

GOVERNMENT NOTICE NO. 939 published on 30/10/2020

THE MINING ACT,
(CAP. 123)

REGULATIONS

(Made under section 129)

THE MINING (STATE PARTICIPATION) REGULATIONS, 2020

PART I
PRELIMINARY PROVISIONS

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| Citation | 1. These Regulations may be cited as the Mining (State Participation) Regulations, 2020. |
| Application | 2. These Regulations shall apply to non-dilutable free carried interest shares in the capital of a mining company or person holding mining licence or special mining licence. |
| Interpretation | 3. In these Regulations, unless the context requires otherwise- |
| Cap 123 | “Act” means the Mining Act, |
| | “Commission” means the Mining Commission established under Section 21 of the Act; |
| Cap. 212 | “company” means a company incorporated under the Companies Act; |
| | “free carried interest” has the meaning ascribed to it under the Act; |
| Cap. 370 | “investment” has the meaning ascribed to it under the Treasury Registrar (Powers and Functions) Act; |
| Cap 1 | “Government” has the meaning ascribed to it under the Interpretation of Laws Act; |
| | “Minister” means the Minister responsible for mining affairs; |
| | “mining company” means the company that is holding a mining licence or special mining licence issued under the Act; |
| Cap. 212 | “shares” has the meaning ascribed to it under the Companies Act; and |
| Cap. 370 | “Treasury Registrar” has the meaning ascribed to it under the Treasury Registrar (Powers and Functions) Act. |

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PART II
ACQUISITION AND CONTROL OF NON-DILUTABLE FREE CARRIED
INTEREST SHARES

Construction of
“non-dilutable”
free carried
interest shares

4. Subject to sections 4 and 10 of the Act, non-dilutable free carried interest shall be construed as such based on the following-

- (a) shares shall be treated as a special class of shares, in which case the holder share shall be entitled to the payment of dividend of a fixed amount in priority to another class or classes of shares; and
- (b) shares shall not decrease in value or percentage of ownership of a shareholder or loss of some percentage of equity.

Acquisition
of shares

5.-(1) Subject to regulation 6, the Treasury Registrar shall acquire not less than sixteen percent non-dilutable free carried interest shares in the capital of a mining company or any other person holding mining licence or special mining licence on behalf of the Government.

(2) Without prejudice to sub-regulation (1), the Treasury Registrar on behalf of the government may also acquire in total up to fifty percent of the shares in a mining company or any other person holding mining licence or special mining licence commensurate with the total tax expenditures incurred by the Government in favour of a mining company or a person holding mining licence or special mining licence.

(3) The acquisition of shares as referred to under sub-regulation (2) shall be determined by the total value of the tax expenditures enjoyed by the mining company or a person holding mining licence or special mining licence through tax exemptions and reliefs.

(4) In every two years after the commencement of these Regulations, the Government shall review tax expenditures enjoyed by the mining company or a person holding mining licence or special mining licence in determining number of shares to be acquired by the Government.

(5) The computation of Government shares shall base on an amount of tax expenditure enjoyed by that mining company up to the date of computation divide by the market value of shares at the date of computation.

(6) Any benefit enjoyed by the mining company through stabilization arrangement under Section 100E of the Act shall be included in the computation of the Government shares.

Determination
of

6.-(1) For the purposes of acquisition of shares under

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level of
investment

these Regulations, the Commission in consultation with the office of the Treasury Registrar and Tanzania Revenue Authority shall from time to time determine the types of minerals or level of investment made by a holder of special mining licence or mining licence on which the government shall be entitled to acquire the said sixteen percent non-dilutable free carried interest shares or more.

(2) In determining the level of investment, the following shall be taken into consideration as determined by the Commission-

- (a) capital invested;
- (b) mining technology involved;
- (c) profit; and
- (d) total value of tax expenditures enjoyed by the mining company.

Control of
government
shares

7.-(1) The Treasury Registrar shall, in consultation with the Commission, be responsible for all matters relating to the managing and control of the government shares in the capital of the mining company or a person holding mining licence or special mining licence.

(2) Notwithstanding sub regulation (1), the Treasury Registrar shall be assisted by the Ministry of Finance and Planning, Ministry of Minerals, Commission, Bank of Tanzania and Tanzania Revenue Authority.

Provision of
relevant
information

8.-(1) The Commission shall have the duty to provide relevant information to the Office of the Treasury Registrar in relation to the type of minerals of which the Government is entitled to-

- (a) sixteen percent or more of non-dilutable free carried interest shares in the capital of the mining company or a person holding mining licence or special mining licence;
- (b) information relevant for the acquisition of addition shares of up to fifty percent.

(2) A mining company or person holding mining licence or special mining licence shall, in such a manner as the Commission may determine, disclose relevant information to the Commission relating to expenditures, production, revenue and profit.

Mode of
payment
of interest on
share of
Government

9.-(1) The Treasury Registrar shall determine the mode of payment of profit resulting from non-dilutable free carried interest shares or other addition shares to the Government under section 10 of the Act.

(2) In determining the mode of payment to the Government, the Treasury Registrar shall notify in writing the mining companies or any other person holding mining licence

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or special mining licence on the procedures of payment of profit resulting from non-dilutable free carried interest or other additional shares to Government.

Rights of
holder of non -
dilutable free
carried interest
shares
Cap. 212

10.-(1) The Government by holding sixteen percent or more 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:

- (a) be issued with shares certificate as evidence of title over a number of shares held in a mining company;
- (b) be registered in members' register of the company which shall be kept at the registered office of the company within Tanzania;
- (c) participate in company's statutory meetings, including annual general meetings and other meetings and its right to vote;
- (d) participate in the governance of the company;
- (e) have access to company's reports relating to company's accounts, director's and auditor's reports;
- (f) to receive dividends;
- (g) appoint a director to represent Government interest subject to the provisions of the Memorandum and Articles of Association.;
- (h) participate in the removal of a director;
- (i) automatic allotment to it of shares of a mining company without direct financial contribution by cash or otherwise for the value of shares;
- (j) actual ownership of the non - dilutable free carried interest shares

from the start;

- (k) receive a proportionate share from any repayment of either equity, shareholding loan or third-party loan.

Nature of free
carried interest
relating to
holding shares
in the capital of
mining
company

11.-(1) The Government by holding sixteen percent or more non – dilutable free carried interest shares in the capital of the mining company shall have no obligation to: -

- (a) 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;
- (b) contribute any equity capital, repayment of shareholder loan or third-party loan.

Interest shares
of
mining

12. The remaining shares of the investment mining Company beside those of the Government shall be deemed to

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company be total capital of the mining company required for investment and run of the project for the lifetime of the project.

Allotment or
issuance
of free carried
interest
shares to the
government 13.-(1) The free carried interest shares to the Government shall be allotted or issued to the Government as part of state participation in mining operations.

(2) The free carried interest shares to the Government shall be deemed to be fully paid up shares at the time of its allotment or issuance.

(3) The free carried interest shares to the Government shall exist throughout the life time of the mineral right of a mining operation.

Issuance of
directive 14.-(1) The Minister responsible for mining affairs, in consultation with the Minister responsible for finance, may issue specific or general directives to the Treasury Registrar or any mining company on proper administration of the Government shares in the mining company or a person holding mining licence or special mining licence.

(2) The Treasury Registrar, in consultation with the Commission, may issue specific or general directives to any mining company or a person holding mining licence or special mining licence relating to Government shares in that a mining company or a person holding a mining licence or special mining licence.

Dodoma
21st October, 2020

DOTO MASHAKA BITEKO
Minister for Minerals