

MINING LAW



START OF NEW ERA, TANZANIA RESUMES ISSUANCE OF MINING LICENCES, ABOLISHES RETENTION LICENCES

Issuance of Mining Licences Resumed

The government of Tanzania has resumed issuance of mining licences ten months after the process was halted in July, 2017 following the regulatory changes in the sector. Particularly, the government suspended issuance of mining licences pending the formation of the new Mining Commission as required by the Mining Act, 2010 (“the Act”) as amended by the Written Laws (Miscellaneous Amendments) Act, 2017 (No. 7 of 2017).



The announcement for resumption of issuance of mining licences was given on 11th of May, 2018 by Prof. Idris Kikula, the Chairman of the newly formed Mining Commission. The chairman and the Commissioners were appointed on the 17th of April, 2018 by the President Hon. Dr. John Pombe Magufuli in exercise of powers vested in him by section 21 of the Act as amended by The Written Laws (Miscellaneous Amendments) Act, 2017.

What Should Investors Consider Most as They Make the Applications?

Investors who are considering to apply for mining licences should be prepared to comply with the requirements brought about by the amendments of the Mining Act and the new mining regulations promulgated in January, 2018 without default. *In this regard, applications for mining licences, should, among others, be accompanied by the following detailed information:-*

1. Local Content Plan;
2. Corporate Social Responsibility Plan;



KEY ISSUES:

- Retention licences are no longer part and parcel of the mineral rights in the current Tanzanian mining legal regime following changes adopted in 2017.
- Only applications that are in strict compliance with the mining law as amended will be granted.
- With the coming of the new Mining Commission, the mining law as amended is expected to be fully administered and implemented.

3. Technical Resource and Audited Financial Statement;
4. Environmental Impact Assessment Certificates; and
5. Environmental Protections Plans and should be in strict adherence to the Mining law as amended.

Revocation of Eleven Retention Licenses

As the Commission announced the resumption of issuance of mining licences, it also announced to have revoked eleven (11) retention licenses as part of the enforcement of the new mining regime. Retention licences were a creation of section 4 read together with sections 37 and 38 of the Mining Act, 2010 before it was amended in July, 2017 by the Written Laws (Miscellaneous Amendments) Act, 2017 (No. 7 of 2017). According to section 4 read together with the repealed sections 37 and 38 of the Mining Act, a retention licence was granted to holders of a prospecting licence after they identify a mineral deposit in a prospecting area that is potentially of a commercial significance but cannot be immediately developed due to technical constraints, adverse market conditions or other economic factors.

Who are the Victims of the Revocation?

The mining companies whose retention licences have been revoked are:-

1. Kabanga Nickel company Limited –Nickel;
2. National Mineral Development Limited –Gold;
3. Bafex Tanzania Limited –which had four retention mining licenses for Silver, Gold and Copper;
4. Mabangu Mining Limited –Gold;
5. Resolute Tanzania Limited –Gold;
6. Wigu Hill Mining Company Limited –Rare earth elements;
7. Nachingwea Nickel Limited –Nickel; and
8. Precious Metals Refinery Company Limited –Nickel.



Why Revoking the Eleven Retention Licences

The newly formed Mining Commission cancelled the said eleven (11) retention licences, with effect as from the 11th of May, 2018, in exercising the powers conferred on it by Regulation 21 of the Mining (Mineral Rights) Regulations of 2018, G.N. No. 1 of 2018 (the Regulations). *Regulation 21 revokes, with immediate effect, all retention licences issued prior to the date of publication of the Regulations and makes them of no any legal effect as from the date of publication of the Regulations i.e. on 10th of January, 2018 henceforth.* Consequently, all retention licenses which were issued prior to 10th January, 2018 ceased and do no longer have legal effect.

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How Does the Revocation Mark Official Abolition of Retention Licences

The announcement to cancel the retention licences is an official abolition of retention licences in the mining sector of Tanzania in that it enforces the provisions of Regulation 21 and it is also in line and an implementation of section 16 of the Written Laws (Miscellaneous Amendments) Act, 2017 (No. 7 of 2017). The said section 16 repeals sections 37 and 38 of the Mining Act, 2010. The repealed sections 37 and 38 that contained provisions providing for all incidents for application and grant of retention licences and as such the repeal of the sections marks the end of retention licences in mining sector of Tanzania. Further to that, the repeal of sections 37 and 38 was followed by the statutory revocation of all retention licences issued prior to the coming into force of the regulations particularly by regulation 21 of the new Mining (Mineral Rights) Regulations of 2018, G.N. No. 1 of 2018. *This is without doubt a clear indication that retention licences are no longer issuable in Tanzanian mining law.*

The Way Forward

It is apparent that the cancelled retention licences cannot be recovered back by the then holders of them as such licences are no longer part and parcel of the mineral rights recognized by the Mining Act. Therefore, with abolition of such retention licenses, the holders of prospecting licenses who have identified a mineral



deposit in a prospecting area that is potentially of a commercial significance need to apply for mining licenses. Also, *with the appointment of the Mining Commission in place, the full swing and effective implementation of the new Mining Regime is now in place. Investors and stakeholders in Mining business should be ready to embrace the new changes.*

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