



Zambia

Overview of the legal system

The Republic of Zambia declared independence from Britain on 24 October 1964 adopting a legal system rooted in the one provided by British colonial rule. Zambia draws its laws from a variety of different sources, these include Common law, judicial precedent, legislation passed by an elected parliament, customary law and the Constitution of Zambia which is the supreme law of the land.

Overview of laws applicable to mining activity

The Mines and Minerals Development Act No.11 of 2015 of the Laws of Zambia (MMDA) is the principle legal framework for mining operations in Zambia. Among other aspects the MMDA outlines the law with regards to mining licences, mining rights, health and safety as well as taxes and royalties.

The MMDA is supplemented by additional legislation such as the Mine Acquisition (Special Provisions) Act and chapters 218 and 219 of the Laws of Zambia.

Mineral Processing Licence

Reconnaissance activity is prohibited by section 12 of the MMDA without mining rights or a Mineral Processing Licence. These are issued by the Director of Mining Cadastre and under s18(2) MMDA provide the holder with a period of 180 days from the granting of the Licence to carry out reconnaissance over the land being considered for mining activities. Also a Pegging Certificate must be registered at the Mining Cadastre Office within this timeframe.

Exploration Licence

Subject to an application being accepted by the Mining Committee, under the MMDA an exploration licence is issued for an initial period of 4 years. Afterwards, the licence may be renewed for two cycles of no more than three years each, culminating in a maximum grant of 10 years. The holder of an exploration licence is required to relinquish 50% of the exploration area at each renewal. Once the licence is issued, the holder will have exclusive rights to carry on exploration in the specified area for the minerals listed in the licence. An exploration licence does not confer an automatic right to a mining licence.

Mining Licence

Any individual intending to carry out any artisanal, small-scale or large-scale mining activities must apply for a non-renewable mining licence. Artisanal and small-scale mining may only be undertaken by Zambian citizens, co-operatives wholly composed of citizens and citizen-owned, citizen-influenced or citizen-empowered companies.

The holder of an exploration licence may apply for a mining licence no later than 6 months before the expiry of the exploration licence. An artisanal mining licence is valid for 2 years; a small-scale mining licence is valid for 10 years; and a large-scale mining licence is valid for 25 years.

Restrictions on foreign ownership

Foreign ownership of mining projects in Zambia is restricted. As mentioned above artisanal and small-scale mining may only be undertaken by Zambian citizens or companies that are citizen owned. The MMDA defines citizen owned as a company where at least 50.1% of the companies equity is owned by Zambian citizens and one in which significant control of the management of the company is exercised by Zambian citizens. There are no restrictions on foreign ownership for large scale mining projects.

Real Property

Despite being theoretically well defined, the enforcement of property and contractual rights in Zambia is relatively weak. The Zambian Development Agency Act of 2006 (ZDA Act) seeks to ensure that investors' property rights are respected. The ZDA permits property to be held by natural and legal individuals and also facilitates the acquisition and disposition of all property rights.

Government Expropriation

The President of Zambia does have the power to compulsorily acquire, under the Lands (Compulsory Acquisition) Act, any real property (land), interest or personal property for the public interest. Appropriation is subject to the grant of fair and reasonable compensation.

Local Content

The Zambian government encourages investors to use domestic content and products in its goods or technology if available. Unlike other African jurisdictions however there is no policy of forced localization and investors are permitted a choice as to the goods and services they use. This policy is currently under review however and companies may need, moving forward, to be prepared to demonstrate a commitment to supporting the development of local content.

Available structures for borrowing vehicles

Private Limited Company

- Private Company Limited by Shares;

A private company limited by shares is to have no more than 50 members. Shares in such companies are to be freely transferable unless all the shareholders have agreed in writing to the inclusion of a provision contrary to this in the company's articles. The Companies Act 1994 specifies that the minimum capital requirement for private companies is 50,000 kwacha (approximately £6.28) subject to either a larger or smaller amount being prescribed.

- Private Company Limited by Guarantee

A relatively unattractive investment vehicle seeing as these companies do not have a share capital and are not permitted to carry on business for the purpose of making profits for their members.

At the time of formation, each member must sign a declaration of guarantee which specifies the amount the member undertakes to contribute were the company to be wound up. The member's liabilities are limited to the amount so guaranteed.

- Unlimited Company

Unlimited companies are also unattractive investment vehicles given that their shareholders have unlimited liability for the company's debts.

Public Limited Company (PLC)

- Public Limited Company

A limited market is available in Zambia for the public trading of shares. Shares can be publicly traded on the Lusaka Securities Exchange (LuSE). Kansanshi Mining PLC which is a subsidiary of First Quantum Minerals Ltd is traded on the LuSE and helps to fund the largest copper mine in Africa at Kansanshi. Under the Zambian Companies Act 2004, shares in Plcs do not have to be fully paid up. The minimum allotted share capital for a Plc in Zambia is one million kwacha (approximately £125.66) subject to either a larger or smaller amount being prescribed.

Government free/earned carried interest in projects.

The Zambian government does not possess free carry rights or the option to acquire stakeholdings in a particular venture. In certain situations, however, where the mine was previously owned by the Zambian government and subsequently sold to foreign investors the government (per s27 of the Zambian Development Agency Act No.11 of 2006) may maintain a minority shareholding known as a 'golden share'. These golden shares give the government the ability to intervene in ventures where the controlling foreign company acts in a manner deemed detrimental to the national interests of Zambia.

Taxation of mining projects (including royalties)

Companies carrying out mining ventures in Zambia are charged corporate income tax at a rate of 30% under the Income Tax Act. Royalties are payable at a rate of 5% on base metals, energy and industrial minerals and 6% for gemstones and precious metals. The royalty rate for copper is based on a sliding scale that moves between 4% and 6% depending on the price of copper at any particular time.

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

There is a 15% withholding tax on dividends in Zambia. However, this rate drops to 0% if the dividends are paid from a mining company or a company listed on the Lusaka Stock Exchange. There is also a 15% withholding tax levied on interest. The Zambian government charges a 15% withholding tax on management or consulting fees to Zambian residents, and a 20% tax for non-Zambian residents. However, the rate on management/consulting fees to non-Zambian residents will be 15% if paid by a mining company to shareholders. Royalties for residents are taxed at a rate of 15%. A 20% charge is levied on royalties for non-residents.

FX Issues

The Bank of Zambia (BoZ) is responsible for the management of Zambia's foreign exchange reserves. The BoZ participates in open market operations with the aims of building up capital reserves and smoothing exchange rate volatility. As the kwacha continues to slowly recover from its 2015 low the BoZ continues to play a very active role in how kwacha is handled.

Despite this active role both foreign and local currency can easily be held in offshore accounts. Amounts over USD 5,000, carried in or out in cash or traveller's checks, must be declared. Commercial banks and bureau de change operators restrict issuance of over-the-counter cash to \$5,000 per transaction.

Hedging

There is no ISDA opinion available which addresses the enforceability of either the 1992 or the 2002 ISDA Master Agreements in Zambia. Such provisions may still be enforceable, however this would be dependent upon the ruling of the Zambian courts in each individual scenario. We would recommend seeking the advice of local counsel in Zambia before entering into one of these agreements.

Nature of available security

Provided the borrower has an interest in the asset over which security is being taken there are essentially no limitations on the types of asset over which a borrower can grant security.

Security can be taken under Zambian law of both tangible and intangible moveable assets. The Moveable Property (Security Interest) Act, No.3 of 2016 is the main authority for this and states that interests can either be created by a formal security agreement between the parties, through any other written law, or if required via a court order.

Securities over moveable property can be perfected for an initial five year period, which can then be renewed for a further five years at any time prior to the expiry of the first five years. Priority in the case of competing perfected security interests is given to the interest that is successfully registered first. In the case of competing unperfected security interests, priority is determined by the date of their creation.

Cost of granting security

Aside from nominal registration fees (typically capped at USD 400 when registering a security at the relevant public registry) there are no taxes or fees payable on the granting of security in Zambia. Stamp duty is no longer payable following the repeal of the Stamp Duty Act.

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