

19 January 2018



Mining (Mineral Rights) Regulations 2018 published

- **Provide procedure for applications for mineral rights**
- **Replace the Mining (Mineral Rights) Regulations, 2010**
- **Set the maximum size of mining areas**
- **Mining areas to be pegged and demarcated**
- **Set minimum expenditures for holders of prospecting license**
- **Mineral rights holders obliged to keep records and reporting to the Commission**
- **Prescribe the procedures and fees for conversion, amalgamation, assignment, suspension and surrender of mineral rights**
- **Establishes a tie-breaker rule for simultaneous applications, overlapping areas and tying bids**
- **Establishes Allocation Committee for primary mining license**
- **All pending applications must comply with the current law**
- **All existing retention licenses cancelled**

The new Mining (Mineral Rights) Regulations 2018 were published on 10 January 2018 vide G.N No. 1 of 2018. The Regulations replace the Mining (Mineral Rights) Regulations, 2010.

According to the Regulations, application for a mineral right shall be made to the Mining Commission (the Commission) in a prescribed form. The Regulations also set the fees related to applications for grant, renewal, transfer, suspension, surrender, search or conversion of mineral rights and annual rents payable. The Regulations also set the maximum size of each mining area subject of a mineral rights to be:

- a prospecting licence for metallic minerals, energy minerals, industrial minerals and kimberlitic diamond is 300 sq. km (30,000 hectares)
- a prospecting licence for building materials and gemstones excluding kimberlitic diamond is 5 sq. km (500 hectares)
- a special mining licence for mineral deposits other than superficial deposits is 35 sq. km (3,500 hectares)
- a special mining licence for superficial deposits is 70 sq. km (7,000 hectares)
- a mining licence for metallic minerals, energy minerals, industrial minerals and kimberlitic diamond is 10 sq. km (1,000 hectares)
- a mining licence for building materials or gemstone excluding kimberlitic diamond is 1 sq. km (100 hectares)
- a primary mining licence for all minerals other than building materials is 10 hectares.

The Regulations require that every area of land which is subject to a mineral right must be pegged and demarcated by erecting a post that shall be securely placed in the ground at each corner of the relevant area. Each post shall project not less than 2 metres from the ground and be conspicuous with clear marks or writings that state the owner, type or mineral right with the licence number, state the dimensions and area covered under the licence. It is also a requirement under the Regulations that at least two trenches should be excavated to show the direction of the boundary of the licence area at each corner of the licence area. Failure to comply with this requirement is a criminal offence punishable by a penalty of a fine not exceeding TZS 25M.

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The Regulations set up the minimum amount of money the holder of a prospecting licence shall expend annually on prospecting operations in the licence area as follows:

- all minerals other than gemstones, industrial minerals or building materials, USD 500 per sq. km for the initial prospecting period, USD 2000 per sq. km for the first renewal period and USD 6000 per sq. km for the second renewal period
- for industrial minerals building materials, USD 100 per sq. km
- for gemstones, USD 250 per sq. km.

The Regulations oblige holders of a prospecting licence to keep full and proper accounts of all expenditure incurred in the prospecting licence supported by receipts, vouchers and such other documentary evidence of expenditure as the Commission may require.

Under the Regulations, a holder of a primary mining licence may apply to the Commission for the suspension or partial suspension of operations. Once granted, the certificate of suspension must be posted conspicuously at the licence area during the period of suspension. Equally, a person who holds, in respect of contiguous areas, two or more primary mining licences and wishes in respect of each of those licences to apply for conversion of the licences into a single mining licence, must first apply to the Commission to amalgamate the primary mining licences into a single mining area. A certificate of amalgamation may be issued notwithstanding the fact that it may result into a single mining area exceeding the maximum area for a primary mining licence. Similarly, the holder of a primary mining licence who wishes to surrender a primary mining licence is required to apply to the Commission responsible for the mining area by giving a three months notice. Application will be processed upon proof of payment of all arrears in respect of annual rents and royalty.

The Regulations oblige holders of a primary mining licence, on or before the end of one month of a calendar year, to submit to the Commission a written report. The report should include the name of the holder; the date and the licence number; the nature of the operations being conducted on the area during the preceding months; the average number of persons employed on the area in mining or prospecting operation during the preceding months; the amount paid in wages to persons actually engaged in mining or prospecting operations on the licence area or in supervision of such operation during the preceding months; the nature and value of any machinery or plant brought in or removed from the area from the date of the previous report; the kind and quality of minerals obtained during the preceding months and the manner by which they have been disposed of; and particulars of any death or accident of employees which have occurred at the licence area during the preceding months.

According to the Regulations, where the Minister has designated an area as an area reserved exclusively for prospecting and mining operations by persons holding primary mining licences, the designated area shall be divided by the Commission into numbered blocks which, so far as the boundaries of the area permit, be rectangular or square in shape. A map of the area so divided shall be published in the Gazette by the Commission for public information. The Regulations vests the Commission with powers to appoint, for the designated area, an Allocation Committee responsible for allocating primary mining licences and will be composed of:

- the District Commissioner for the district who shall be the Chairman
- the Resident Mines officer who shall be the Secretary
- a member of Parliament of the respective area
- the Chairman of the local government authority of the relevant town district, municipal or city
- the Executive Director of the relevant town district, municipal or city and
- two persons appointed after consultation with the Regional Administrative Secretary

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In making allocations, the Allocation Committee shall have regard to the orderly development of the mining industry in Tanzania and take account of the technical competence of applicants; the relevant experience of applicants in conducting mining operations; the financial resources of applicants; the acceptance by the applicant to obtain a written consent of the lawful occupier in the designated area; and the need to ensure that people living in the vicinity of the designated area secure a reasonable share of the mineral resources discovered in the designated area.

The holder of a mineral right who wishes to assign that mineral rights to another person, continues to be liable for compliance with the provisions of the Mining Act and Regulations including a requirement for payment of fees and rents until the transfer is completed.

According to the Regulations, where two or more applications are received by authorised officer in respect of areas which are partially or wholly overlapping on the same day during the hours of business such applications shall be deemed to have been received simultaneously so that the priority between them over the overlapping area shall be determined by inviting successful applicants to submit to the Commission by such date bids which state the bidding premium and schedule of payment in a period not exceeding six months. Similarly, where there are more than one highest bids, the Commission shall determine the priority by determining the best payment schedule submitted by the applicants. As regards to two or more applications for licences over the same areas which are partially or wholly overlapping, the Regulations provide that priority will be determined by the date and time of receipt of applications.

Transitional provisions

The Regulations provide that all pending applications shall be deemed as applications made under the Mining Act. In other words, all the applications, though made before the Mining Act was amended in 2017, must comply with the Mining Act as amended. For instance, section 28(3)(g)&(h), 41 and 49 of the Mining Act as amended, require applicants for mineral right to include in their applications a statement of integrity pledge in a prescribed form and local content plan. Additionally, the applicants for prospecting licence are required to state the type of mineral applied for as categorised under section 28 of the Mining Act. The Regulations also provide that applications for prospecting licence with preliminary reconnaissance period shall be deemed to be applications for prospecting licence under section 28 of the Mining Act.

The Regulations provide that pending application for prospecting license shall not be granted to an applicant holding twenty or more valid prospecting licences unless the cumulative prospecting areas of such other prospecting licences does not exceed 2,000 square kilometres as per requirement of section 8(6) of the Mining Act.

According to the Regulations, all retention licences issued prior to the date of publication of the Regulations are now cancelled and shall cease to have legal effect. Consequently, rights over all areas which were subject of such retention licences revert to the Government. It has to be seen how this provision will work for companies with MDAs that have stabilization clauses.

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