Amendments to the Mining Act

Several provisions of the Mining Act, 2010 (the Mining Act) have either been amended or repealed by the Tanzania Extractive Industries (Transparency and Accountability) Act, 2015 (TEIA). Most of these amendments (the Amendments) do not dramatically depart from the provisions of the Mining Act, however they do introduce a number of changes which will affect mineral rights holders.

This month’s mining briefing will summarise some of the key Amendments to the Mining Act concerning:

- Initial capital investment for primary mining licence is now raised to USD 5 million
- Tanzania Minerals Audit Agency introduced in the Mining Act
- The Online Transactional Mining Flexicadastre Portal introduced in the Mining Act
- A penalty for undertaking unauthorised prospecting, mining and processing operations is now increased to Tshs. 10 million
- The equipment involved in unauthorised prospecting, mining and processing operations will now be auctioned by the Government
- The duration of the mining development agreement is now limited to ten years
- The Amendments have introduced the Tanzania Extractive Industries Transparency and Accountability Committee
- Upon renewal holders of prospecting licences of less than 40 square kilometers are not required to relinquish the licence area to less than 20 square kilometers
- The Amendments restrict applying for a mining or special mining licence over a prospecting licence issued to another person
- Holders of mining and special mining licence will now be required to commence mining activities within 18 months
- The Ministry of Energy and Minerals (MEM) may process an application for conversion of a primary mining licence (PML) to a mining licence in excess of 30 days
- The decisions of the MEM Minister may be subject to judicial review at the High Court of Tanzania
- Dealer licence may now be issued with respect to building materials and a holder of a dealer licence is required to file monthly reports instead of quarterly reports
- The allowable distance for mining near a building or reservoir or dam owned by the Government is now raised to 200 metres

Primary mining licence
The Amendments have significantly increased the initial capital investment threshold for a PML from a maximum of USD 100,000 to maximum of USD 5 million.
The Mining Act previously provided that a PML means a small scale mining operations whose capital investment is less than USD 100,000. The Amendments provide that a PML means a licence for small scale mining characterized by minimal machinery or technology of an initial capital for investment which does not exceed USD 5 million. The Mining Act and Amendments do not provide a specific definition of the term “initial capital investment” however we are of the view that once the Amendments are implemented we will come to know the meaning of this term through practice.

**Tanzania Minerals Audit Agency (TMAA)**
The TMAA was established under the Executive Agencies Act in November 2009, as a semi-autonomous institution responsible for the auditing and monitoring of mineral production. However TMAA was not preliminarily referred to in the Mining Act. The Amendments introduce TMAA and its duties into the Mining Act which include the duty to:

- Audit and monitor mineral production
- Audit quality and quantity of minerals produced and exported by mining entities
- Audit financial records of mining entities for the purpose of tax assessments
- Audit environmental management expenditures of the mining entities for the purpose of assessment of compliance to the mine closure plan

**Online Transactional Mining Flexicadastre Portal (OTMFP)**
MEM introduced the requirement of companies holding mineral rights to register themselves with the OTMFP although the same was not included in the Mining Act. The Amendments introduce OTMFP into the Mining Act and provide that it is a web based service aiming to facilitate submission of mineral rights applications, online payments, administration of mineral rights and exchange of mineral rights information including the communication of MEM decisions electronically.

**Penalty for undertaking unauthorised prospecting, mining and processing operations**
The Mining Act preliminarily provided that individuals undertaking unauthorised prospecting and mining operations will be liable to a fine not exceeding Tshs. 5 million or imprisonment for a period not exceeding three years or both.

The Amendments have introduced restrictions for undertaking unauthorised processing operations as well. The penalty for the individuals who undertake unauthorised mining and processing operations has been raised to a fine not exceeding Tshs. 10 million but not less than Tshs. 5 million or to imprisonment for a term not exceeding three years.

**Auctioning of the equipment involved in unauthorized prospecting, mining and processing operations**
The Mining Act provided that any minerals obtained in the course of unauthorised prospecting or mining operations including equipment involved will be forfeited. The Amendments provide that after such forfeiture the same will be auctioned through the relevant Government Asset Auctioning Procedures.

**Duration of a Mining Development Agreement (MDA)**
The Mining Act provided that the MDA would be valid for the duration of a special mining licence. Based on this provision, if the special mining licence was issued for the estimated life of the ore body indicated in the feasibility study report, then the MDA could be entered into for the entire life of the mine. The Amendments have limited the duration of the MDA to a maximum ten years and may be renewed on mutual agreement by parties. We will need to see in due course how this renewal will be undertaken by MEM.

**Tanzania extractive industries transparency and accountability committee (the committee)**
The Amendments have introduced the concept of the Committee which will now have power to acquire and publish information obtained from mining companies. This may affect the confidentiality of information which is particularly important to mining companies in Tanzania.

**Relinquishment of a prospecting licence**
The Amendments provide that, the holder of a prospecting licence whose licence has less than 40 square kilometers shall, at the time of application for renewal of a prospecting licence, relinquish part of the licence such that the remaining licence area is not less than 20 square kilometres. There was no such provision in the Mining Act apart from requiring relinquishment of 50% of the prospecting licence area upon applying for a renewal of a prospecting licence.
Restriction on application of a mining or special mining licence over an area subject to a prospecting licence

The Mining Act provided that if an application for a mining or special mining licence included an area subject to a prospecting licence granted to another person, the licensing authority would serve thirty days’ termination notice to the holder of the prospecting licence.

The Mining Act further provided that, upon receipt of the termination notice, the holder of a prospecting licence could either apply for a mining or special mining licence within the thirty days or upon expiry of thirty days, the prospecting licence would be deemed terminated.

Hence upon lapse of the thirty days’ notice and no application for a mining or special mining licence had been filed by the holder of the prospecting licence, the holder of the prospecting licence would lose its rights over the area and the applicant for a mining or special mining licence would then be issued with a licence which includes the area previously falling under the prospecting licence.

The Amendments have repealed this provision so it is no longer possible to apply for a mining or special mining licence which includes an area falling under a prospecting licence granted to another person.

Commencing of mining activities

The Mining Act provided that the holder of a mining or special mining licence was required to enter into the mining area, develop the mining area and undertake mining operations. The Mining Act did not specifically provide a specific time within which the holders of mining or special mining licences should commence mining operations. The duration within which the holder of a mining or special mining licence was required to commence mining operations was contained in the licence itself and the duration was largely dependent on the programme of mining operations submitted at the time of applying for a mining or special mining licence.

The Amendments have introduced the following:

a. Holders of a special mining licence are required to commence mining activities within eighteen months or such other period as a licensing authority may allow from the date of grant of the licence

b. Holders of a mining licence are required to commence mining operations within eighteen months from the date of grant of the licence

Based on the Amendments, there is an implication that holders of special mining licences may upon receiving permission from MEM commence mining activities after lapse of eighteen months from the date of grant of the licence. However holders of mining licences are required to commence mining operations within a period of eighteen months from the date of grant of the mining licence.

Processing an application for conversion of a PML to a mining licence

The Mining Act required the MEM Minister to process an application for conversion of a PML to a Mining Licence and issue the Mining Licence certificate within thirty days from the date of an application for conversion. The Amendments have removed the time limit of thirty days hence the MEM Minister may grant an application for conversion of a PML when he deems fit to do so.

Judicial review

The Amendments require a person who is aggrieved by a decision of the MEM Minister to suspend or cancel mineral rights to file an application for judicial review at the High Court within sixty days from the date of the decision.

Previously, the Mining Act provided that persons aggrieved by the decision of the:

a. Licensing authority other than the Minister for suspension or cancellation of mineral rights and compulsory assignment of undivided shares could within sixty days appeal to the MEM Minister

b. MEM Minister for suspension or cancellation of mineral rights and compulsory assignment of undivided shares could within sixty days appeal to the High Court

The Amendments have deleted paragraphs (a) and (b) above and now persons aggrieved by the decision of the Minister will apply for judicial review to the High Court.
Dealer licence

The Mining Act preliminarily provided that, a dealer licence may be issued with respect to gold, metallic minerals, coloured gemstones, diamonds, coal and industrial minerals. The Amendments have added building materials into the list of minerals to which a dealer licence may be issued.

The Amendments have also introduced a requirement for applications for a dealer licence in respect of gemstones to be accompanied by a commitment to acquire and utilize in case of a Tanzanian, five lapidary machines ad in case of a foreigner thirty lapidary machines within three months from the date of grant of the dealer licence.

The Amendments further provide that, the holders of dealer licences are required to file monthly reports with the Zone Mines Office. Previously, the Mining Act required holders of dealer licences to file reports with the Zone Mines Office quarterly.

Mining near a building or reservoir or dam owned by the Government

The Mining Act had a restriction which required mineral rights holders to seek consent from the responsible Minister prior to exercising their mineral rights in respect of any land which is within 100 metres of any building, reservoir or dam owned by the Government. The Amendment raises the distance from 100 metres to 200 metres.