

Briefing

Royalty payments for mining operations in Tanzania

In this month's mining briefing we consider the obligations upon mining companies to pay royalties to the Government of Tanzania (the **GOT**), the manner in which such royalties are calculated and the implications if royalties are not properly paid.

Obligation to pay royalties

The Mining Act 2010 (the **Act**) governs the mining industry in Tanzania.

The Act states that all mineral rights holders (**MRHs**) must pay royalties to the GOT at the following rates:

Mineral	Royalties payable (percentage of gross value)
Uranium	5
Gemstone and diamond	5
Metallic minerals such as copper, gold, silver and the platinum group of minerals	4
Gems	1
All other materials, including building materials, salt and all minerals within the industrial minerals group	3

"Gross value" for this purpose means the market value of minerals at the point of refining or sale or, in the case of consumption within Tanzania, at the point of delivery in Tanzania.

Any mineral samples used for the purposes of assay, analysis or other

technical examination will be exempt from any kind of royalty payment, provided that the market value of any sample does not exceed TSH 50,000.

If an MRH elects to sell his production to a licensed dealer, the licensed dealer will become liable to make the royalty payments to the GOT.

Should the GOT's minister responsible for mining (the **Minister**) conclude that the realised price for certain minerals does not correspond to the proper market value that should have been paid for such minerals, he may serve a notice on the MRH as such. For this purpose the proper market value will be deemed to be the price for the minerals if they had been sold on similar terms in a transaction at arms length between the seller and the buyer.

If a notice is served by the Minister suggesting that the proper price has not been paid for certain minerals the amount of the proper market value will need to be settled and agreed between the Minister and the MRH. If the Minister and MRH are unable to reach agreement, the matter will be referred for determination by an independent expert and settled in accordance with the Mining (Mineral Trading) Regulations 2010 (the **Trading Regulations**).

Further information

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The Trading Regulations provide that the Minister and the MRH must agree to appoint one independent expert from a recognised institution or an individual of international standing and the value determined by such independent expert shall be the market value of the minerals.

All licensed dealers must make payment to the GOT in lieu of royalties in circumstances where minerals are:

- exported;
- in the case of gold or any metallic minerals, sold to a smelter or refinery in Tanzania;
- in the case of gemstones, sold to a duly authorised lapidary or jewellery maker in Tanzania; or
- in the case of industrial minerals, energy minerals and building materials, sold to any user in Tanzania.

Provisional assessment of royalties

The Minister may conclude (for any reason) that it is impractical to assess the amount of any royalty or payment in lieu of royalty. In this situation the MRH (or licensed dealer, if applicable) will be liable to pay a provisional royalty.

Sanctions for failure to pay royalties

If an MRH fails to pay any royalty or provisional royalty on or before the due date, the Minister may serve an order prohibiting the disposal of any mineral from the relevant mining area or any other mineral area held by that MRH.

If an MRH fails to comply with an order given by the Minister prohibiting the disposal of minerals it will commit an offence and be liable upon conviction:

- as an individual, for a fine not exceeding TSH 10 million or imprisonment for a period of up to 2 years or both; or
- as a body corporate, for a fine not exceeding TSH 50 million.

It is also an offence for any person who knows that an order has been given prohibiting the sale of minerals to receive any such minerals. In this situation, the recipient of the minerals will be liable to either:

- forfeit the relevant minerals; or
- if the court is satisfied that the relevant minerals are no longer in the recipient's possession or control, to a fine equal to the estimated market value of the relevant minerals.

Other News

Mining contracts to be made public

Eliakim Maswi, the Permanent Secretary in the Ministry of Energy and Minerals has confirmed that mining and exploration contracts will now be made public.

Such publication will only apply to new contracts that are entered into and historical contracts will remain subject to all previously agreed confidentiality provisions.

This announcement was made to enable compliance with the demands of the International Extractive Industry Transparency Initiative (of which Tanzania is a member).

Mining Events in Tanzania

Tanzanian Explorers Club

The Tanzanian Explorers Club (TEC) is for people working in, or affiliated with, the Tanzanian mineral exploration sector and provides an informal environment to facilitate networking within the industry and information sharing between key participants in the Tanzanian mining sector. If you are interested in joining the next TEC meeting please email Clyde & Co's mining team to find out further details.