

19 July 2018



Mining (Integrity Pledge) Regulations 2018 published

- Apply to holders of Mineral Rights undertaking prospecting and mining as well as their contractors and subcontractors
- Enumerate objectives of Integrity Pledge
- Spell out obligations imposed on any contractor, subcontractor, licensee, or any other person conducting mining
- Prohibit malpractices such as tax evasion, under or overpricing, transfer mispricing and corruption
- Malpractices punishable by minimum fine of TZS 100M or imprisonment for a minimum 10 years or both
- Hefty penalties for failure to comply with Integrity Pledge which include suspension, withdrawal or cancellation of a licence
- Prescribe format of Integrity Pledge
- Mining Commission to investigate and monitor compliance
- Existing holders of Mineral Rights given 3 months to comply with provisions of Regulations

On 13 July 2018, the Mining (Integrity Pledge) Regulations 2018 (Regulations) were published as Government Notice No. 304 of 2018 by the Minister for Minerals. These Regulations apply to all holders of Mineral Rights who undertake prospecting and mining activities in Mainland Tanzania. The Regulations define 'integrity pledge' as a formal and concrete expression of commitment by a mineral right holder to abide in ethical business practices and support a national stand against corruption.

According to the Regulations, the objectives of Integrity Pledge are to: (a) develop a nation of high integrity, that is resilient and embraces universal good values; (b) promote integrity, accountability and proper management of anti-corruption programme, for adoption by the corporate community operating in the mining industry; (c) reinforce corporate governance, integrity, transparency and accountability in the daily operational processes and procedures of companies and businesses; (d) facilitate, support and provide technical assistance for companies and businesses to implement the business integrity system as an effective preventive measure against corrupt and unethical practices; (e) ensure proper insurance cover against losses, injuries or damage to environmental, communities, individual and properties that may be occasioned in the course of carrying mining activities; and (f) complement the Prevention and Combating of Corruption Bureau's efforts to set up the best business practice in Tanzania.

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About FB Attorneys

FB Attorneys is an all service law firm based out of Dar es Salaam, Tanzania.

We cover all aspects of the law and specialise in all corporate and commercial matters including Mining, Oil & Gas, Tax, Litigation, Competition, Banking & Intellectual Property law.

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The Regulations impose an obligation on any contractor, subcontractor, licensee, or any other person conducting mining activities to adhere to the following underlying integrity requirements: (a) Promoting integrity values, transparency and good governance; (b) Strengthening internal systems that support prevention of corruption; (c) Complying with laws, policies and procedures relating to anti-corruption; (d) Supporting prevention of corruption initiatives by the Government; (e) maintaining appropriate financial reports; (f) implementing a whistle blowing system; (g) refraining from dealing with unethical companies; and (h) ensuring proper operations in the course of carrying out mining activities to avoid losses, injuries or damage to environmental, communities, individual and properties.

In addition, the Regulations oblige the contractor, subcontractor, licensee, or any other person to establish and maintain a compliance programme throughout the term of the licence that includes the following principles: (a) Written Code of Conduct, policies and procedures; (b) Training, awareness campaigns and education; and (c) any notification of Government investigation or legal proceedings.

The Regulations also prohibit a holder of Mineral Right from engaging in any malpractices including tax evasion, double taxation, under or overpricing, transfer pricing and corruption. Any person who contravenes this obligation commits an offence and shall be liable upon conviction, to a fine of not less TZS 100 million or to an imprisonment for a term of not less than 10 years or to both fine and imprisonment.

Furthermore, the Regulations impose a hefty penalty for a holder of Mineral Right who fails to comply with the requirement of the Integrity Pledge which include:

- suspension of a license or permit to engage in mining operation or activity
- withdrawal or cancellation of a licence
- payment of fine as prescribed in the Act and any other applicable laws; and
- any other penalty as prescribed under the Mining Act and any other Written Laws

The Regulations impose a further obligation to a holder of Mineral Right that carries out prospecting or mining activities to sign an Integrity Pledge form as prescribed in the First Schedule to the Regulations. Similarly, a holder of Mineral Right is obliged to ensure that any person it engages with, in undertaking any activity in connection with mining activities, complies with the Integrity Pledge requirements. In addition, a holder of Mineral Right, contractor, subcontractor or such other person shall develop, implement and distribute a written code of conduct unto whom it applies thereof.

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According to the Regulations, an obligation to comply with Integrity Pledge by the Holder of Mineral Right entails the following: (a) conducting the mining operation or activities with utmost integrity; (b) desisting from engaging in any arrangement that undermines or is in any manner prejudicial to the country's financial and monetary systems, in particular, all earnings, payments or receivables derived from or in respect of mining operations or activities shall be received in, and accounted for in Tanzania; (c) desisting from engaging in any arrangement that undermines or is otherwise prejudicial to Tanzania's tax system; (d) disengaging from any arrangement that is inconsistent with the country's economic objectives, policies and strategies (e) maintenance of satisfactory and effective insurance coverage against losses, injuries or damage to environment, communities, individuals and properties, that may be occasioned in the course of carrying out mining operations or activities; (f) disengaging from arrangement that undermines or is otherwise prejudicial to Tanzania's national security; and (g) ensuring that is fully in compliance with the Laws, Regulations, Rules and Policies.

In ensuring compliance with the Regulations, the Mining Commission, is empowered to initiate, at any time, an investigation into an activity of a contractor, subcontractor, licensee or any other person. The Commission has also been vested with mandate to monitor the compliance of these Regulations through enforcement of the Integrity Pledge and investigation to determine whether any holder of Mineral Right, contractor, subcontractor or any such other person has violated the provisions of these Regulations.

In discharge of its duties the Commission has powers: (a) to summon any person to submit or provide any information that the Commission deems necessary in the course of discharging its duties or functions; (b) to suspend or revoke any licence on grounds of failure to comply with the requirements under these Regulations; and (c) to do all things which are necessary or desirable to give effect to the provisions of these Regulations.

The holders of Mineral Rights who undertake prospecting or mining activities, are required, within 3 months after these Regulations come into force (by 12 October 2018), to make arrangements to the satisfaction of the Commission as are necessary in order to comply with the provisions of these Regulations.

These Regulations bring in even further regulations in the already heavily regulated mining sector in Tanzania. It is also notable that these compliance requirements are not only applicable to the holders of Mineral Rights (mining companies) but also to the subcontractors. Non-compliance may result into cancellation, suspension or withdrawal of a licence.

It is also important to note that the Regulations represent an unprecedented jurisprudence in Tanzania. The imposition of heavy criminal sanctions such as a minimum sentence of 10 years imprisonment through a subsidiary legislation is indeed worrisome and extraordinary.

To read a copy of the Regulations [click here](#)

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