

# Tanzania

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## Overview of Tanzania's Mining Act 2010

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On 23 April 2010 Tanzania's Parliament passed The Mining Act 2010 (the Act). The Act is a composite of a document presented to Parliament (the Initial Reading), together with a schedule of amendments (the Amendments). The Act has yet to be Gazetted and thus is not yet in force, though it is reputed to be under a *Certificate of Urgency* and therefore is expected to come into force shortly.

As regards the mining sector generally, the vision of the Government of Tanzania (the GOT) is to have a strong, vibrant, well-organised private sector led, large and small scale mining industry conducted in a safe and environmentally-sound manner which contributes over 10% of gross domestic product coupled with a well developed gemstone lapidary industry whilst providing employment to Tanzanians.

With that vision as a backdrop, the intention of the GOT is to within the Act address challenges that the GOT has identified in relation to the mining sector in Tanzania; specifically, low integration with other sectors of the economy, low contribution to the gross domestic product compared to the sector growth and low capacity of the GOT to effectively regulate and administer the sector.

### Industry concerns

The Act is more restrictive than its predecessor and is consistent with other recent legislation which seeks to concentrate a greater interest in the hands of Tanzanian nationals with increased regulation in key sectors whilst continuing to encourage inward investment.

Some of the publicly expressed concerns were due to the restrictions contained in the Initial Reading (such as reservation of mineral rights and licenses for dealing in minerals being reserved to Tanzanian citizens and corporate bodies under the exclusive control of Tanzanian citizens) which were subsequently relaxed by the provisions of the Amendments.

However, the Act does materially increase the levels of royalty payable to the GOT and places restrictions on non-Tanzanian participation in small scale mining, dealing in minerals and gemstone operations.

There are concerns within the industry that the restrictions will have a negative impact on the Tanzanian mining industry both in terms of its competitiveness and as a magnet for foreign investment.

We have yet to see an official copy of the Act, so our comments are subject to sight of this.

### Key provisions

The Act will introduce significant changes to mining policy, in particular the following.

(a) Mineral rights and licenses for dealing in minerals will be reserved exclusively to Tanzanian citizens and corporate bodies under the exclusive control of Tanzanian citizens. It has been said that agreements/licences currently in force with non Tanzanian controlled mining companies remain unchanged but there is no clear "grandfathering" provision on this. The main point to note, however, is that the Amendments significantly mitigated the Tanzanian control issue in respect of general mining licences, and the restrictions will apply only to "primary mining licences", which are licences with respect to small scale mining operations involving capital expenditure of less than \$100,000 (Section 8 and Section 73).

(b) Licences to mine for gemstones are only to be granted to Tanzanians, regardless of the size of the operation, except where the Minister

determines that the development is most likely to require specialised skills, technology or a high level of investment in which case the licence may be granted to an applicant so long as the non-Tanzanian participation element is no more than 50% (Section 8(4)).

(c) The Act gives the Minister power to prescribe a standard model form Mining Development Agreement for all projects exceeding US \$100m. So far as we are aware no standard form has yet been prescribed. (Section 8(4)).

(d) The Act gives the Minister power to make regulations authorising the GOT to participate in the conduct and financing of mining operations and give the GOT a free carried interest, the level of which is not set by statute but rather by negotiation between the GOT and the relevant mineral rights holder (Section 10).

(e) It amends the method by which GOT royalties are calculated so that they will in future be levied on the gross value of minerals, rather than the present method of calculation which refers to the net value (Section 87).

(f) It increases the rates of royalties levied by the GOT on the gross value of minerals as follows:

- (i) uranium - 5%;
- (ii) gemstone and diamond - 5%;
- (iii) metallic minerals (copper, gold, silver, and platinum group) - 4%;
- (iv) gem - 1%; and
- (v) in the case of other minerals, including building materials, salt, all minerals within the industrial minerals group - 3% (Section 87).

(g) Although some writers have asserted that the Act imposes an obligation for mining companies to list on the Dar es Salaam Stock Exchange, whilst the Act does refer to the Minister having the right to make regulations relating to a public offering, provisions for doing so are not contained within the Act itself. (Section 109).

(h) The Act requires a greater degree of disclosure by the holders of mineral rights in respect of reports, records and general information. (Section 100 and Second Schedule).

Arguably the changes to be introduced by the Act will consequentially affect Tanzanian's ability to attract foreign direct investment and indeed some of the provisions may reduce its competitiveness. However, if sector participants take a wholistic view as to the mining investment parameters (including by reference to not only royalties levied but also income tax rates, withholding tax rates, capital deduction allowances, the right to carry forward losses and import/custom duties) as against Tanzania's regional competitors, Tanzania is relatively comparable in its investment regime.

## Financial and corporate

Recommended firms	
<b>Tier 1</b>	Ako Law Mkono & Co
<b>Tier 2</b>	Adept Chambers Ishengoma Karume Masha & Magai
<b>Tier 3</b>	FK Law Chambers Rex Attorneys

It might be one of Africa's fastest growing economies, but Tanzania is still underperforming in the foreign investment stakes. Corporate lawyers report growing interest from clients looking to enter the local market, and due diligence for proposed inbound investment has kept them busy, but transactional work will not pick up until these plans materialise.

The only area where this has happened is the financial sector. The cash economy sparked Barclays Bank's aggressive expansion, South Africa's First National Bank's looking to set up operations, plus interest from I&M Bank and a number of other Kenyan institutions. For Tanzania's northern neighbour, these investments are seen as a natural expansion of their business, and one that is spurred on by the East African Community (EAC). Since July 2010 the EAC has permitted the free flow of goods, services and labour across the borders of its five constituent countries. The market is divided as to whether this will overwhelm Tanzania's fragile economy, or enhance business opportunities and capital market activity. Either way, lawyers predict it

will create mandates: "Companies have more confidence in cross border transactions now. Confidence has increased and the number is on the rise," says one.

The year's most notable transaction was CRDB Bank's listing on the Dar es Salaam Stock Exchange (DSE). Raising TSh18.8 billion (€9.39 million), the June 2009 IPO was the DSE's eleventh and coincides with the government's push to get the public investing in stocks and treasury bonds.

Deals aside, the legal market shakeup is worthy of mention again this year. The small but highly regarded practices of Mustafa Tharoo and Lucy Sondo have joined forces to form Adept Chambers, and well known consultant Adam Lovett only stayed at Ako Law for one year before moving to another new firm in CRB Africa Legal.

### Ako Law

Ako Law lived up to its potential over the past 12 months and as a result climbs into the top tier. Just 18 months after opening, the boutique firm has shaken off its breakaway tag and established itself as a top firm in its own right. One peer says: "The feeling around town is that there is a very good new law firm in play," adding: "They are a small outfit but they have proved themselves as a firm to be reckoned with".

Its combination of local practitioners and foreign lawyers taught by the world's leading firms puts it at the forefront of inbound investment work. This edge is embodied in partner Krista Bates who clients credit with improving the transaction standards: "She is extremely competent and has detailed knowledge of corporate transactions given her background in London law firms". Another says: "She is everything you expect from a lawyer and on top of that, things you don't usually expect. She's very responsive, always with a quick turnaround time, and she's practical and understands from a commercial perspective. She helps me access the risks and advise how to mitigate them in a way that fits with local custom."

Notable international clients include Finnish financier Finnfund, which the firm helped invest in an African timber business, and emerging markets investment group African Century. Ako Law is known for its energy and infrastructure work and recently advised local electricity generator Songas on its proposed extension of transport facilities between its plants.

Ako Law's international association switched from Shadbolt & Co to Clyde & Co earlier this year when the global firms merged parts of their practice.

### Leading lawyers

Krista Bates  
Kibuta Ongwamuhana

### Mkono & Co

Although Mkono & Co is still known as the biggest and one of the best firms, peers note it has slipped a little from its pedestal recently. Other lawyers say the firm is less visible on transactions, no longer has a hold over the best instructions, and has suffered from some departures, the most recent being banking partner Clark Arrington. But neither competitors nor clients dispute that Mkono & Co is still a tier one firm.

Recently the firm was mandated to advise on some big-ticket international clients on their proposed investments in the country. In May 2010 it advised HSBC Bank on its possible acquisition of a stake in a local company, and last August it advised Hilton Hotels on its plan to enter the market. It is also working with telecom infrastructure company Eaton Telecoms which is looking to take over the assets of one of the country's largest mobile operators.

Managing partner Nimrod Mkono is still considered a leading lawyer but peers note he has taken a back seat recently, with fellow partner Wilbert Kapinga now considered the firm's driving force. Kapinga is described by one competitor as "astute, capable and a good guy to work with on the other side."

### Leading lawyers

Wilbert Kapinga  
Nimrod Mkono

### Adept Chambers

Adept Chambers is one of the new names to enter Tanzania's ever-changing legal market. The firm opened at the start of 2010 upon the merger of Abenry & Company and Ringo & Associates. Adept Chambers' predecessors were seen as good but small practices, and clients say the merger has been seamless as well as timely: "We didn't even notice," says one client. "The only thing we did notice is the added skill set. This has come at the right time for the market and the client."

Clients say Mustafa Tharoo has established himself as the firm's driving force, noting his abilities as a general corporate counsel: "He can think on his feet and has a good commercial mind. He always advises in the context of the complexity of my business," says one.

Adept Chambers' short work history shows it is well connected in banking circles. Highlights include helping CRDB Bank list on the Dar es Salaam Stock Exchange and representing a syndicate of four banks on a

\$24 million term loan facility granted to hotel management group Hodi. The firm was also involved in the year's only banking takeover, advising the shareholders of CF Union Bank on the bank's \$22 million sale to a consortium of international banks and funds.

Another notable mandate had the firm work on a \$18 million credit facility granted by International Finance Corporation and Norfund. This required the team to review and draft the loan documents, plus perfect the security contracts and comment on security sharing agreements.

#### Leading lawyers

Mustafa Tharoo

#### Other ranked firms

Now that the dust has settled after Charles Rwechungura's departure from **Rex Attorneys**, the market is comfortable commenting on the new-look firm. And the verdict is that it's still a strong competitor. The firm seems determined to remain an independent practice focussed on Africa, but other lawyers see it as a prime target for international firms looking for local connections: "I wouldn't be surprised if a London firm soon tries to make a link with them," says one peer.

In addition to leading lawyer Eve Hawa Sinare, Alex Nguluma is another well respected partner.

*Leading lawyers:* Eve Hawa Sinare

#### Other notable firms

**CRB Africa Legal** is the breakaway firm established by former Rex Attorneys partner Charles Rwechungura. Initial competitor feedback is that it's too early to tell how the firm will perform, but clients have been happy with its work. "They have in-depth knowledge of local law and economic conditions," says one South African client. "They go beyond giving straightforward legal advice which is helpful for an international client."

In the recent market reshuffle, CRB Africa Legal picked up some noteworthy corporate talent in the form of Nicholas Zervos from Ringo & Associates and Adam Lovett from Ako Law, and partner Cyril Pasha joined in the middle of 2010.

The firm works closely with leading South African firm Deney's Reitz, via its Africa specialised division Africa Legal, which has boosted its cross-border capabilities and assisted it in some recent mandates.

For example the firm is helping South Africa's First National Bank enter the local market, assisting with its banking licence application, regulatory requirements, the structuring of the entity and proposed prod-

uct disclosure statements. It is also local counsel for East African Breweries in its tug-of-war with SABMiller over the ownership of Tanzania Breweries. This mandate required the firm to conduct due diligence on the target and draft all transaction documents, including those relating to loans to be assigned as part of the sale.

Lawyers say **FB Attorneys** is visible only as a litigation practice, but corporate clients believe it can compete with the top tier firms in corporate work: "The service level for Tanzania is extremely good. They work well under pressure. Quite often we want things done yesterday and they are very efficient and get things processed very quickly."

Recently the firm advised property group Cosmos on the \$40 million financing of its newest building in Tanzania. In October 2009 it acted for Sharaf Logistics on its \$40 million vehicle depot in the central business district, and in the same month worked on the project financing of Tanzania's largest low-cost housing project.

The face of the firm is Fayaz Bhojani, described by one client as "not aggressive but always challenging the other side." The client adds: "He's a real advocate, he always has sound arguments."