

5 February 2020



Natural Wealth and Resources Regulations Released

- General principles to guide natural wealth and resources agreements provided
- Minister vested with powers to coordinate, monitor and manage all natural resources agreements
- Regulations establish a register of agreements on natural wealth and resources
- Re-negotiation procedures addressed
- Sectoral Ministers to establish teams to re-negotiate agreements
- Code of conduct for investors in natural wealth and resources provided
- Breach of Code of Conduct can lead to termination

The long awaited Regulations on natural wealth and resources have been published on 31 January 2020 via Government Notices Nos. 57 & 58 of 2020. The issued Regulations are in two sets, namely the Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Regulations, 2020 (the Unconscionable Terms Regulations) and the Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations, 2020 (the Code of Conduct for Investors Regulations).

The Unconscionable Terms Regulations

It should be remembered that the Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act of 2017 empowers the National Assembly to review all agreements and arrangements, whether before or after enactment of the Act, pertaining to natural resources and where necessary, direct the Government to re-negotiate any unconscionable terms. Also, the Natural Wealth and Resources (Permanent Sovereignty) Act, 2017 aims at proclaiming Tanzania's permanent sovereignty over its natural resources by exercising more control over such resources.

The Unconscionable Terms Regulations, among others, echo the principles that will be used to guide all agreements and arrangements in natural wealth and resources. These principles include fair dealing, honesty and utmost good faith.

Further, the Unconscionable Terms Regulations confer the Minister responsible for constitutional affairs with the mandate to coordinate, monitor and manage all contracts, and to report to the President in accordance with the applicable laws and procedures. On top of that, the Minister is vested with powers to establish and maintain an observatory system to enable effective consultation, coordination and cooperation with other Government Departments and Ministries, Agencies or any other public or private institutions or body established pursuant to any written law dealing with natural wealth and resources.

The Unconscionable Terms Regulations also establish a register within the Ministry responsible for constitution affairs for entering information relating to natural wealth and resources agreements. The application for registration of an agreement is provided for under the first schedule to the Regulations, which is NWR Form-N.1. After the submission of the said form by the responsible person (Ministry, Agency or Department or any other private institution), the Registrar will enter the information in NWR Form- N.2 and assign a registration number which shall signify the identity of the agreement.

It is worth noting that, the Director responsible for natural wealth observatory activities in the Ministry shall be designated as the Registrar of natural wealth and resources agreements and shall, among others, perform the below functions:

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LEGAL UPDATE

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- Keep and maintain the register
- Register all natural wealth resources agreements
- Develop tools for monitoring and evaluation on natural wealth and resources
- Make follow up on the process of agreements re-negotiation and prepare a report to be submitted to the Permanent Secretary and other relevant authorities
- Assess the level of contribution of natural wealth and resources regime

Moreover, where the National Assembly has passed a resolution concerning re-negotiation of an agreement, the sectoral Minister responsible for entry into any natural wealth and resource agreement shall consult with the Attorney General and appoint a re-negotiation team. The re-negotiation team is obliged to develop a schedule of re-negotiation (which should not exceed 90 days) and share it with the other party. After completion of the re-negotiation process, the parties will sign a re-negotiation summary through NWR Form- N.6 and submit the draft report to the Permanent Secretary of the sectoral Ministry.

The Unconscionable Terms Regulations further require the Permanent Secretary to convene a stakeholders' meeting and discuss the draft report. If the draft report is adopted, the Permanent Secretary is obliged to submit the draft report to the sectoral Minister who will then deliver the same to the Minister responsible for constitutional affairs. Subsequently, the Minister will table the draft report to the Cabinet, and if approved, the final report will be submitted to the National Assembly accompanied by the President's Certificate. It is important to note that re-negotiation arrangements commenced prior to the promulgation of the Unconscionable Terms Regulations remain unaffected by these Regulations.

Code of Conduct for Investors Regulations

Regarding the Code of Conduct for Investors Regulations, they are mainly made to ensure that agreements on natural wealth and resources are conducted in a manner that adheres to the highest ethical principles. These Regulations require the investors to enter into arrangements that will be compliant with the policies, laws, regulations, other binding instruments, and decisions (precedents) based upon such instruments.

The first obligation under the Regulations is upon the entities, consultants, suppliers, contractors, investors, partners, agents and employees to observe the Code of Conduct by operating in good faith, transparently and in the interest and welfare of Tanzanians. The said Code of Conduct prohibits involvement in the following:

- Corruption or economic and organised crimes
- Conflict of interest
- Violation of basic rights
- Discrimination of all sorts
- Violation of workers' rights
- Child labour
- Environmental pollution
- Anti-trust practices

Additionally, the Code of Conduct for Investors Regulations provides for a mechanism that will entitle the Government to audit and monitor compliance of investors with the Code of Conduct. Also, in the event the investor is found in serious or repeated violation of the Code of Conduct, the Government is entitled to terminate business arrangements with such an investor. Furthermore, the Code of Conduct for Investors Regulations requires the investor to conduct Honesty and Integrity Self-Test, and also to sign an Integrity Pledge which is a schedule to the Regulations.

To read the Unconscionable Terms Regulations [click here](#).

To read the Code of Conduct for Investors Regulations [click here](#).

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