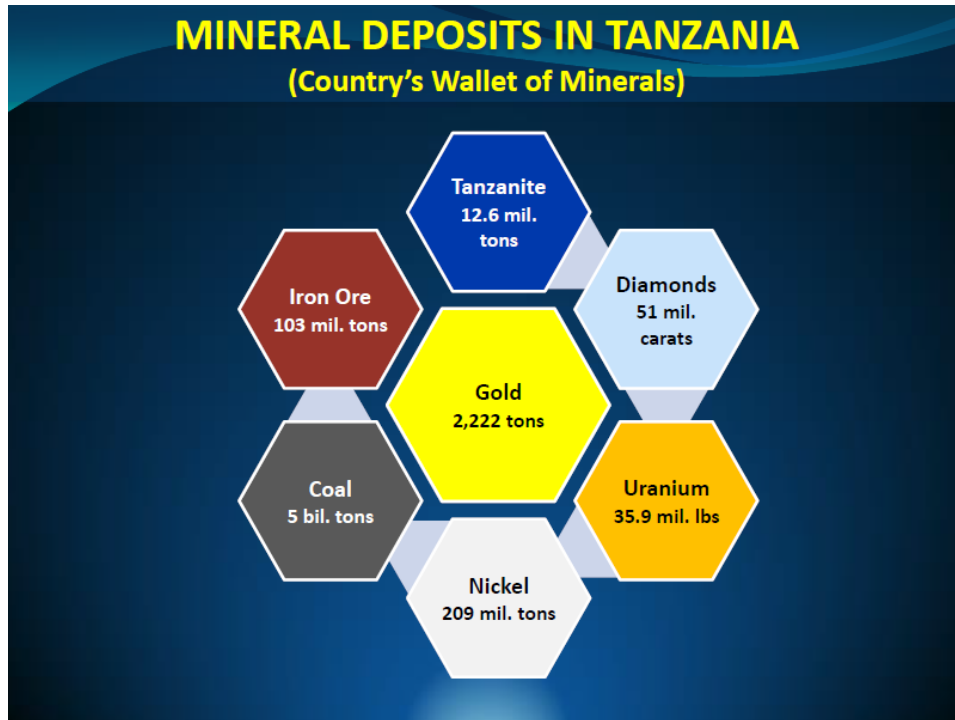
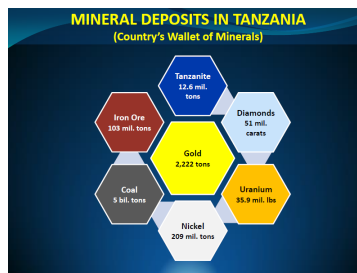




TANZANIA MINING LICENCE AND LAW

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Mining is increasingly becoming the leading sector in Tanzania in terms of exports. During the last ten years Tanzania has witnessed high growth in mining sector.



The highest authorities for mining are the Minister Responsible for Minerals, and the Commissioner of Mining. Applications for prospecting licenses, "including an application in respect of land in an area reserved for applications by tender for prospecting licenses" are sent to the Minister. The Minister may then, on behalf of the United Republic, enter into a development agreement with the holder or applicant of the right.

Under Division D of the Act, small-scale miners can obtain primary prospecting licenses for a period of 12 months, and primary mining licenses for a period of 5 years, up from only 12 months in the old Act. Both types of license are renewable. Only Tanzanian nationals are eligible for these licenses, and the licenses can be converted into a mining or special mining license, "usually by entering into a joint venture with a company that is able to meet the annual expenditure requirements.

The Commissioner for Minerals is appointed by the President and should be a "suitably qualified public officer." The Commissioner, or any official appointed to act on his/her behalf, is in charge of surveying, mapping, and demarcation of mining areas. The law says that "agreement should be made with the lawful occupiers of land and their written consent obtained to carry out mining or prospecting operations". The Mining Act defines a lawful occupier of land in the following way:

Lawful occupier in relation to any land means a person who is in actual occupation of the land or any part of it and where there are more than one person, means that one of them who is the owner, or who is responsible or would be so responsible if the land were let at a rent or otherwise occupied in circumstances in which consideration or damages for such occupation would be payable.

Mineral Rights Available Under Tanzanian Law

Broadly, mineral rights that are available under Tanzanian law can be classified into three groups, namely, investigatory, production, and trading. Investigatory rights are given in a form of prospecting or retention licences, production rights are given in a form of mining licence and trading licences are given in a form of dealership licences. The minister has the power to grant, renew, suspend or cancel any licence. Licences are granted on a 'first-come, first-served' basis except in a situation where licences are subjected to a competitive bidding process. The major licences which may be granted under the Mining Act, 1998 to foreign owned companies include the following:

- Prospecting licences with preliminary reconnaissance period which are given for two years. Subsequently, the licence holder can be granted a normal prospecting licence an area not exceeding the size permitted for a normal prospecting licence.
- Prospecting licences which are given for an initial period of three years. The prospecting licence can be renewed twice for a period not exceeding two years for each renewal subject to relinquishing half of the area covered by the licence. A request for renewal must be submitted within three months before the expiry date. Subsequently, a prospecting licence may only be

retained to complete an already started feasibility study.

- Retention licences which can be given for a maximum of five years over an area where the holder of a prospecting licence has identified mineral deposit of commercial significance and mining cannot be started by reason of technical constraints, adverse market conditions or other economic factor of temporary character. A retention licence can be renewed once for a period not exceeding five years subject to submission of updated studies and assessment of the prospects and commercial exploitation of mineral deposits.
- Special mining licences which can be given for a maximum of twenty five years. As pointed out above, special mining licences are normally supplemented by minerals development agreements which guarantees the fiscal stability of a long-term mining project, defines the circumstances or manner in which the minister may exercise his discretion conferred on him by the legislation, laying down environmental requirements and to define the dispute settlement mechanism arising out or relating to the agreement.
- Mining licences which can be given for a maximum of ten years.
- Gemstone mining licences which can be given for maximum of ten years.

There are primary prospecting licences and primary mining licences which are restricted to citizens of Tanzania, or corporate entities whose membership is composed exclusively of Tanzanian citizens.

Taxation

There is a special tax regime for mining companies (including those owned by foreign parties). Some of the main features of the tax framework for mining companies include the following aspects:

- Depreciation allowance for exploration and mining equipment is deducted at a rate of 100 per cent on capital expenditure;
- Losses may be carried forward indefinitely until recovered against income;
- Expenditure on prospecting and mining operations in respect of another licence area may, for the purpose of calculating taxable income, be treated as part of the expenditure incurred in respect of the mining operations;
- Withholding tax on payments for technical services and on management fee is capped at 3 per cent where the technical services fee, or management fee, does not exceed 2 per cent of the amount claimed as deduction from income in respect of operating expenses incurred in mining operations, and 20 per cent for any excess amount;
- Import duties by a mining company or its subcontractors is charged at 0 per cent during exploration and in the first year of operation, and thereafter it is capped at 5 per cent;
- VAT on imports and local supplies of goods and services to a mining company or its subcontractors are exempted. Any VAT paid by mining companies on local supplies or imports of goods or services, is recoverable. Exports of minerals are zero-rated; and
- Royalties' rates for minerals are 5% and 3% for diamonds and other minerals respectively on the net back value of minerals produced under licence. Net value is defined in the Mining Act, Cap. 123 as the market value of minerals 'free on board' at the point of export from Tanzania, or in case of consumption within Tanzania, at the point of delivery within Tanzania, less cost of transport, insurance and handling charges, from the mining area to the point of export or delivery and the cost of smelting and refining or other processing costs.

Export of Minerals

Export of minerals is governed by the Mining Act, Cap. 123. Export of all minerals requires a permit from the Commissioner for Minerals. The export process must comply with the export procedure described under the Mining (Mineral Trading) Regulations, 1999. There are fees which are payable before the export permit is granted. In addition, provisional royalty or provisional payment in lieu of royalty must be paid before issuance of export permit. The Commissioner has powers to re-value minerals to be exported. The consignment of minerals to be exported must be sealed by the Commissioner before is taken out of the country.

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