

Briefing

Regulations requiring mining firms to register on the Dar es Salaam stock exchange

In this month's mining briefing we consider the potential implications of a regulatory framework being imposed which seeks to ensure that mining firms are listed on the Dar es Salaam Stock Exchange (**DSE**). In particular, this briefing will consider:

- (i) the legal basis for requiring mining firms to list on the DSE;
- (ii) the rationale for imposing such regulations; and
- (iii) practical steps to consider when making an application to list on the DSE.

Legal background

The Mining Act 2010 (the **Act**) governs the mining industry in Tanzania. The Act is supported by regulations which set out rules on specific matters, such as environmental protection and health and safety. The Act provides that the Minister of Energy and Minerals (**Minister**) may make regulations for any matter which, in accordance with the Act, is to be provided for by the regulations or which may be prescribed.

The Act specifically refers to regulations requiring mining firms to list on the DSE. The Act provides that the Minister shall, in consultation with holders of special mining

licences, make regulations prescribing the minimum shareholding requirement and procedure for selling shares to Tanzanian nationals, in accordance with the Capital Market and Securities Act 1994 (**CMSA**), by offering shares to the public through listing with the DSE.

At the time of coming into force, some writers were of the opinion that the Act itself imposed an obligation on mining firms to list on the DSE. Whilst, the Act does refer to the Minister having the right to make regulations relating to public offerings, as outlined above, these provisions are not contained in the Act itself. Therefore, specific

regulations would need to be put in place to require mining firms to list with the DSE.

This issue is topical now because the Government of Tanzania (**GoT**) has indicated that it is moving towards ensuring that all mining firms are listed on the DSE. During the budget debate in June 2013, finance minister, William Mgimwa, told parliament that his office was working on a regulatory framework in line with the Act requiring mining firms to list on the DSE.

Rationale behind the regulations

There are a number of reasons for the GoT wanting to push through regulations requiring mining firms to list on the DSE. Local ownership and content is a fundamental part of any project concerning natural resources in an emerging market.

Rules on local ownership are put in place to ensure that local people have more control of their country's natural resources and can participate in the success brought by such resources. Listing on the DSE will allow Tanzanians to own a stake in these firms. This is likely to enhance good relations between mining firms and the local people, as well as having economic benefits; listings and trades in shares are likely to stimulate the economy and improve economic independence.

However, the GoT will also be eager to ensure that firms are listed on the DSE for taxation purposes. Firms listing on the stock exchange are subject to increased transparency requirements. This, in turn, will assist the GoT to better monitor the payment of taxes.

The DSE

The DSE was incorporated in 1996 as a company limited by guarantee. The DSE was created following the establishment of the Capital Markets and Securities Authority (the **Securities Authority**) under the CMSA. The Securities Authority is a government agency established to promote and regulate securities business in Tanzania. There are

seventeen companies listed on the DSE as of July 2013.

Listing on the DSE

There are a number of conditions which an applicant must satisfy before being listed on the stock exchange. Some of the key requirements are outlined below:

- **Producing a valid prospectus:** the prospectus should provide all information required of the applicant under applicable Tanzanian securities laws. Generally, this will include an overview of the group corporate structure, operations, governance structure and the mechanics for trading shares, amongst other matters.
- **Obtaining sponsorship by a Licensed Dealing Member (LDM) of the exchange:** the applicant must appoint an LDM of the exchange to sponsor its application who shall be responsible for the lodging of all documents and ensuring that they comply with the rules.
- **Providing supporting documents:** the applicant must provide a number of documents in support of its application, such as, audited accounts for the last three years, memorandum and articles of association, details of existing and intended distribution of the applicant's securities, a copy of all required authorisations and copies of proposed underwriting arrangements and contracts; and
- **Satisfying the basic conditions for listing:** an applicant must satisfy the conditions relating to (amongst others) share and working capital, profit forecasts, minimum value of securities to be listed, distribution of shares, conflicts of interest and the memorandum and articles.

The application must be made by filing the application form annexed to the Dar es Salaam Stock Exchange Rules (the **Rules**) and giving the associated undertakings. The application should be accompanied by a certificate from the LDM sponsoring the application, the supporting documents and the fees specified in the Rules.

Further information

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Comment

The procedure for filing an application can appear complex and document heavy on the corporate side. It is therefore recommended that legal and professional advice is sought in advance and to assist with the application. It may also be necessary to consider rules specific to mining firms; the regulatory framework requiring mining firms to list on the stock exchange may set out specific provisions applicable to mining firms, in addition to, or in place of, those set out by the Rules.

There is currently no deadline for when regulations ensuring that mining firms list on the stock market must be in place but the GoT has stated that final preparations are underway and it hopes to have the regulations in force soon. We will keep you posted on this issue in future editions of this briefing.

Other news

Environmental rehabilitation bond

In June's briefing we reported that Ministry of Energy and Minerals (**MEM**) is introducing an environmental rehabilitation bond for mining firms to ensure that depleted mines are restored once the company winds up its operations. Such a bond would require mining firms to deposit an amount in a GoT operated fund. This rule was expected to come into force in July but the MEM and Tanzanian Minerals Audit Agency (**TMAA**) have indicated that the provision will not yet be fully implemented, as the TMAA and GoT are still in consultation with mining firms and considering the method of calculation for the bond. We will continue to monitor developments on the environmental rehabilitation bond.

Coal reserves revised up from previous estimate

Energy and minerals minister Professor Sospeter Muhongo announced that Tanzania has coal reserves of up to 5 billion tonnes, more than three times its previously stated figure of 1.5 billion tonnes. Tanzania produces coal from two mines mainly for domestic use, such as power generation. Tancoal Energy, a joint venture between the government and a private company, runs the Ngaka coal mine, while the Kiwira mine is run by the state.

Mining events in Tanzania

Tanzanian Explorers Club

The Tanzanian Explorers Club (**TEC**) is for people working in, or affiliated with, the Tanzanian mineral exploration sector and provides an informal environment to facilitate networking within the industry and information sharing between key participants in the Tanzanian mining sector. If you are interested in joining the next TEC meeting please email Clyde & Co's mining team to find out further details.