

Briefing

Mining development agreements

In this month's mining briefing we look at Mining Development Agreements (**MDAs**) and the role that they play in the mining sector in Tanzania.

Legal basis

The Mining Act 2010 (the **2010 Act**) governs the mining industry in Tanzania. The 2010 Act is supported by regulations which set out rules on specific matters, such as environmental protection and health and safety. The 2010 Act also provides that the Minister of Energy and Minerals (**Minister**) may make certain regulations.

Section 10 of the 2010 Act allows the Minister to enter into a MDA with a holder of, or an applicant for, a mineral right.

Background of MDAs

The concept of the MDA was first introduced in the Mining Act 1998 (the **1998 Act**) and has been further adapted by the 2010 Act.

Section 10 (3) of the 2010 Act provides that the Minister cannot enter into an MDA unless the following conditions have been satisfied:

- capital expenditure for the mining operations in the special mining area that will be the subject of the MDA must be at least USD 100 million; and
- the results of due diligence conducted on the status of the mineral rights holder must confirm the applicant's financial and technical capability to undertake the proposed project.

All MDAs will be valid for the shorter of:

- the duration of the special mining licence (i.e. the estimated life of the ore body indicated in the feasibility study report); or

- such period as the applicant may request.

The 2010 Act also provides that all MDAs must be reviewed every 5 years to determine the extent to which they have been complied with and that prior to entering into any MDA, the Minister must refer the proposal to the Mining Advisory Board for its advice.

The scope of MDAs

In determining the scope of MDAs it is important to also consider the objectives of MDAs. Such objectives include the following:

- guaranteeing the fiscal stability of a long-term mining project;
- articulating environmental matters, including in respect of matters which are project specific and not covered by regulations of general application;
- amplifying the legal responsibility of the investor to guarantee the procurement of goods and services available in Tanzania;
- guaranteeing the employment and training programme for citizens of Tanzania and providing succession planning in relation to expatriate employees; and
- providing free-carried interest and state participation in long-term mining projects.

We will now examine each of these objectives and the manner in which they are implemented in more detail.

Further information

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Fiscal stability guarantee

The terms of MDAs provide that companies will receive a guarantee from the Government of Tanzania (the **GoT**) that they will not, for the life of the MDA, effect any unilateral legislative changes which relate to the relevant company. This guarantee will extend to the range and applicable rates of royalties, taxes, duties and levies and the manner in which such liabilities will be calculated.

MDAs may also contain special provisions relating to certain fiscal measures that will take effect in the event of any change in applicable law.

Environmental matters

Historical mining legislation in Tanzania did not give a particularly high priority to environmental concerns. However, the 2010 Act provides much more stringent regulations requiring compliance with international standards regarding the protection of the environment.

Indeed, section 4 of the Mining (Environmental Management and Protection) Regulations 1999 provides that applicants for mining licences, special mining licences and gemstone mining licences are all required to submit an independent environmental impact assessment and an environmental management plan. Whilst applicants for primary licences are not obliged to submit an environmental impact assessment they are required to strictly comply with environmental regulations.

Procurement of goods and services guarantee

The 2010 Act contains a requirement for mining licence applications to contain a statement relating to the applicant's procurement plan for goods and services in Tanzania. This was not a requirement under any historical mining legislation in Tanzania.

Employee guarantee

The terms of MDAs will usually provide that companies are free to employ and train, without restriction, Tanzanian citizens although all companies are required to implement a succession plan in relation to expatriate employees.

In return the GoT will guarantee that where companies have entered into MDAs, that it will grant non-Tanzanian citizens all necessary work permits, visas and passes provided that they have complied with all applicable Tanzanian laws.

Government free carried interest and state participation guarantee

Section 10 of the 2010 Act states that MDAs should also contain provisions that relate to the free carried interest of the GoT and state participation. Section 4 of the 2010 Act defines "free carried interest" as the interest derived from holding shares of which the holder enjoys all the rights of a shareholder but has no obligation to subscribe or contribute equity capital for the shares.

The 2010 Act further provides that the level of free carried interest and state participation in any mining operation under a special mining licence will be negotiated between the GoT and the relevant company and will be dependant on the type of minerals and the level of investment. In doing so, the GoT will also guarantee that it will not nationalise or forcefully acquire any title, interest or other right of the company.

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.

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