate that 30 per cent of a shareholding by holders of special mining licences be locally owned and that a minimum local shareholding should be obtained through a public offer made under the Capital Markets Securities Authority. The term local shareholding with respect to a natural person is defined as a citizen of Tanzania, and in relation to a body corporate it is defined as shares held by a company in which citizens of Tanzania or the government own a beneficial interest of at least 50 per cent of the shares of the company. The regulations empower the Minister to grant a waiver if the holder of a licence fails to secure the minimum local shareholding following an unsuccessful public offer. The waiver is granted on application by the licence holder and upon recommendation by the Capital Markets and Securities Authority.

A mining licence confers on the holder the exclusive right to carry on mining operations in the mining area for minerals specified in the licence and is granted for operations for which the capital investment is between US\$100,000 and US\$100 million. It is granted for a maximum initial period of 10 years and may be renewed once for a period not exceeding 10 years. An application for renewal should be made not later than six months prior to expiry of the licence and must be accompanied by the prescribed fee and tax clearance certificate issued by the tax authority in respect of operations to be conducted during the renewal period. The conditions that may apply to the holder of a mining licence include the following:

- a* the right to enter into the mining area and undertake mining operations;
- b* the right to erect equipment, plant and buildings;
- c* to dispose of the minerals recovered;
- d* to carry out prospecting within the mining area;
- e* to stack or dump any waste in accordance with the environmental management plan;
- f* to pay royalties, taxes and other charges;
- g* to implement the proposed plan for relocation, resettlement of and payment of compensation to people within the mining areas if they are occupied by surface rights holders; and
- h* to employ and train citizens of Tanzania and implement a succession plan for expatriate employees in accordance with the Employment and Labour Relations Acts.

A primary mining licence confers on the holder the exclusive right to carry on prospecting and mining operations in the mining area. It is granted for an initial period of up to seven years and is renewable. The law does not specify either the number of years for which the licence may be renewed or the number of times that it may be renewed. In practice, however, a primary mining licence is normally renewed for the same period as the initial period for which it was granted. This type of licence is granted only to citizens of Tanzania or to

companies that are exclusively composed of Tanzanians, whose directors are Tanzanians and in which control of the company is exercised from within Tanzania by persons who are all citizens of Tanzania.

The conditions that may apply to the holder of a primary mining licence include:

- a* the right to erect the necessary equipment, plant and buildings for the purposes of mining, transporting, dressing or treating the minerals recovered during the course of mining operations;
- b* to pay the royalties due to the government;
- c* to stack or dump any mineral or waste product in a manner consistent with the Environment Management Act;
- d* to implement the proposed plan for relocation, resettlement of, and payment of compensation to people within the mining areas if the area is occupied by surface rights holders; and
- e* the right to prospect within that mining area for any minerals other than gemstones.

A primary mining licence may be converted into a mining licence.

There are also dealers' licences and brokers' licences. A dealer's licence allows the holder to acquire minerals and sell them, including the right to export, and a broker's licence allows the holder to acquire minerals and sell them, but not to export. A broker's licence can only be issued to Tanzanians.

Mineral rights are transferable; however, special and mining licences may only be assigned if the consent of the Commission is obtained, unless the assignment is to an affiliate or a financial institution. Consent of the Commission can only be given where there is proof that substantial developments have been effected by the holder seeking to transfer his or her mineral right.<sup>14</sup>

Once granted, a mineral right cannot be suspended or cancelled except for just cause and after following due process. Causes that may justify the cancellation or suspension of a licence include non-compliance with binding provisions of the Mining Act, regulations or licence conditions, failure to comply with a lawful direction given under the legislation or the regulations, and failure to comply with conditions relating to a licence that may be contained in a development agreement. However, before a licence can be cancelled or suspended, the Commission is required to issue a default notice and allow the licence holder not less than three months to remedy the default, or, if a default cannot be remedied, the licence holder must be given an opportunity to offer reasonable compensation for the default.<sup>15</sup>

Foreign parties may be granted any type of mineral right, subject to compliance with general licensing requirements, with the exception of primary mining licences, gemstone mining licences and broker's licences. As stated above, a primary mining licence cannot be granted to foreigners;<sup>16</sup> however, if a holder of a primary mining licence requires technical support to conduct operations and the technical support cannot be sourced from Tanzania, the holder is allowed to contract a foreigner to provide that support. Such an agreement requires approval in advance by the Commission, given on the recommendation of a resident mines officer. Likewise, the Commission may grant the licence in an arrangement in which a foreigner owns not more than 50 per cent of participating shares. For the Commission

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14 Section 9 of the Mining Act.

15 Section 63 of the Mining Act.

16 Section 8(2) of the Mining Act.

to proceed in this manner, it must be demonstrated that the development of gemstone resources in the respective area is likely to require specialised skills, technology or a high level of investment.<sup>17</sup>

### **iii Additional permits and licences**

There are other permits and licences that may be required for conducting mining activities. Generally, all companies in Tanzania are required to be registered with the Business Registration and Licensing Agency (BRELA). The aim of BRELA is to regulate and facilitate businesses in Tanzania and be responsible for the registration of companies. Anyone wishing to conduct mining business in Tanzania is required to obtain a business licence before applying for the mineral right under which he or she wishes to operate. Other permits include those related to health and safety, extraction and use of water, environmental matters, the importation and use of chemicals and explosives, etc.

### **iv Closure and remediation of mining projects**

Mineral rights holders are required to prepare and submit to the Chief Inspector of Mines a mine closure plan for approval. The plan must include:

- a* a programme to reclaim and rehabilitate land and watercourses to an acceptable condition that takes account of its previous use;
- b* a programme to support socioeconomic activities to provide an alternative livelihood for local communities beyond the life of the mine;
- c* comments made by the district authorities, the surrounding communities and the district mine closure committee;
- d* the cost of providing statutory and other benefits to employees beyond the life of the mine; and
- e* the cost of reclaiming and rehabilitating the mining area in the event that the mine is closed.

A rehabilitation bond must be posted in the form of an escrow account, capital bond, insurance guarantee bond or bank guarantee bond, as may be required by the Minister.

## **IV ENVIRONMENTAL AND SOCIAL CONSIDERATIONS**

### **i Environmental, health and safety regulations**

There are several pieces of legislation, regulations and rules on environmental matters that are applicable to mining projects, the main one being the Environmental Management Act and regulations made under it.<sup>18</sup>

The Mining (Safety, Occupational Health and Environment Protection) Regulations of 2010 are directly applicable to the mining sector.

The Mining (Environmental Protection for Small Scale Mining) Regulations of 2010 apply specifically to primary mining licence holders and are not applicable to prospecting activities or medium and large-scale mining activities.

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<sup>17</sup> Section 8(3) of the Mining Act.

<sup>18</sup> The main regulations from a mining perspective are the Environmental Impact Assessment and Audit Regulations of 2005.

## **ii Environmental compliance**

As stated above, the Environmental Management Act is the major environmental law.<sup>19</sup> Section 6 thereof imposes a general duty on all persons residing in the United Republic of Tanzania to protect the environment. Further, this Act requires any person who engages in mining, including quarrying and open-cast extraction, to carry out an environmental and social impact assessment (ESIA) at his or her own cost. The ESIA must be conducted before any financing or undertaking of the mining project, regardless of whether the proponent has in its possession the requisite permit or licence for carrying out the project.

Complementing the foregoing provisions, the Mining Act requires applicants of mining and special mining licences to hold a certificate of environmental and social impact assessment studies before a mineral right can be granted. The provisions of the Environmental Management Act in respect of the management and use of land will prevail over any existing land laws in the event that there is any conflict in respect of environmental aspects of land management.

The Environmental Impact Assessment and Audit Regulations 2005 (the ESIA Regulations) set out in detail how the environmental impact assessment and audit thereof should be conducted. An application for an ESIA certificate has to be made in the format of Form No. 1 (Project Brief) of the Third Schedule of the regulations. The proponent is required to submit 10 copies of the Project Brief to the National Environmental Management Council (the Council). The Council is then required to submit the Project Brief within seven days to each relevant ministry, the relevant local government environmental management officer and the relevant regional secretariat for their written comments, which in turn have to be submitted to the Council within 21 days of the date they received the Project Brief from the Council. The Council is then required to screen the Project Brief and the comments pursuant to the criteria specified in the Second Schedule of the Regulations. The Council is required to screen the Project Brief within 45 days of the date of its submission by the proponent.

The proponent will then be required to carry out an ESIA<sup>20</sup> pursuant to the Fourth Schedule of the Act for the purposes of preparing an environmental impact assessment statement (the Statement). The Statement is made pursuant to Regulation 18 and in the format of Form No. 2 specified in the Third Schedule to the Regulations. The Statement is required to be submitted with a non-technical executive summary in both the Kiswahili language and English. The proponent is required to submit 15 copies of the Statement to the Council. The Council is required to submit the Statement within 14 days of the date of receipt to the Ministry of Minerals and must notify and invite the general public to comment. The Ministry of Minerals will have 30 days within which to review the report and send its comments to the Council. Should the Ministry fail to submit its comments within this period, or an extension thereof, the Council can proceed to determine the project without its comments. The holding of a public hearing to discuss the Statement is not mandatory, but at the discretion of the Council if it is of the opinion that it requires the view of the public to make a fair and just decision or it is necessary for the protection of the environment. The Council is required to determine whether to hold a public hearing within 30 days of

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19 The Act came into force on 1 July 2005.

20 Section 83 of the Environmental Management Act imposes the requirement for all environmental and social impact assessments to be carried out by experts who are duly registered with the Council pursuant to the Environmental (Registration of Environmental Experts) Regulations 2005. The Council publishes a list of experts annually.

receiving the Statement. Upon completion of its review of the Statement, the Council must submit the Statement with its comments and recommendation to the Minister responsible for the environment. The Minister has 30 days from the date of receiving the Statement and recommendation to make a decision. The decision must be in writing and contain the reasons for the decision. The decision must also be communicated to the proponent and a copy of it submitted to the Council's office, where it should be made available for inspection by the general public. Further, the Minister's decision must state whether the Statement is approved, not approved or approved subject to the proponent meeting specified conditions.<sup>21</sup>

Upon approval of the Statement, the Minister shall issue an environmental impact assessment certificate (the Certificate) in Form No. 3 specified in the Third Schedule of the Regulations. It is possible to vary the terms of the Certificate by applying to the Minister. The Certificate is transferable. Further, if the project has not started within three years of the date of issue of the Certificate, the proponent will be required to re-register, with the Council, its intention to develop.

### **iii Third-party rights**

Holders of land rights do not automatically hold rights over any type of natural resource, including minerals, that has formed below the ground. Once a mineral right is granted, the holder thereof becomes entitled to enter any area of land for which the mineral right is granted, subject to subscribed conditions for exercising the rights of entry. The rights attaching to a particular mineral right are provided for under the respective provisions in the Mining Act. The holder of a prospecting licence has the right to enter the prospecting area and erect installations, camps and temporary buildings.<sup>22</sup> The holder of a special mining or a mining licence may enter a mining area and take all measures on or under the surface for the purposes of mining operations, including to erect plants, buildings and equipment as necessary for mining operations.<sup>23</sup> Section 4 of the Mining Act defines a mining area as an area of land that is the subject of a special mining licence, a mining licence or a primary mining licence. This means that the holder of a special mining licence or a mining licence has surface land rights to the land in respect of which he or she holds the respective mineral rights.

The exercise of access to surface rights in a mining area is governed by the provisions of Part VII of the Mining Act. In exercising land surface rights, one of the two things are required: (1) to obtain the consent of a government minister, local authority, other authority or landowner; or (2) to compensate, relocate and resettle the relevant landowners. Whether consent or compensation are applicable will depend on the current use of the land and the activities that a mineral right-holder wants to undertake. Examples of areas requiring ministerial consent include areas designated for burial, areas where there is a military installation, any reserved area or any protected monument.<sup>24</sup> Local authority and landowner's consent are required for any inhabited area, land set aside for agricultural use, or where land

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21 It is possible to appeal the decision of the Minister to not grant a certificate to the Environmental Appeals Tribunal.

22 Section 35(2) of the Mining Act.

23 Sections 46 and 51 of the Mining Act.

24 Section 95(1)(a) of the Mining Act provides a full list of the categories of land for which ministerial consent is required.

use plans, compensation and relocation are involved.<sup>25</sup> Consent may also be required from other authorities; for instance, in national parks, forest reserves, game reserves and areas where there is a railway.

Under the terms of Section 97 of the Mining Act, compensation, relocation and resettlement may be required where rights conferred by a mineral right cannot be reasonably exercised without affecting the interests of a lawful occupier of land. In this event, the mineral right-holder will be required to advise the landowner and consult the local government authority and to submit a plan regarding compensation, relocation and resettlement. Any consideration due will be in accordance with the procedures and principles of evaluation set out under the land laws and the Land Compensation Regulations.

As regards compensation, it is required that an assessment is undertaken to identify the occupiers of the land, followed by a valuation of the land and any crops or other properties therein; this exercise must be carried out by a qualified valuer and before commencing the valuation exercise, it is a requirement to consult the local government regarding the valuation exercise, compensation and, if applicable, resettlement. The basis for assessment of the value of land and any unexhausted improvements for the purposes of compensation is the market value of the land. Compensation normally includes:

- a* the value of the land;
- b* the value of unexhausted improvements;
- c* a disturbance allowance;
- d* a transport allowance;
- e* an accommodation allowance; and
- f* loss of profits.

Once the assessment is completed, the valuer will prepare a valuation report, which must be approved by the Chief Government Valuer in the Ministry of Lands and Human Settlements; thereafter, the report must be endorsed by the Regional Commissioner, the District Commissioner and the Ward Executive Officer. When the approval and the endorsements have been completed, payment of the required compensation is made to the individuals identified in the valuation report. Once completed, approved and endorsed, a valuation report remains valid for six months, after which the valuation exercise must be done again if the compensation payment was not made within the six months.

#### **iv Additional considerations**

Other social considerations are those pertaining to local content requirements. The Mining (Local Content) Regulations of 2018 require that licence holders, contractors and subcontractors or licensees must ensure that local content requirements, including minimum local content levels,<sup>26</sup> are complied with. These requirements include that indigenous Tanzanian companies are given first preference in the granting of mining licences and, thus, subject to variations as may be made by the Minister, to qualify for the granting of a mining

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25 See Section 95(b) of the Mining Act.

26 These are specified in the First Schedule to the Regulations.

licence, there must be 5 per cent equity participation by an indigenous Tanzanian company.<sup>27</sup> Mining companies, as far as is practicable, must set up a project office within the district where the project is located before carrying out any work. That being said, there are no specific requirements on how the office should be set up and therefore this should be at the discretion of the company. A company that does not qualify as non-indigenous and intends to provide goods and services to a licence holder is required to incorporate a joint venture company with an indigenous Tanzanian company, in which the latter must have an equity participation of at least 20 per cent.

The local content plan should include long-term projections of the licensee's programme of work and an annual content plan for each year of the project. Before approval, the plan must be reviewed by the Local Content Committee.<sup>28</sup> It must contain detailed provisions that ensure:

- a* first consideration is given to local goods and services, provided they meet the standards as established by the authority responsible for standards;
- b* qualified Tanzanians are considered first for employment;
- c* adequate provision is made for training Tanzanians; and
- d* there is provision for how the licensee will guarantee use of locally manufactured goods.

A local content plan may be rejected by the Commission. In that event, it may be returned and a revised plan must be submitted to the Committee within 14 days.

Mineral right-holders must also establish and implement a bidding process for acquisition of goods and services that gives preference to indigenous Tanzanian companies. Evaluation of bids and the award of contracts should not be based solely on the principle of the lowest bidder, and where an indigenous Tanzanian company has the capacity to execute the job, that company should not be disqualified solely because it has not tendered the lowest bid. Furthermore, if a bid by a Tanzanian company does not exceed the lowest bid by more than 10 per cent, the contract must be awarded to the Tanzanian company, and if bids are judged to be equal, the bid with the highest level of local content should be selected. In the event that a non-indigenous Tanzanian company is engaged, then it must incorporate a company in Tanzania, operate it from Tanzania and, where practicable, execute its tasks in association with a Tanzanian company.

Another requirement under the Local Content Regulations is the submission of a local content plan for employment and training. This must include a succession plan for positions held by non-Tanzanians that makes provision to ensure that Tanzanians understudy the said positions for a period that will be determined by the Commission. After that period has elapsed, the positions must be held by Tanzanians. The Local Content Regulations require that junior and mid-level positions are held by Tanzanians only.<sup>29</sup>

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27 The term 'non-indigenous Tanzanian company' is defined under the Local Content Regulations as a company that is incorporated under the Companies Act of 2002 and that has at least 20 per cent equity ownership by citizens of Tanzania and in which at least 80 per cent of its executive and senior management positions and 100 per cent of its non-managerial and other positions are held by Tanzanians.

28 The Committee is established under Regulation 5 of the Local Content Regulations and is composed of a full-time member of the Commission, the Director of Labour and Employment, a representative of the Tanzania Private Sector Foundation, the Chief Executive Officer of the Geological Survey of Tanzania, the Head of Legal Services in the Ministry and the Executive Secretary of the Commission.

29 Junior and middle-level positions are defined as including foreman, supervisor positions or any other designated position.

It is also a requirement to prepare a programme for research and development and budgeting for the promotion of education, practical attachments and training in relation to a licensee's overall work programme and activities. The plan must outline a revolving three to five-year programme for research and development initiatives to be undertaken internally, provide details of the expected expenditure in implementing the plan, and provide public calls for proposals for research and development initiatives and criteria for selecting proposals that qualify. The plan must be updated annually. Licensees are also required to support and carry out a published plan for a technology transfer programme for the promotion of technology transfer to Tanzania. Thus, a sub-plan must be prepared, which should include a programme of planned initiatives for the effective transfer of technology from a licensee to an indigenous Tanzanian company and citizens of Tanzania. Licensees are required to support the technology transfer as regards formation of joint ventures, partnering of licensing agreements between indigenous Tanzanian companies and foreign contractors or service companies.

The Local Content Regulations require licensees to insure risks through an indigenous brokerage firm or, where applicable, an indigenous reinsurance brokerage firm. Offshore insurance services require the approval of the Commissioner for Insurance.

Legal services must be sourced through a Tanzanian legal practitioner or a firm of Tanzanian legal practitioners. A legal services sub-plan must be prepared, which should include a comprehensive report of the legal services used in the preceding six months in terms of expenditure, a forecast of the legal services required during the ensuing six months, and an annual budget for legal services for the ensuing year quoted in Tanzanian shillings and US dollars.

Financial services must also be secured through a Tanzanian financial institution or organisation. A financial services sub-plan must be prepared, which should include a comprehensive report of the financial services used in the preceding six months in terms of expenditure, a forecast of the financial services required during the ensuing six months, the projected expenditure on financial services, and a list of financial services used in the preceding six months, the nature of the financial service provided and the cost for that financial service. Further, it is required to maintain a bank account with a Tanzanian bank<sup>30</sup> and to transact business through banks in Tanzania.

The Local Content Regulations require the Commission to establish a Common Qualification System for registration and pre-qualification of local content in the mining industry. This is intended to be used for:

- a* verification of a contractor's capacities and capabilities;
- b* evaluation of local content submitted by licensees;
- c* tracking and monitoring of performance and provision of feedback; and
- d* ranking and categorisation of mining service companies based on capabilities and local content.

The information may be inspected and a certified copy of the extract from any document may be requested and provided on payment of a fee. At the time of writing, the Commission is yet to establish a Common Qualification System.

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<sup>30</sup> Indigenous Tanzanian bank is defined as a bank that has 100 per cent or not less than 20 percent of Tanzanian shareholding.

## **V OPERATIONS, PROCESSING AND SALE OF MINERALS**

### **i Processing and operations**

Under the provisions of the Mining Act, a mineral right-holder undertaking mining activities is required to construct secure storage facilities on site for storing extracted raw minerals. Stored minerals can be kept in a storage facility for a maximum of five days, after which they must be moved to the Government Minerals Warehouse to wait beneficiation or, if the government so permits, export. Beneficiation and processing of minerals is governed by the Mining (Mineral Beneficiation) Regulations,<sup>31</sup> which provide for application and granting of a processing, smelting or refining licence. The licence holder has the right to process, smelt or refine minerals and for that purpose is allowed to buy, acquire, sell and dispose of minerals, including by exporting them. The licence holder is mandatorily required to employ and train Tanzanians and implement a succession plan on expatriate employees. Further, the holder must prepare and implement a plan that ensures procurement of goods and services that are available in Tanzania.

### **ii Sale, import and export of extracted or processed minerals**

Among the rights granted to holders of mineral rights for conducting mining activities is the right to dispose of minerals,<sup>32</sup> including the right to export minerals. However, the disposal of minerals comes with conditions. As stated above, mineral right-holders can only keep minerals for five days, after which they have to be moved to a government warehouse. Under the provisions of the Mining (Minerals and Mineral Concentrate Trading) Regulations of 2018, holders of mining and special mining licences, holders of processing, refining and smelting licences and holders of dealer's licences may export or import minerals subject to obtaining an export or import permit issued by an authorised person.<sup>33</sup> Import and export permits are issued upon receipt of evidence that the applicable royalties have been paid. In addition, non-residents who have purchased minerals from an authorised miner or a licensed dealer may upon application be issued with special permits for exporting acquired minerals, should they wish to. However, special permits cannot be issued to the same person more than twice in any one year.

### **iii Foreign investment**

There are no restrictions on repatriating capital. Under the terms of the Foreign Exchange Act,<sup>34</sup> any person who is a resident of Tanzania may for purposes other than general travel remit through commercial banks such an amount of foreign currency as shall be prescribed by the bank from time to time for a specified purpose. Any person maintaining foreign currency in a Tanzanian bank account may at any time and without restriction draw any amount of foreign currency for the purpose of making payment within or outside Tanzania.

Foreign investment in domestic mining companies or mining projects is not generally subject to government review. Further, foreign loans to residents are permitted unless the repayment term exceeds 365 days. However, the loan must be approved by and registered

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31 Government Notice No. 5 of 10 January 2018.

32 Sections 46 and 51 of the Mining Act.

33 Under the Mining Act, authorised persons include the Commissioner for Minerals, the Chief Inspector of Mines or such officers as may be appointed by the Commission.

34 CAP 271 (RE) 2002.

with the Bank of Tanzania. Among other things, the bank will consider the relevant debt instruments to determine whether the interest rate reflects the prevailing market conditions for the relevant currency of borrowing, and the loan's term is tied to the ability of the project to meet its repayment obligations.

Foreign investments are protected through recognition and protection of private property by the Tanzania Investment Act and the Constitution of the United Republic of Tanzania of 1977.

## **VI CHARGES**

### **i Royalties**

Royalties are payable on the basis of a percentage calculated according to the gross value<sup>35</sup> of minerals and the process entails all extracted minerals being sorted and valued in the presence of a mines resident officer, a representative of the Tanzania Revenue Authority and a representative of the relevant responsible state organ. The report made after valuation will be used to calculate the royalties payable to the government. The government retains the right to reject a valuation on account of deep negative volatility and, in such a case, it may purchase minerals at the lowest value ascertained.

The percentage of royalty payable for metallic minerals, gemstones and diamonds is 6 per cent. The royalty percentage for uranium is 5 per cent, that of gems is 1 per cent and that of building materials, salt and industrial minerals is 3 per cent.

### **ii Taxes**

The Income Tax Act contains specific provisions that apply to the mining industry. Although mining companies continue to be subject to 30 per cent corporate income tax on their taxable profits, the income tax legislation was amended in 2016 to introduce among other things, ring-fencing requirements along the value chain and changes with regard to both deductions and depreciation. Subject to continuity-of-ownership and same-business tests, there is no limit on the carry-forward period for tax losses though losses from one mining licence area can only be offset against profits from the same mining licence area. However, the offset of losses brought forward is limited to 70 per cent of current year taxable profit before brought-forward losses if an entity has had tax losses in the preceding four years.<sup>36</sup> Gains from the disposal of investments in Tanzania, either directly or indirectly, are subject to income tax if the investments fall within the source rules, and, in such a case, the gain will be taxed at a rate of 30 per cent. The tax on gain from disposal of mineral rights has to be remitted to the tax authority with 30 days from the day of realisation unless specified otherwise by the Commissioner.<sup>37</sup> An alternative minimum tax applies at a rate of 0.5 per cent to the turnover of companies with perpetual unrelieved tax losses for the current and preceding two income years.

Mining companies are required to withhold tax when making payments in relation to dividends (10 per cent), interest (10 per cent), service fees provided by non-residents (15 per cent) and local professional and consultancy services (5 per cent).

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35 The term gross value is defined as 'the market value of minerals as determined through valuation'.

36 Change brought by Finance Act 2020, effective 1 July 2020.

37 Change brought by Finance Act 2020, effective 1 July 2020.

The VAT rate is 18 per cent and there is no reduced rate. Mining companies enjoy VAT exemption on the import of goods for exploration or prospecting activities to the extent that those goods are eligible for relief from customs duties under the East African Customs Management Act. There is also a restriction on input VAT credit where raw minerals are exported without the addition of local value.

### **iii Duties**

Tanzania is a member of both the East African Community and the Southern African Development Community. If goods are subject to a lower rate of duty from either of these trading blocs, the lower duty rate applies until such time as the trading arrangements between the trading blocs are harmonised. Goods eligible for relief are specified under the East African Customs Management Act (when imported by a registered and licensed explorer or prospector for exclusive use in mineral exploration or prospecting activities). All other imported goods are subject to either 10 per cent (on spare parts and semi-processed goods) or 25 per cent (on finished goods) on all other imports. A 1.5 per cent Railway Development Levy applies to the freight on board value of imported goods. The levy is not applicable to goods in transit or imported goods that qualify for relief or exemption under the East African Community Customs Management Act 2004.

### **iv Other fees**

Mineral right-holders are required to pay annual rental fees with respect to the mining areas on which the rights are granted. The fees are charged for each square kilometre and vary depending on the type of mineral rights that a person holds. Rental fees for prospecting licences range from US\$100 to US\$200 depending on the category of minerals for which the prospecting licence is issued. The fees are US\$5,000 for a special mining licence, US\$3,000 for a mining licence for metallic minerals, energy minerals, gemstones or kimberlitic diamonds and US\$2,000 for building materials and industrial minerals.

## **VII OUTLOOK AND TRENDS**

Since mid-2017, the government of the United Republic of Tanzania has passed significant regulatory changes to the extractive industry in general, to set a new field for the industry. These changes were aimed at ensuring equitable returns to the government and providing clear taxation guidelines specific to the industry. There are a number of positive results that have come out of these changes, particularly on clarity of the taxation issues; however, uncertainty remains regarding the practicality of certain aspects such as availability of local capacity to take on the projects to ensure compliance with local content. Nonetheless, Tanzania's Vision 2025 sets out a plan for mining to contribute 10 per cent of GDP, which suggest an optimistic outlook for the industry.

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ISBN 978-1-83862-806-2