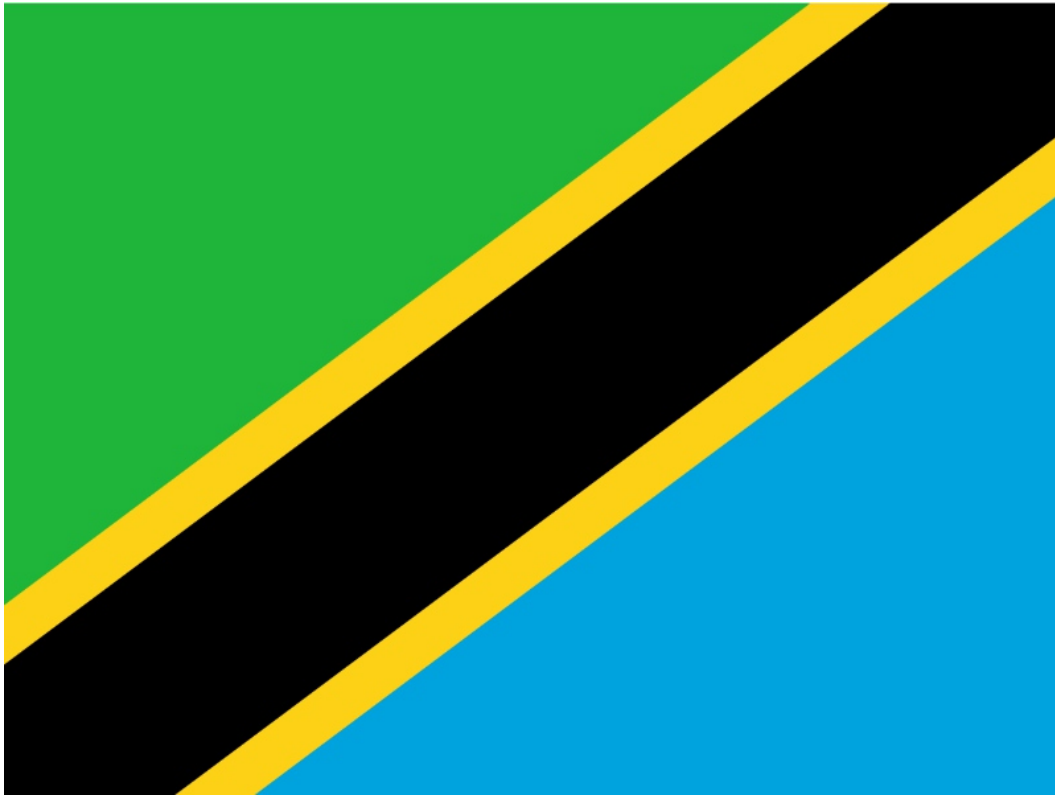


Tanzania lays down the law on local participation in mining sector



The mining industry in [Tanzania](#) is adopting a wait-and-see approach following the government's sweeping changes to mining regulations, aimed, in part, at ensuring sovereign ownership of the country's natural resources.

“Over the past 12 to 18 months – and as recently as early January 2018 – there has been significant movement in the mining regulatory landscape.

This is driven largely by the government's objective of ensuring that [Tanzania](#) and its citizens benefit from the country's mineral wealth, which will have significant implications for holders of mining licences and those involved in providing goods and services to those licence holders,” says Chris Green, partner in the Dar es Salaam office of pan-African law firm Bowmans.

[quote]Green says the new regulatory environment, signed into law in July 2017, has left the mining industry treading water.

“We are not seeing any significant new investment in the mining space in Tanzania at the moment, and companies with existing operations are adopting a cautious approach to further investment and are having to consider how best to ensure the continued viability of existing operations.”

Regulations seek to ensure sovereign ownership

One of the biggest changes is that all holders of special mining rights – meaning major mines – are, by law, required to list on the Dar es Salaam Stock Exchange and ensure that 30% of shares are placed in the hands of Tanzanian citizens.

Another important change is that in future, when government and a rights holder are negotiating the terms of a mining development agreement, government must have a 16% carried interest in the project.

Existing agreements have not been overlooked.

“Government has brought into play a mechanism to notify any rights holder that it wants to renegotiate the terms of an agreement to deal with so-called ‘unconscionable provisions’,” says Green.

The definition of such a provision is broad and could include any aspect of an agreement that runs against government’s ambition of ensuring sovereign ownership of Tanzania’s mineral resources.

An example could be a mining development agreement that is regulated by the laws of a foreign jurisdiction other than Tanzanian law.

“Where the government of Tanzania and the rights holder are unable to agree on revised terms within a legislated time period, the terms in question will be deemed to be expunged.”

Also noteworthy is the 2017 ban imposed on the export of mineral concentrates from Tanzania.

“The reason is that government feels there has been too much extraction of raw materials without beneficiation in Tanzania, to the detriment of the economy,” explains Green.

Different local content thresholds cause uncertainty

Recent regulations published to facilitate the implementation of the earlier legislative changes have added a further layer of complexity for industry participants to consider.

“The latest regulations do not, in some respects, align with the terms of the Mining Act as amended in July 2017, in that different terminology and thresholds are used to define what constitutes a local or indigenous company for local content purposes. At this stage, it is not clear which requirements will be given precedence or how they will be read together.”

According to the July 2017 amendments to the Mining Act, mining sector participants must give preference to suppliers of goods and services who are Tanzanian citizens, to local companies that are 100% owned by Tanzanian citizens or to joint ventures where Tanzanian citizens hold a 51% participating interest.

However, in regulations issued in January 2018, government introduced the concept of “indigenous Tanzanian companies” (not referred to in the Act), where the threshold for acceptable local participation in joint ventures providing goods and services to mining sector participants appears to have been set at 20%.

“Time will tell how the various requirements are interpreted and implemented, possibly when the issue becomes the subject of disputes,” states Green.

“In the meantime, it will be important for organisations already operating or considering commencing operations to keep a close eye on the legal and regulatory developments as they unfold.”

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