



# Tanzania

## Overview of legal system

Tanzania is a presidential democracy in which the President of Tanzania is both the head of state and the head of the government. As a result of its British colonial past, Tanzania's legal system is largely derived from English common law.

The primary source of law in Tanzania is the Constitution of Tanzania which was enacted in 1977 and still has effect today. Statute and case law are the other major sources of law in Tanzania. Additionally the mining sector is also subject to aspects of both received and international law. Tanzania's judicial system operates in four tiers with the Court of Appeal at the top of the hierarchy.

## Overview of laws applicable to mining activity

The Mining Act Number 14 of 2010 ("**Mining Act**"), as amended on 2 December 2022 pursuant to the Written Laws (Miscellaneous Amendment) (No.3) Act is the principal piece of legislation that governs the mining industry in Tanzania. A number of regulations support this act including, but not limited to, The Mining (Mineral Rights) Regulation 2018, The Mining (State Participation) Regulations 2022, The Mining (Dispute Resolutions) Regulation and The Mining (Safe Working and Occupational Health) Regulation.

### Licences

Indigenous Tanzanian Companies are given preference when mining licences are granted. An Indigenous Tanzanian Company shall be given priority over a foreign company if the two are competing for the same licence.

An "Indigenous Tanzanian Company" means a company incorporated under the Companies Act of Tanzania where at least 20% of the company is owned by Tanzanian citizens, Tanzanian citizens hold at least 80% of the executive and senior management positions and Tanzanians occupy 100% of non-managerial and other positions.

### Prospecting Licence

An application for a Prospecting Licence must be made to the Tanzanian Mining Commission. Typically a Prospecting Licence is issued for a period of up to four years with the option to extend for a further three years on a first renewal application, a further two years on a second renewal application and a further year, if the Prospecting Licence is still required for the completion of a feasibility study. Where the Prospecting Licence relates to gemstones, other than kimberlitic diamonds, or where an application relates to building materials, a Prospecting Licence will not be issued for any more than one year and this licence will not be subject to future renewal.

An application for a Prospecting Licence shall state the type of mineral applied for as categorised under s28 of the Mining Act.

The holder of a Prospecting Licence will have the exclusive right to carry out prospecting operations in respect of the specified area of land and for the specified mineral. Operations must begin within three months of the issuance of the licence.

### Retention Licence

The Mining (Mineral Rights) Regulations, 2018 cancelled all Retention Licences then in effect. All Retention Licences were cancelled and no longer had legal effect. Areas previously covered by a Retention Licence reverted back to the ownership of the Tanzanian government.

### Primary Mining Licence

An application for a Primary Mining Licence must be made to the Mining Commission. A Primary Mining Licence is initially for a period of seven years (which is renewable) and can be converted into a full Mining Licence by filing form No. MRF5 with the Mining Commission. A Primary Mining Licence is only granted to citizens of Tanzania or companies exclusively composed of Tanzanians. All Primary Mining Licence holders are required to commence mining operations within a period of six months, or such other period as may be determined by the licencing authority.

### Mining Licence

An application for a Mining Licence must be made to the Mining Commission. A Mining Licence confers upon the holder an exclusive right to carry out mining operations in respect of the specified land and for the specified mineral. A Mining Licence is for medium scale mining operations defined as operations with a capital investment of between 100,000 US dollars and 100 million US dollars, or its equivalent in Tanzanian Shillings.

A Mining Licence will be issued for a maximum period of 10 years, with the possibility to renew no later than six months prior to the expiry of the licence for an additional 10 years.

### Special Mining Licences

In order to obtain a special mining licence an application must be made to the Mining Commission. A Special Mining Licence will be issued for the indicated and expected life of the mining operation or, alternatively, the period of time requested by the applicant. An application to extend this can be made if the requested period of time does not mirror the life of the project.

A Special Mining Licence affords the holder an exclusive right to carry out mining operations in respect of a specified area of land and a the specified mineral. Only large scale mining operations will need a Special Mining Licence. A large scale operation is defined as one that possesses a capital investment of 100 million US dollars or more. Unless the Minister grants a waiver, the holder of such a licence is required to have a local shareholding by way of a public offering at least 30% of its shares through the Dar es Salaam stock exchange. A local shareholding would mean in the case of a natural person, a Tanzanian citizen and in terms of a body corporate, a company where Tanzanian citizens hold at least 50% of the shares in that company.

### Primary Processing Licence

Any person who intends to conduct ball mill operations or sluicing needs to apply for a Primary Processing Licence. A Primary Processing Licence will be valid for one year and may be renewable

## Restrictions on foreign ownership

The Mining (Local Content) Regulations 2018, as supplemented by the Mining (State Participation) Regulations 2022 stipulate that a mining licence holder or special mining licence holder in Tanzania must give to the Tanzanian government a non-dilutable equity interest of at least 16% of the free carried interest in the capital of the company, which could increase up to 50% depending on the amount of tax incentives granted to the mining company. Additionally at least 5% of a company engaged in mining in Tanzania must be owned by an "Indigenous Tanzanian Company". There is a \$5million fine for non-compliance with these restrictions on foreign ownership.

### Real Property

Pursuant to the Land Act 1999 all land in Tanzania is public land and is therefore vested in the President of Tanzania. The President can subsequently grant rights of occupancy for a period not exceeding 99 years. A person who is not a Tanzanian citizen, or a private company in which the majority of shareholders are not Tanzanian citizens, can only hold land for the purpose of investment through a derivative right. This can be circumvented however by partnering with a Tanzanian lease holder.

## Local content

The Mining (Local Content) Regulations 2018 established a Local Content Committee which has powers to set minimum standards of local content requirements, monitor and audit compliance of local content requirements and prepare guidelines to include targets and format for local content plans.

The Tanzanian government is engaged in workforce localisation programmes through the Ministry of Labour and Employment. More specifically the holder of either a Special Mining Licence or a Mining Licence has an obligation to employ and train Tanzanian citizens. A succession plan also needs to be put in place with regards to expatriate employees.

In the case of a Special Mining Licence, the Labour Commissioner may intervene if the foreign employee being hired possesses skills that are deemed to be readily available in Tanzania. The holder of a Special Mining Licence has an obligation to allow a certain level of local shareholder participation. With regards to local goods a margin of preference must be placed on goods manufactured, extracted or grown in Tanzania. A preference must also be given to Tanzanian service companies.

## Available structures for borrowing vehicles

There are two options for establishing a presence in Tanzania available to foreign companies. They can either incorporate a subsidiary in Tanzania or, alternatively, incorporate as a branch entity.

### Limited Liability Company

In order to incorporate a limited liability entity in Tanzania there is a minimum requirement for two shareholders, two directors and a company secretary. Given that the liability is limited this tends to be the most common entity type for foreign companies. These are however heavily regulated by statute.

### Public Limited Company

Any private company can re-register as a public company, but a minimum of seven members are required. Paid up share capital requirements differ for listings on the Main Investment Market (US\$500,000) which also requires at least 25% of shares to be in public ownership.

### Branch companies

Once a foreign company has been properly registered it enjoys all of the same rights as a company fully incorporated in Tanzania. They also have the same obligations however, such as the requirement to file annual accounts each year. In order to be registered as a Branch company, a company must have a Tanzanian office and also have authorised a Tanzanian resident to act on its behalf.

## Government free/earned carried interest in projects

The Tanzanian government enjoys a free carried interest in all mining projects. The Mining (Local Content) Regulations 2018 supplemented by the Mining (State Participation) Regulations 2022 stipulate that a mining licence holder or special mining licence holder in Tanzania must give to the Tanzanian government a non-dilutable equity interest of at least 16% of the free carried interest in the capital of the company, which could increase up to 50% depending on the amount of tax incentives granted to the mining company.

The mining company must enter into a joint venture arrangement with the Tanzanian government to be governed by a framework agreement in the form set out in the Mining (State Participation) Regulations 2022

## Taxation of mining projects (including royalties)

In Tanzania corporation tax of 30% is levied on the total taxable income of the company. Companies that list more than 30% of their shares on the Dar es Salaam stock exchange benefit from a concessionary rate of 25% for the first three years.

VAT is 18% but there is a 0% VAT rate for import duties on capital goods during exploration and mine development under the East African Customs Management Act. This can however rise to 5% after the first anniversary of the commercial operation. Depreciation allowance applies at a rate of 100% on capital expenditure for exploration and development. Furthermore with regards ring fencing: losses in one mining licence area may only be offset against profits in that same mining licence area.

The payment of royalties to the government is calculated by the gross value of the minerals produced. This will differ depending on the type of mineral but is typically around 5%.

## Withholding tax on interest and dividends. Possible structures to mitigate withholding on interest

Mining companies are subject to a special fiscal regime when it comes to taxation. As a result withholding tax is levied at 10% on dividends whilst this rate is pegged at 15% on interest. Tanzania has double tax treaty rates in place with many countries including Canada, Denmark, Finland, India, Zambia, Sweden and Italy. The double tax treaty rates only apply if they are lower than the domestic rates. As an example withholding tax is levied at 0% on dividends, interest and royalties with Zambia.

## F/X issues

Tanzania enjoys a highly liberalised foreign exchange regime. There are no restrictions on the importation of funds to help finance mining activities. Both Tanzanian residents and foreign nationals are permitted to hold any amount of foreign currency in Tanzania and to open and maintain foreign currency accounts. A few restrictions do still apply however. The restrictions are outlined in the Foreign Exchange Act, 1992, regulations issued under this Act and circulars issued from time to time by the Bank of Tanzania.

## Hedging

There is no ISDA opinion available which would address the enforceability of the termination, bilateral close-out netting and multibranch netting provisions of the 1992 and 2002 ISDA Master Agreements. This does not mean that such provisions would not be enforceable and if necessary a legal opinion from a local counsel in Tanzania can be sought to confirm this. Alternatively (or if such enforceability cannot be confirmed) a back-to-back hedging structure can be put in place with a shareholder of a Tanzanian company or another group company located in a jurisdiction where the enforceability of such provisions has been confirmed in an ISDA opinion.

## Nature of available security

In Tanzania security can be taken over a wide range of asset classes including shares, bank accounts, debt securities, real property and receivables. Perfection of security is typically completed through registering the security in question with the registrar of companies. The intricacies of creating, perfecting and maintaining the security is contingent upon the asset class. Security can be enforced through the courts and the local courts who have typically recognised contracts which are governed by law of a different jurisdiction.

## Cost of granting security

A number of fees are typically involved with granting security. These include a nominal registration fee and nominal stamp duty that is payable as a one off fee.

---

Mayer Brown is a distinctively global law firm, uniquely positioned to advise the world's leading companies and financial institutions on their most complex deals and disputes. With extensive reach across four continents, we are the only integrated law firm in the world with approximately 200 lawyers in each of the world's three largest financial centers—New York, London and Hong Kong—the backbone of the global economy. We have deep experience in high-stakes litigation and complex transactions across industry sectors, including our signature strength, the global financial services industry. Our diverse teams of lawyers are recognized by our clients as strategic partners with deep commercial instincts and a commitment to creatively anticipating their needs and delivering excellence in everything we do. Our “one-firm” culture—seamless and integrated across all practices and regions—ensures that our clients receive the best of our knowledge and experience.

Please visit [mayerbrown.com](https://www.mayerbrown.com) for comprehensive contact information for all Mayer Brown offices.

Mayer Brown is a global services provider comprising associated legal practices that are separate entities, including Mayer Brown LLP (Illinois, USA), Mayer Brown International LLP (England & Wales), Mayer Brown (a Hong Kong partnership) and Tauil & Chequer Advogados (a Brazilian law partnership) and non-legal service providers, which provide consultancy services (collectively, the “Mayer Brown Practices”). The Mayer Brown Practices are established in various jurisdictions and may be a legal person or a partnership. PK Wong & Nair LLC (“PKWN”) is the constituent Singapore law practice of our licensed joint law venture in Singapore, Mayer Brown PK Wong & Nair Pte. Ltd. Details of the individual Mayer Brown Practices and PKWN can be found in the Legal Notices section of our website. “Mayer Brown” and the Mayer Brown logo are the trademarks of Mayer Brown.

© 2023 Mayer Brown. All rights reserved.

Attorney Advertising. Prior results do not guarantee a similar outcome.

[Americas](#) | [Asia](#) | [Europe](#) | [Middle East](#)

[mayerbrown.com](https://www.mayerbrown.com)