

19 November 2020



Minimum GoT Shareholding Regulations Published

- Process of acquisition of shares highlighted
- Provides for regular review of tax expenditures enjoyed
- Factors to gauge level of investment stipulated
- Rights of the GoT as a holder of free carried interests stated
- Treasury Registrar to determine the mode of payment of profit to the GoT

In a bid to ensure Tanzanians also enjoy a share of their minerals, section 10 of the Mining Act, R.E. 2019 (the Act) imposes a mandatory requirement to the mining companies in Tanzania to afford/grant the Government of Tanzania (GoT) a minimum of 16% non-dilutable free carried interest shares in the capital of a mining company. The Act stipulates that the GoT's non-dilutable free carried interest shares can be increased up to 50%.

On 30 October 2020, the Minister for Minerals published the Mining (State Participation) Regulations, 2020 (the Regulations). The Regulations have been published to give more details on the acquisition and control of the GoT's non-dilutable free carried interest shares in a mining company. The Regulations clarify that the acquisition of shares shall be determined by the total value of tax expenditures enjoyed by a mining company or a person holding a Mining Licence or Special Mining Licence through tax exemptions and reliefs. What the above implies is that the more tax incentives the mining company enjoys, the higher the percentage of non-dilutable free carried interest shares the GoT will be entitled to.

In assessing the level of investment made by a mining company for the purposes of GoT shareholding, the Regulations require the Mining Commission in consultation with the Treasury Registrar and TRA to consider the capital invested; mining technology involved; profit; and total tax value of tax expenditures enjoyed by the mining company.

Moreover, the GoT is empowered to review tax expenditures every two years that are enjoyed by the mining companies so as to determine the number of further shares to be acquired by the GoT. Hence, the initial minimum 16% shareholding by the GoT can be increased after every two years.

It is worth noting that after the GoT having acquired the free carried interest shares, the Regulations entitles the GoT, among others, the right to be issued with a share certificate; to be registered as a member of the company; to participate in the statutory meetings and the governance; to access companies reports; to appoint a director and to receive dividends. Further, the Regulations provide that the GoT shall enjoy the right to receive a proportionate share from any repayment of either equity, shareholding loan or third party loan. It is to be seen how this will be interpreted and implemented.

The Regulations further enables the Treasury Registrar to determine the mode of payment of profit resulting from non-dilutable free carried interest shares or other additional shares to the Government. In determining the mode of payment to the GoT, the Treasury Registrar is required to notify the mining companies, in writing, on the procedures of payment of profit.

The long awaited guidance on how to implement the requirements of the GoT having non-dilutable free carried interest shares in mining companies is now provided in these Regulations.

To Read the Mining (State Participation) Regulations, 2020 [click here](#).

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