

## Update

# Flurry of new energy legislation proposed in Tanzania

Clyde & Co recently published an energy briefing exploring the new Petroleum Act 2015 Bill supplement related to upstream, midstream and downstream petroleum activities. However, that is not the only piece of legislation which is proposed to be enacted by the Tanzanian Government and which is relevant to those involved in the extractive and energy sectors.

Continuing on from our previous briefing, in this update we will outline the **Tanzania Extractive Industries (Transparency and Accountability) Act 2015**, the **Oil and Gas Revenues Act 2015** and the **Finance Act 2015** (which proposes amendments to the Tanzania Investment Act).

## Background

With the upcoming referendum on a new constitution for Tanzania and the spate of proposed legislation, it is clear that the Government is in the process of a radical overhaul of the regulatory and statutory regime governing the energy and extractive sectors in Tanzania. Alongside the proposed Petroleum Act 2015, the Government is proposing to enact the:

- Tanzania Extractive Industries (Transparency and Accountability) Act 2015
- Oil and Gas Revenues Act 2015, and
- Finance Act 2015

These Acts all remain in draft form so they may be amended before being passed and coming into force. We are reporting on the contents of the Acts, as published on 25 June 2015.

## **Tanzania Extractive Industries (Transparency and Accountability) Act 2015**

The Tanzania Extractive Industries (Transparency and Accountability) Act 2015 (**TEI Act**) covers those industries dealing with Tanzania's natural resources. We believe that the Act will apply to mining as well as to the oil and gas industries in Mainland Tanzania. The main purpose of the legislation is to enact a statutory regulatory framework, in which payments between private companies and Government entities can be tracked and reconciled with the hope of combatting bribery and corruption.

The TEI Act provides for the founding of the Tanzania Extractive Industries (Transparency and Accountability) Committee (the **Committee**), which shall be an independent government body with oversight responsibilities for promoting and enhancing transparency and accountability. The Committee shall be comprised of no more than sixteen members, with the Chairman appointed by the President. Of the remaining potential members: five are to be from the Government (one of whom shall be the Attorney General, or his representative), five from the private industry sectors and the final five from civil society organisations.

The overarching purpose of the Committee is to ensure that the “benefits of the extractive industry are verified, duly accounted for and prudently utilised for the benefit of the citizens of Tanzania”. In order to achieve this, the Committee shall, amongst other things:

- (a) Develop a framework for transparency in the reporting and disclosure by all extractive industry companies on revenues due or paid to the Government
- (b) Require from any company an accurate account of the money paid by and received from the company
- (c) Require companies to disclose accurate records of the cost of production, capital expenditures at every stage of investment, volumes of production and export data, and
- (d) Conduct investigations on material discrepancies between revenue payments and receipts

Every year the Committee will publish a threshold where every company which exceeds it shall be required to reconcile payments made to the Government against receipts held by the Government and provide a report (a **Reconciliation Report**) detailing this reconciliation to the Committee. Where a Reconciliation Report identifies a material discrepancy, the Committee shall within fourteen working days submit the report to the Controller and the Auditor General, who shall produce an audit report which shall in turn be provided to the Committee. Having received the report from the Controller and the Auditor General, the Committee shall discuss the matter with the Government before following the recommendations of the Controller and the Auditor General.

All companies working in extractive industries shall also be required to provide the Committee with an annual report detailing their corporate social responsibility and also submit to the Committee their capital expenditures at every stage of investment. Failure to do so will be a criminal offence.

Also as part of the transparency regime, the Committee shall require the publication of the following information:

- (a) All concessions, contracts and licenses relating to the extractive industries
- (b) The names of shareholders who own interests in the extractive industries, and
- (c) Reports into the implementation of Environmental Management Plans

Failure to comply with the provisions of the TEI Act and to fail to provide the Committee with the documents as requested is to be a criminal offence, with the punishment, upon conviction being either a fine of not less than ten million shillings in the case of an individual, or a fine of not less than one hundred and fifty million shillings in the case of corporate entity. This is a big point for all companies in the extractive and energy sectors. Will all Production Sharing Agreements and Mineral Development Agreements need to be published for example? How does this sit with the confidentiality provisions in these agreements? We are monitoring the application of these provisions.

### **The Oil and Gas Revenues Management Act, 2015**

The Oil and Gas Revenues Management Act, 2015 (**OGRM Act**) shall apply in both Mainland Tanzania and Zanzibar and intends to govern the management of revenues derived from the exploration, development and production of oil and gas activities.

The OGRM Act provides that taxes and levies shall continue to be assessed, collected and accounted for by the Tanzania Revenue Authority (**TRA**), whereas non-tax oil and gas revenues shall be collected and accounted for by the National Oil Company – this includes surface rentals and block fees. The Petroleum Upstream Regulatory Authority (if formed when the Petroleum Act 2015 is finalised) shall be responsible for auditing the cost recovery on the exploration, development, production and sale of oil and gas to determine government profit share and royalties.

Another significant development is the forming of the Oil and Gas Fund (the **Fund**), whose objectives shall be to ensure that:

- (a) Fiscal and macroeconomic stability is maintained
- (b) The financing of investment in oil and gas is guaranteed
- (c) Social and economic development is enhanced, and
- (d) Resources for future generations are safeguarded

The Fund shall receive its capital from Government royalties, Government profit share, the dividends on Government participation in oil and gas operations, corporate income tax on exploration, production and development of oil and gas resources, and the return on investments of the Fund.

The Fund’s strategy shall be decided by the Minister of Finance, advised by a Board consisting of five individuals appointed by the President. Where the Minister of Finance declines to follow the advice of the Board, the matter shall be determined by the President.

Management of the Fund shall be in accordance with the statutory fiscal rules, which are:

- (a) The financing of the Government budget
- (b) The financing of the Fund’s investments
- (c) Fiscal stabilisation, and
- (d) Saving for future generations

Amongst other reasons, these fiscal rules have been based upon the recognition that it is important to protect the Tanzanian economy against the inherent volatility of oil and gas revenue and the presence of uncertainty over the timing and size of that revenue.

### **The Finance Act, 2015**

The Finance Act, 2015 (**Finance Act**) proposes to make an important amendment to the Tanzania Investment Act, 1997 (**Investment Act**) changing the thresholds for when a project may be granted special strategic investment status.

Under the existing Investment Act, a business shall be regarded as a strategic or major investment if:

- (a) Where the company is locally owned, the investment capital is not less than the Tanzanian equivalent of USD 20,000,000, or
- (b) Where the company is wholly owned by a foreign investor, or is a joint venture, the minimum investment capital is not less than the Tanzanian equivalent of USD 50,000,000

However, the proposed Finance Act would amend this meaning that special strategic investment status may only be granted to projects if:

- (a) The project has a minimum investment capital of not less than the Tanzanian equivalent of USD 300,000,000
- (b) The investment capital transaction is undertaken through a registered Tanzanian financial or insurance institution
- (c) At least 1,500 'direct' local jobs are created, with a 'satisfactory' number of senior positions, and
- (d) The project has the capability to significantly generate foreign exchange earnings, to produce significant import substitution goods or to supply important facilities necessary for the development of the social, economic or financial sectors

Where a project is granted special strategic investment status, the Minister of Finance should propose to the National Investment Steering Committee 'additional specific fiscal incentives' for the project, which, if ordered, would be published in the Gazette.

It is clear therefore that the Government is wishing to limit those projects which could be granted special economic status to those projects which have the capability of generating substantial local direct economic development, rather than using a relatively arbitrary capital threshold. However, where such status is granted, the project may well be able to take advantage of unspecified fiscal incentives, although these could become public knowledge through the publication of the order in the Gazette.

### **Tanzanian Explorers Club**

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

### **Further information**

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