



# Zimbabwe

## Overview of the legal system

Zimbabwe's legal system is largely based on a fusion of Roman Dutch common law and English law. As a former British colony, most of Zimbabwe's current company and financial statutory laws are modelled on the English law that was in force prior to Zimbabwe attaining independence in April 1980. Zimbabwe has a codified written constitution which is the supreme law of the land to which all of the country's other laws are subservient. Such Constitution provides for property rights which include the protection against compulsory deprivation of property without adequate and prompt compensation.

## Overview of laws applicable to mining activity

The principal piece of legislation governing mining activities in Zimbabwe is the Mines and Minerals Act of 1961 [Chapter 21:05] and the various regulations made thereunder pertaining to management of mining sites, health, sanitation, safety, milling and other mining-related activities. The Mines and Minerals Act is administered by the President as the authority in whom ownership of the country's mineral resources lies, the Minister of Mines and Mining Development with the assistance of the permanent Secretary of the ministry, the Mining Affairs Board and the Mining Commissioners for each of the ten provinces in the country. Licenses to conduct prospecting and mining activities are issued in accordance with the relevant provisions in the Mines and Minerals Act.

### Prospecting Licence

An ordinary prospecting license or licenses may be issued to any person who is a permanent resident of Zimbabwe by a mining commissioner upon payment of the prescribed fee. The rights conferred by a prospecting license include the right to search for minerals and to peg claims for precious metals or precious stones but do not include the right to carry out drilling or excavation work whether on the surface or underground. A holder of a prospecting license may drill and excavate on the area specified in the prospecting license on an exclusive basis for a limited period of 30 days at a time upon notifying the relevant mining commissioner of intent to do so and meeting the conditions stated in a prescribed form called a Prospecting Notice. A prospecting license is valid for 2 years subject to renewal on application to the relevant mining commissioner. Transfers or cessions of a prospecting are prohibited.

### Exclusive Prospecting Concessions

In terms of section 87 of the Mines and Minerals Act, any person, whether individual or a juristic person and whether a permanent resident of Zimbabwe or otherwise, may submit an application to the Mining Affairs Board for an exclusive prospecting concession. The Mining Affairs Board will consider the applicant's financial capacity and assess whether it would not be against national interest to grant the concession. Ultimately, it is up to the President of Zimbabwe to refuse or grant the concession on such terms and conditions as he may set.

The rights conferred by the concession include exclusivity to carry on prospecting activities over a reserved area of up to 65 thousand hectares depending on the minerals being prospected for, the right to carry out drilling and excavation works for the duration of the concession and the right to peg and register mining locations. However, just like the ordinary prospecting license, prospecting activities under an exclusive prospecting concession ought to be conducted with an approved prospector being in charge of the operations. Transfers or cessions of an exclusive prospecting concessions may be done subject to the prior consent of the Minister of and to terms and conditions as the Mining Affairs Board may recommend. Exclusive prospective concessions are valid for an initial period of 3 years subject to extension for no more than 3 years in total.

### Mining Lease

A holder of a registered mining location may apply to a mining commissioner for a mining lease over a defined area within the registered mining location stating the minerals intended to be mined. Applications for mining leases are determined by the Board of Mining Affairs which considers factors such as the financial capacity of the applicant and the prospects of mining operations being carried out on a substantial scale for a considerable period. The Board of Mining Affairs has the discretion to grant the mining lease on such terms and conditions as it may deem desirable including the tenure of the mining lease. The rights conferred by a mining lease include the exclusive right to mine the mineral deposits stated in the mining lease and the exclusive right to mine any additional minerals discovered with the area covered by the lease with the exception of coal, oil or gas. Mining leases may be transferred to a person approved by the Board of Mining Affairs.

### Special Mining Lease

A holder of one or more contiguous registered mining locations who intends to invest no less than USD100million to develop a mine whose output will principally be for exports may apply to a mining commissioner for a special mining lease. Initial consideration of the application will be carried out by the Board of Mining Affairs who will consider the feasibility studies, financing plan, marketing plan, procurement plan and other information submitted by the applicant before making recommendations to the Minister of Mines and Mining Development on the application. The Minister will consider the recommendations of the Board before forwarding to the President of Zimbabwe who will then refuse or grant the application in part or in whole and on such terms and conditions as he may fix. The tenure of a special mining lease may run for up to 25 years subject to renewal for further period of not more than 10 years depending on the life of mine.

## Special Grants

The Secretary of the Ministry of Mines and Mining Development may issue special grants to any person or entity whether a permanent resident of Zimbabwe or not to conduct prospecting or mining activities upon payment of the prescribed fee and meeting the terms and conditions as may be set by the Minister of Mines and Mining Development. Factors such as financial capacity, scale of operations and national interest are amongst the considerations for issuance of a special grant. The term of the special grants will be determined by the Minister. In addition, the mining of coal, oil, gas and any nuclear energy sources may only be done under a special grant approved by the President of Zimbabwe on specified terms and conditions that include term of the grant, payment of royalties and payment of annual fees by the holder of the grant. A special grant cannot be transferred except with the authorization of the President of Zimbabwe.

## Restrictions on foreign ownership

Following the amendments to the country's Indigenization and Economic Empowerment Act of 2007 [Chapter 14:07] at the beginning of 2018, there are no longer any restrictions on the extent of foreign ownership in companies carrying out mining activities with the exception of diamond and platinum mining where the foreign ownership threshold is set at a maximum of 49% shareholding. However, the current diamond policy adopted by the Zimbabwean government at the end of 2018 has scope for allowing foreign shareholders to hold more than 49% shareholding subject to satisfactory submissions being made to justify increased shareholding. Whilst there are no specified guidelines regarding the nature of those submissions, the extent of local beneficiation and national interest have been given as examples of the submissions that may be considered.

## Ownership of Real Property

Zimbabwean residents and non-resident presently have the same right to acquire land that is capable of private ownership in Zimbabwe. There are currently no legal provisions that restrict foreign ownership of land in Zimbabwe. There is land such as communal land or certain agricultural land falling under state ownership where both Zimbabwean residents and non-residents cannot own but may only utilize under leases granted by the Ministry of Lands or the relevant rural district authority under whose jurisdiction some of such land may fall.

## Local content

The regulatory framework governing mining in Zimbabwe does not have specific local content requirements. However, the extent of local procurement, local retention and employment of local labour are some of the factors that are considered when granting mining rights to foreign investors. In addition, the national interest consideration is also wide enough to encompass the extent of proposed local content in determining applications for mining rights.

## Available structures for borrowing vehicles

The Mines and Minerals Act permits any juristic person or body corporate such as a company, a trust or a cooperative to acquire mining rights. There are no specific requirements of the structure that a borrowing vehicle ought to take in Zimbabwe. In practice, for large scale projects, the most commonly used borrowing vehicle is that of a private company limited by shares and incorporated as a local company in terms of the Companies Act of 1951[Chapter 24:03]. Private companies in Zimbabwe require at least one director who resides in Zimbabwe and the number of shareholders in that company are limited to 50. Another form of borrowing vehicle that is utilized on mining projects is a branch of a foreign company. Branches of foreign companies are required to be registered with the Zimbabwean Companies Registry before they may commence operations. Any external borrowings require prior exchange control approval from the Reserve Bank of Zimbabwe. Applications for exchange control approval are submitted through the commercial bankers of the borrowing vehicle.

## Government free/earned carried interest in projects

There are presently no provisions for free carried interest in mining projects in Zimbabwe.

## Taxation of mining projects (including royalties)

Corporate income tax on mining operations is levied at 15% for holders of a special mining lease or special grant and 25% for other mining title holders. However, holders of special mining leases or special grants may be charged additional profit tax based on level of profitability. Mining operators licensed to operate in a special economic zone established under the Special Economic Zones Act of 2016 [Chapter 14:34] enjoy a 5 year tax holiday and then taxed at 15% thereafter. All capital expenditure on exploration, development, and operating incurred wholly and exclusively for mining operations is allowed in full. There is no restriction on carryover of tax losses and these can be carried forward for an indefinite period.

### Royalties

Royalties are charged based on the mineral as follows: diamonds – 15%; platinum and other precious stones – 10%; gold – 5%; other precious metals – 4%; industrial and base minerals – 2%; and coal – 1%. A full rebate of royalties is allowed in respect of all minerals used wholly within Zimbabwe.

## Withholding tax on interest and dividends

Subject to exemptions and reductions under bilateral tax treaties, mining companies with foreign shareholding are subject to the following withholding taxes: 15% withholding tax on fees for services of a technical, managerial, administrative or consultative nature paid to a non-resident; 15% withholding tax on remittances; and withholding tax on dividends at a rate of 15% for private companies and 10% for companies listed on the Zimbabwe Stock Exchange or not.

## FX Issues

The forex market in Zimbabwe is highly regulated through exchange control directives and guidelines that are issued from time to time by the Reserve Bank of Zimbabwe. Under Zimbabwe's exchange control rules and regulations, foreign currency remittances and offshore retention of foreign currency earned from mining activities is subject to monitoring and approval by the central bank. Zimbabwe does have a market-determined interbank exchange rate system which is unable to fully meet the needs of the market due to foreign currency shortages prevailing in the country.

## Hedging

There is no ISDA opinion available which would address the enforceability of the termination, bilateral close-out netting and multi-branch 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 Zimbabwe 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 Zimbabwean 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

The Mines and Minerals Act provides that the whole or part of a mining location may be used as security for loans granted to the mine operator. The security may be in the form of a notarial deed of hypothecation that is registered with the Permanent Secretary for the Ministry of Mines and Mineral Development. The deed of hypothecation must set out the amount being secured, any interest payable on such amount and the terms upon which the hypothecation is to be effected. Security over a mining location may also be taken in the form of an option agreement that is registered as a notarial deed with a mining commissioner.

## Cost of granting security

Stamp duty is payable on the registration of security over mining locations whether in the form of a deed of hypothecation or a deed relation to an option agreement. The stamp duty is charged at the rate of 0.4% of the loan amount to be secured.

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