

State Participation in Mining Companies through holding of compulsory shares now regulated

July 18, 2022

THE MINING (STATE PARTICIPATION) REGULATIONS, 2020 were published on 30/10/2020 through GN No. 939/2020. The regulations provides details on how the government will control and acquire non-dilutable free carried interest shares in mining companies.

The shares by the government will be held through the capital of a mining company by persons holding a mining licence or a special mining licence. This will be done pursuant to Section 10 of the Mining Act, R.E. 2019 which introduced a mandatory requirement to the mining companies in Tanzania to afford and/or grant the Government of Tanzania a minimum of 16% non-dilutable free carried interest shares in the capital of a mining company and the Government may acquire up-to 50% of such shares commensurate with the total tax expenditures incurred by the Government in favour of a mining company.

The acquisition of these shares by the Government shall be determined by the total value of the tax expenditures enjoyed by the mining company or a person holding mining licences or special mining licence through tax exemptions and relief.

The Government shall review tax expenditure enjoyed by mining companies every two years to determine the number of shares to be acquired by the Government which shall be determined through the amount of tax expenditure enjoyed by the company up to the date of computation divided by the market value of shares at the date of computation and shall also include any benefit enjoyed through stabilization arrangement under Section 100E of the Mining Act to be included in the computation of Government shares.

The Mining Commission in consultation with the office of the Treasury Registrar and Tanzania Revenue Authority shall determine the types of minerals or levels of investment made by mining

If you have any question concerning this memorandum, please reach out to your regular firm contact or the following authors:

Ally M. Kileo
Managing Advocate

+255 769 500 100
+255 787 630 150
ally.kileo@mdmlaw.co.tz

MAIN OFFICE
Msasani Peninsula, Chole Rd,
Golden Heights, 2nd Floor,
Dar-es-Salaam, Tanzania.

T: +255 22 2602382
+255 22 2602250
E: info@mdmlaw.co.tz

ALERT MEMORANDUM

companies in which the government shall be entitled to acquire shares by taking into consideration; the capital invested, mining technology involved, profit and total value of tax expenditures enjoyed by the mining company. Mining companies shall also be required to disclose relevant information to the Commission relating to expenditures, production, revenue and profit during this process.

It is the Treasury Registrar who shall determine the mode of payment of profit resulting from non-dilutable free carried interest shares and or any other addition shares to the Government.

Consequently the Government by these non – dilutable free carried interest shares in the capital of the mining company shall enjoy the right stipulated under the Companies Act, including the right to be issued with shares certificate for title over the shares; be registered as a members’ register of the company kept with the Registrar of Companies in Tanzania; participate in company’s statutory meetings, including annual general meetings and other meetings and exercise their right to vote; participate in the governance of the company; have access to company’s reports relating to company’s accounts, director’s and auditor’s reports; to receive dividends; appoint a director to represent Government interest; participate in the removal of a director; automatic allotment to it of shares of a mining company without direct financial contribution by cash or otherwise for the value of shares; actual ownership of the non - dilutable free carried

interest shares from the start; receive a proportionate share from any repayment of either equity, shareholding loan or third-party loan.

The Government by holding these shares shall have no obligation to subscribe for shares neither to show readiness or commitment to take up shares or stock by actually subscribing to the Memorandum and Articles of Association nor contribute any equity capital, repayment of shareholder loan or third-party loan and the shares shall be deemed fully paid up.

In conclusion the principle behind these Regulations is the more tax incentives a mining company enjoys the higher the number of non-dilutable shares the Government will hold in that company.