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Tanzania: recent legislative
changes in mining, banking and
capital markets

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The Parliament of Tanzania, through the Written Laws (Miscellaneous Amendments) (No. 3) Act of 2022 (the **Amendment Act**)¹ made amendments to six (6) laws, among them being: the Mining Act Cap 123 Revised Edition 2019 (the **Mining Act**), the Banking and Financial Institutions Act No. 5 of 2006 (the **BFIA**) and the Capital Markets and Securities Act (Cap 79 Revised Edition 2002) (the **CMSA Act**).

Other important changes to the banking sector have also been introduced by the Banking and Financial Institutions (Capital Adequacy) (Amendment) Regulations Government Notice No. 12 of 2023 (the **Capital Adequacy Regulations of 2023**) and the Banking and Financial Institutions (Licensing) (Amendment) Regulations Government Notice No. 13 of 2023 (the **Licensing Regulations of 2023**).

The Amendment Act, the Capital Adequacy Regulations of 2023 and the Licensing Regulations of 2023 have made numerous changes to the principal laws to cater for among others, compliance and the regulatory business environment in Tanzania. In this month's legal update, we highlight the changes made to the principal laws and consider how they will affect each law.

The Mining Act

Section 129 – Regulations

Subsection (6) provided that the Mining Act may make regulations to prescribe for a penalty and an imprisonment term in case of breach. Before the amendment a fine not exceeding TZS 2,000,000 (approx. USD 860) and/or imprisonment for a period not exceeding twelve (12) months would be prescribed.

The Mining Act now reads as follows:

- (6) *Any regulations made under this Act may prescribe:*
- (a) *in the case of breach of matters relating to local content, a fine not exceeding ten billion shillings or a sum equivalent to the amount of gain or profit made as a result of the breach, whichever is greater, or imprisonment for a term not exceeding three years or to both; and*
 - (b) *in any other case where no specific penalty is prescribed, a fine not exceeding one hundred and fifty million shillings or imprisonment for a term not exceeding two years or to both.*

The recent amendment provides for a more severe penalty (approx. USD 4,268,000) and an imprisonment term of three (3) years or more. The amendments also provide that where no specific penalty has been prescribed, there shall be a fine not exceeding TZS 150,000,000 (approx. USD 64,000) or imprisonment for a term not exceeding two (2) years.

Section 7 - Mineral rights and exclusivity

The Amendment Act has amended the Mining Act by introducing a novel type of mineral right known as a 'primary processing licence' which was not provided for in any of the existing laws. A person intending to conduct ball mill operations or sluicing must apply to the Mining Commission to obtain a primary processing licence which shall be valid for one (1) year and renewable upon application.

(1) The Amendment Act was published and came into force on 2 December 2022

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Section 15 - Applications for mineral rights by tender

The Amendment Act has amended the Mining Act by adding subsections (3), (4), (5) and (6) to section 15. The effect of the amendment is that the Minister for Minerals (the Minister) may within four (4) months from the date of cessation of a mineral right and subject to the prescribed regulations, cause any vacant area other than a reserved area to revert to the Government. The area reverted to the Government shall be held by the holder of shares of the Government in accordance with section 10 of the Mining Act who shall be issued with a certificate of revisionary mineral rights. In practice and as prescribed by the Mining (State Participation) Regulations 2022, the holder of shares of the Government is the Treasury Registrar.

The Amendment Act has defined 'revisionary mineral rights' to mean, mineral rights that revert to the Government upon cessation by operation of law, and includes prospecting licence, retention licence, mining licence, or special mining licence.

In line with section 15(3) of the Amendment Act, section 27A (3) of the Mining Act now provides that the Geological Survey of Tanzania may, for the purpose of obtaining mineral resources estimation on areas to be reverted to the Government, conduct strategic prospecting and exploration.

Section 32(1) – Grant and renewal of prospecting licence

The Mining Act provides that upon the expiration of a prospecting licence, the holder may renew the licence for a period not exceeding three (3) years. The Amendment Act now provides for a second renewal which shall not exceed two (2) years. After the second renewal, the prospecting licence shall no longer be renewable and shall revert to the Government to be dealt with in accordance with section 15 of the Mining Act. While it was evident before this amendment that a holder of a prospecting licence could apply for a second renewal it was not clear when the licence would expire following the second renewal

Section 55 – Grant and validity of primary mining licence

The Amendment Act has added subsection (5) to the Mining Act which now provides a time frame within which a holder of a primary mining licence shall commence mining operations. Subsection (5) reads as follows:

(5) A holder of a primary mining licence shall commence mining operations within a period of six months or such other period as the licensing authority² may permit from the date of the grant of the licence.

This is a new requirement introduced by the Amendment Act. Based on the above provision the Mining Commission may now extend the time within which a holder of a primary mining licence is required to commence mining operations.

The BFIA

Section 3 – Interpretation

The BFIA no longer provides for the definition of the below terms:

'core capital' or 'tier 1 capital', 'supplementary capital' or 'Tier 2 capital' and 'total capital'.

Section 21 of the Amendment Act has deleted the above terms.

Section 17 - Capital requirements

Before the amendment, the BFIA required that:

- a bank or financial institution commence operations with and maintain at all times a minimum of core capital of not less than TZS 5,000,000,000 (approx. USD 2,139,500) or such higher amount as the Bank of Tanzania (the **BoT**) may prescribe;
 - a bank or financial institution maintain core capital of not less than 10 per cent of its total risk-weighted assets and off-balance sheet exposure; and
 - a bank or financial institution maintain total capital of not less than 12 per cent of its risk-weighted assets and off-balance exposure.
- Following the recent amendments, the BoT has the right to prescribe:
- the minimum capital required to commence and maintain operations;
 - capital as a percentage of risk weighted assets and off-balance sheet exposure;
 - additional capital buffers; and
 - leverage ratio.

(2) "Licensing authority" means the Mining Commission.

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Section 21 - Liquidity ratios

Every bank or financial institution is required to maintain minimum liquidity ratios at levels prescribed by the BoT. Any bank or financial institution which fails to maintain the minimum liquidity ratio prescribed by the BoT will face a penalty charge of 2 per cent points at annual rate above the interest rate prevailing in the most recent ninety-one (91) day Treasury Bill auction on the amount of the deficiency, and the penalty charge may be recovered by deduction from any balance of, or moneys owing to the bank or financial institution concerned, or by way of summary suit under Order XXXV of the Civil Procedure Code Cap 33 Revised Edition 2019.

Section 25 – Large exposures

The BFIA now provides that a bank or financial institution shall not directly or indirectly grant to a single person any accommodation such that the value of such accommodation is more than a percentage of the capital of the bank or financial institution at the level prescribed by the BoT. Previously the limit was set at 25 per cent of the core capital of the bank or financial institution or 3 per cent of core capital for a micro-finance company.

Section 28 – Limitation on investment³ in companies engaged in activities not authorised

The limitation now includes:

- limiting an investment in an entity to a specified percentage of that entity's share capital;
- limiting an investment in an entity to a percentage of the capital of the bank or financial institution making the investment at the level prescribed by the BoT; and
- limiting the aggregate amount of such investments that a bank or financial institution may hold.

The CMSA Act

Section 134A – Responsibilities of the issuer of securities

The CMSA has been amended by adding a new section 134A. The effect of the amendment is to include responsibilities for the issuer of securities. The responsibilities include:

- submitting announcements to the Capital Market and Securities Authority (the **CMSA**) for their approval including those concerning meetings of shareholders, corporate actions, or timetable for corporate actions affecting the rights of existing shareholders or the price of share of the issuer;
- inviting the CMSA to attend the statutory meetings required under the Companies Act No. 12 of 2002 as an observer to enable it to monitor the participation of shareholders in the decision-making process;
- ensuring minority shareholders are represented in the Board of Directors of the issuer; and
- complying with corporate governance principles as may be prescribed by the CMSA.
- While exercising its functions under section 10 of the CMSA Act, the CMSA has the mandate to issue any directive or condition to the issuer who fails to comply with the above responsibilities.

(3) According to section 3 of the Tanzania Investment Act No. 10 of 2022 the term 'investment' means the creation or acquisition of new business assets and includes the expansion, restructuring or rehabilitation of an existing business enterprise.

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The Licensing Regulations of 2023

The Licensing Regulations of 2023 were published and came into force on 20 January 2023. These regulations amend the Banking and Financial Institutions (Licensing) Regulations Government Notice No. 297 of 2014 (the **Licensing Regulations of 2014**).

Regulation 40 – Establishment of foreign branch or subsidiary

The Licensing Regulations of 2014 previously permitted a bank or financial institution with a core capital of not less than TZS 150,000,000,000 (approx. USD 64,185,000) to establish branches or subsidiaries abroad after being authorised by the BoT.

Following the amendment, a bank or financial institution shall only be permitted to establish a foreign branch or subsidiary with prior approval of the BoT and upon the BoT satisfying itself that the following requirements have been met:

- the bank or financial institution meets the minimum capital and liquidity requirements on a solo and consolidated basis;
- the bank or financial institution has a satisfactory performance record;
- the bank or financial institution can inject additional capital as and when required; and
- the bank or financial institution is able to manage risks arising from the established branch or subsidiary.

The Capital Adequacy Regulations of 2023

The Capital Adequacy Regulations of 2023 were published and came into force on 20 January 2023. These regulations amend the Banking and Financial Institutions (Capital Adequacy) Regulations Government Notice No. 290 of 2014 (the **Capital Adequacy Regulations of 2014**).

Regulation 3 – Interpretation

The Capital Adequacy Regulations of 2023 have amended regulation 3 by deleting the definitions of the terms ‘core capital’ or ‘Tier 1 capital’, ‘supplementary capital’ or ‘Tier 2 capital’ and ‘total capital’ and substituting for them the following:

‘core capital’ or ‘Tier 1 capital’ means permanent shareholders’ equity in the form of issued and fully paid ordinary shares, and perpetual non-cumulative preference shares, capital grants and disclosed reserves less year to date losses, goodwill organization, pre-operating expenses, prepaid expenses, deferred charges, leasehold rights and any other intangible assets;

‘supplementary capital’ or ‘Tier 2 capital’ means general provisions which are held against future, presently unidentified losses and are freely available to meet losses which subsequently materialize, subordinated debts, cumulative and redeemable preferred stocks, and any other form of capital as may be determined and announced from time to time by the Bank;

‘total capital’ means the sum of core capital and supplementary capital;

Before the amendment all three (3) terms were defined by the BFIA. You will note that the BFIA no longer provides definitions for these terms as they were deleted by the Amendment Act. The definitions are now only set out in the Capital Adequacy Regulations of 2014 (as amended by the Capital Adequacy Regulations of 2023).

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