



# Project Finance

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# Tanzania

Angela Thorns, Kamanga Wilbert Kapinga and Anayaty Tahir

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## 1 Collateral

What types of collateral are available?

In the United Republic of Tanzania assets, rights or interests may be pledged, assigned, mortgaged or charged in order to secure the repayment of an obligation. These include land, buildings, ships, aircraft, shares, intellectual property, goodwill, licence rights and bank accounts.

In project finance transactions, the following tend to be the most common types of collateral favoured by lenders:

- charge on bank accounts;
- pledge of shares;
- all-asset debenture;
- assignment or pledge of licences; and
- mortgage.

## 2 Perfection and priority

How is a security interest in each type of collateral perfected and how is its priority established? Are any fees, taxes or other charges payable to perfect a security interest and, if so, are there lawful techniques to minimise them? May a corporate entity, in the capacity of agent or trustee, hold collateral on behalf of the project lenders as the secured party?

There are four main types of consensual security in Tanzania: the mortgage, the charge, the pledge and the consensual lien.

### Mortgage over land and moveables

A mortgage is a security interest in property or an asset owned by a borrower that is granted to a lender. It is discharged after the conditions of the mortgage have been met. In default, the lender enjoys all the powers and remedies conferred or implied in a transfer of the interest. A mortgage is created by execution of a mortgage deed by the mortgagee. In the case of land, Tanzanian law allows for mortgages to be created over a right of occupancy or a lease in order to secure the payment of money or money's worth or the fulfilment of a condition. An individual granting such a mortgage is required to sign the deed before a notary public who is to attest the mortgagor's signature and identity. If a mortgage over land is being granted by a company, the mortgage deed must be sealed in the presence of two directors or one director and the company secretary. Creation of a mortgage over land is subject to prior consent being granted by the Commissioner for Lands. Perfection occurs when the mortgage is registered with the Land Registry, which keeps a record of titles to land in Tanzania and any dispositions, transmission and encumbrances of and over registered land. Among other information, the register will indicate the date the mortgage was registered and the details of the property so encumbered. Registration is essential for the mortgagee to be able to exercise any of his or her remedies under that mortgage as the law states that a mortgage over land will only take effect when it is registered. Furthermore, registration also

determines priority since mortgages rank according to the order in which they are registered. A mortgage over immovable property is subject to stamp duty of 10,300 Tanzanian shillings on the mainland in Tanzania.

When a mortgage has been granted by a company over its property, the mortgage must be registered with the Registrar of Companies at the Companies Registry within 42 days of its creation. The Registrar maintains a register indicating all mortgages, charges and debentures granted by companies registered in Tanzania and records the information relevant to these encumbrances. The Registrar of Companies will issue a certificate evidencing the registration of the encumbrance indicating the amount thereby secured. Failure to effect registration with the Registrar of Companies will render the mortgage void against any creditor, receiver, administrator or liquidator.

Mortgages may also be granted over moveables such as ships and aircraft. Special rules apply depending on the nature of the asset being mortgaged. For instance, the Merchant Shipping Act, 2003 regulates the creation, registration and perfection of a mortgage over a ship while the Civil Aviation Act, 2003 regulates the creation, registration and perfection of a mortgage over an aircraft. In both instances, the competent authorities maintain a register that records the date and time the mortgage was created for the purposes of establishing priority.

### Charge over company assets

Similarly to a mortgage, a charge does not involve a transfer of ownership but is rather a security interest in specific assets (known as a fixed charge), or a fund of changing assets (known as a floating charge), in satisfaction of a debt. Charges cannot be created by individuals and are therefore regulated by the Companies Act, 2002. Charges can be created over land or any interest therein, on goodwill, on any intellectual property, on book debts or for the purpose of securing an issue of debentures. The law also allows for the creation of a floating charge on the undertaking or property of the company. Although the Act allows the creation of charges using any form of document such as a mortgage deed, charges tend to be created by way of debenture. Similarly to a mortgage, a company is required to file the necessary documents for the registration of a charge with the Registrar of Companies within 42 days of its creation in order for perfection of the security. Subject to registration of the charge, ranking is determined according to the date of creation of the charge.

As indicated, it is commonplace for a lender to require that a charge is granted over a company's bank account as a form of collateral. This would be granted by way of simple agreement to the effect that the bank account will be solely utilised for purposes of servicing the finance. This charge can be held over an account both onshore and offshore.

The Bank of Tanzania is to be informed of the intended loan facility and requested to confirm the arrangement. On doing so, the

Bank of Tanzania will request a copy of the loan agreement together with a disbursement and debt servicing schedule. The purpose of submitting the agreement to the Bank of Tanzania is that of obtaining a debt record number which will serve as the reference for the disbursement and debt servicing of the loan.

Once the debt record number is obtained, all payments made in respect of the loan, be it disbursement or debt servicing, may be issued by merely indicating the debt record number. The Bank of Tanzania requires to be notified of such transactions so that it may monitor the movement of funds to and from the United Republic of Tanzania. Failure to notify it will lead to restrictions on the movement of currency outside Tanzania. No fees or taxes are payable in respect of the notification to the Bank of Tanzania.

The all-asset debenture is also favoured as a form of collateral since it may be created as a charge over the plant, machinery, fixtures and all other assets of a company. A debenture is stamped with nominal stamp duty of 10,300 Tanzanian shillings and is also required to be registered with the Registrar of Companies within 42 days of its creation. Failure to register the same within the time limit would render it void against any creditor, receiver, administrative receiver or liquidator.

### Pledge

A pledge involves taking possession of property for the duration of the pledge as security for payment of a debt or performance of a promise. Actual or constructive possession is required for perfection of the pledge. Pledges are regulated by the Law of Contract Act, 1961, which specifically refers to the pledge of 'goods'. However, it is common practice in Tanzania for shares of Tanzanian companies to be pledged to lenders. In the absence of specific provisions dealing with pledge of shares, a number of steps ought to be taken by lenders to ensure that their rights are properly secured.

In the case of a pledge of shares, a share pledge agreement is entered into whereby the borrower pledges and cedes to the creditor shares that are duly specified in the agreement. Among other matters, the agreement should clearly set out the rights of the creditor over the pledged shares and whether or not the same extend to receiving dividends and exercising shareholder rights such as attending and voting at shareholders' meetings. Furthermore, the pledge agreement should also set out the events that will constitute a default and include provisions for the enforcement of the pledge by the pledgee.

There is no consent requirement from any regulatory authority in respect of a pledge created over shares, neither are there any requirements for the pledge agreement to be notified or registered. It is recommended, however, that the share pledge agreement be registered with the Registrar of Documents at the Ministry of Lands. The filing fees are approximately 80,000 Tanzanian shillings, in addition to stamp duty of 500 Tanzanian shillings payable on execution of the pledge agreement.

It is also possible for a licence to be used as collateral by way of pledge or assignment in accordance with the law regulating the particular sector. For instance, the Mining Act, 2010 allows the holder of a mineral right to assign such right or an undivided proportionate part thereof to another person upon being granted prior written consent of the Minister for Minerals. However, where an assignment is to take place to a bank or other financial institution by way of mortgage or charge given as security for a loan or guarantee in respect of mining operations, then no consent from the licensing authority is required. The Commissioner for Minerals must be notified of the creation of the encumbrance in the manner required by the Mining Act. The Commissioner maintains a register of all mineral rights including a record of all applications, assignments, transfers, suspension and cancellation of mineral rights. The task is complete when the Commissioner issues a certificate of acknowledgement in terms of the Act. Similarly, the Electronic and Postal Communications Act, 2010 allows for a licence issued in terms of

the Act to be assigned or pledged upon prior written consent of the Tanzania Communications Regulatory Authority (TCRA) being granted.

### Contractual lien

A contractual lien is similar to a pledge in the sense that it gives the creditor a right to retain possession of another person's property until a specific obligation is satisfied. It is different from a pledge because the property would not have been deposited as a form of security but rather for some other contractual purpose. A creditor has the right to retain the goods bailed to him or her as security for a balance due, if an express contract has been entered into by the parties. In the event of a default the creditor would be able to exercise the power of sale upon obtaining an order allowing him or her to do so from the courts.

### Taxes and fees

Stamp duty is payable on instruments creating security interests in accordance with the Stamp Duty Act, 1972. The stamp duty payable varies depending upon the type of instrument. Registration of documents with the Companies Register attracts a filing fee of 15,000 Tanzanian shillings per document.

### Specific issues in relation to the security instruments and whether a security trustee can be appointed to that security

Under Tanzanian law, the lenders and the borrower can agree to appoint a security trustee for the purpose of holding security instruments in trust for a syndicate of lenders in a transaction. The security trustee's responsibilities include the administration of the trust and management of the contents responsibly on behalf of both the borrower and the lenders. Each of the lenders involved in the transaction has a financial interest in the trust, rather than in the individual assets granted as security. If the transaction goes smoothly and the borrower discharges the debt, the trust is dissolved and title to the trust assets reverts to the borrower. On the other hand, in the event of a default, the security trustee would be the entity responsible for enforcing the provisions of the applicable transaction documents.

### 3 Existing liens

How can a creditor assure itself as to the absence of liens with priority to the creditor's lien?

It is advisable that an investigation of the title to the property be carried out together with searches with all relevant authorities. Investigations on the certificate of title should extend to any matter that affects the ability of the mortgagee to sell and cover any matters that would affect the value of the property.

In the case of immoveable property a formal search at the lands registry as well as a visit to the property (wherever possible) is recommended to satisfy oneself that the physical location, structure and state of the property conform to the description provided by the borrower, the certificate of title and the valuation report. The search at the registry should shed light on the following facts:

- description and location of the property;
- nature and term of tenure under which the property is held;
- rent payable on the property per annum;
- reservations, if any, on the tenure;
- registered owner of the property; and
- existence of any registered encumbrances.

Where corporate entities are involved, it is important to carry out searches at the Companies Registry but also to verify the internal records of the company. Companies registered in Tanzania are required to maintain a register of debenture holders and a register of charges.

#### 4 Enforcement of collateral

Outside the context of a bankruptcy proceeding, what steps should a project lender take to enforce its rights as a secured party over the collateral?

##### Mortgages

In accordance with the Land Act, 1999, a mortgagee would, upon default, have power to appoint a receiver, lease the mortgaged land, enter into possession or sell the mortgaged land.

A well-drafted mortgage would include all the above rights along with power of attorney appointing the mortgagee and any receiver appointed as the mortgagor's attorney.

The best method of enforcement would be to appoint a receiver who would exercise its power of sale over the property and realise the outstanding funds.

The Lands Act sets out certain notice provisions that must be adhered to before enforcement. Further, where the mortgaged property constitutes a matrimonial property additional notice requirements are in place.

##### Charges

In the case of a charge, the remedies available include appointment of a receiver, putting the company under administration and liquidating the company.

##### Pledge

In the event of a default, the pledgee may bring a suit against the pledgor and retain the goods pledged as a collateral security or he or she may sell the thing pledged, on giving the pledgor reasonable notice of the sale. If the proceeds of the sale are less than the amount due in respect of the debt, the pledgor remains liable to pay the balance. On the other hand, if the proceeds of the sale are greater than the amount due, the pledgee is obliged to pay the surplus to the pledgor.

#### 5 Bankruptcy proceeding

How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the collateral? Are there any preference periods, clawback rights or other preferential creditors' rights (eg, tax debts, employees' claims) with respect to the collateral? What entities are excluded from bankruptcy proceedings and what legislation applies to them? What processes other than court proceedings are available to seize the assets of the project company in an enforcement?

All companies incorporated in Tanzania are subject to Tanzanian corporate insolvency law, which is mainly contained in the Companies Act as supplemented by the Insolvency Regulations, 2005.

##### Formal procedures

There are four main types of formal procedures available for companies in financial distress: compromise arrangements, voluntary arrangements, administration and winding up. Where a distribution is made pursuant to a compromise arrangement or a company voluntary arrangement, the terms on which it will be made will be governed by the arrangement itself, which the creditors will have voted on and approved by the requisite majorities. Accordingly, there is no general rule that applies to the ranking of claims in these procedures; it must be noted that compromise arrangements or company voluntary arrangements cannot affect the rights of preferential debtors.

There is no ranking of claims during administration if the administrator's goal is to preserve the company as a going concern rather than realise the company's property. If, on the other hand, the administrator decides to realise some or all of the company's property in satisfaction of its debts, then the following ranking applies:

- all costs, charges and expenses properly incurred in the administration, including the administrator's remuneration are payable out of the company's assets in priority to all other claims;
- after these have been paid, the company's preferential debts (including due taxes, government rents and employees' wages in respect of services provided within the four months before the relevant date), must be paid; and
- all other claims (ie, secured and unsecured creditors) are payable out of the remaining assets on a *pari passu* basis.

All costs, charges and expenses properly incurred in the winding up, including the liquidator's remuneration, are payable out of the company's assets in priority to all other claims. After the costs, charges and expenses have been paid, the company's preferential debts (as above) must be paid. All other claims (ie, secured and unsecured creditors) are payable out of the remaining assets on a *pari passu* basis.

##### Transactions at an undervalue

When a company is in administration or goes into liquidation and has, within two years before the commencement of winding up or the commencement of administration, entered into a transaction with any person at an undervalue, the administrator or the liquidator, as the case may be, may apply to the court, which may make such order as it thinks fit for restoring the company to the position it would have been in had it not entered into that transaction.

##### Preferences

When a company is in administration or goes into liquidation and has, within six months before the commencement of winding up or administration, given a preference to any person, the administrator or liquidator may apply to the court for an order restoring the company to the position it would have been in had it not given that preference.

##### Floating charges

When a company is being wound up, a floating charge on the company's undertaking or property created within 12 months of the commencement of the winding up is invalid unless it is proved that the company, immediately after creating the charge, was solvent.

#### 6 Foreign exchange

What are the restrictions, controls, fees, taxes or other charges on foreign currency exchange?

The applicable restrictions and controls are explained in the Foreign Exchange Act, 1992, regulations issued under this Act and circulars issued from time to time by the Bank of Tanzania. If a transaction is not explicitly allowed under these instruments, one must assume that it is prohibited and must obtain approval from the Bank of Tanzania.

#### 7 Remittances

What are the restrictions, controls, fees and taxes on remittances of investment returns or payments of principal, interest or premiums on loans or bonds to parties in other jurisdictions?

Payment of dividends and repatriation of capital to foreign investors are unrestricted. Dividends paid by companies listed on the Dar es Salaam Stock Exchange are subject to a withholding tax of 5 per cent while dividends paid by non-listed companies are subject to a withholding tax of 10 per cent.

Other than the requirement to notify the Bank of Tanzania as indicated in question 2, there are no restrictions on repayments of loans and interest to other parties in foreign jurisdictions. A withholding tax of 10 per cent applies on interest payments. Payment

of interest on loans to a foreign entity is exempted if the entity concerned is a bank and the borrower a strategic investor in Tanzania.

Authorising banks will require audited accounts and authenticated tax clearances from the Tanzania Revenue Authority confirming payments of all relevant taxes before affecting payment.

### 8 Repatriation

Must project companies repatriate foreign earnings? If so, must they be converted to local currency and what further restrictions exist over their use?

There is no obligation for a project company to repatriate foreign earnings.

### 9 Offshore and foreign currency accounts

May project companies establish and maintain foreign currency accounts in other jurisdictions and locally?

Foreign currency accounts may be maintained both locally and abroad.

### 10 Foreign investment and ownership restrictions

What restrictions, fees and taxes exist on foreign investment in or ownership of a project and related companies? Do the restrictions also apply to foreign investors or creditors in the event of foreclosure on the project and related companies? Are there any bilateral investment treaties with key nation states or other international treaties that may afford relief from such restrictions? Would such activities require registration with any government authority?

Restrictions exist in specific sectors, including land ownership and interest, oil and gas, mining, telecommunications and tourism. In all of these cases, a foreign investor would be required to either enter into an agreement with locals who will hold a stake in the project or incorporate a Tanzanian company with a percentage of its shares held by locals.

The restrictions continue to apply to foreign investors irrespective of foreclosure.

No bilateral investment treaties signed by Tanzania relieve foreign investors from the restrictions.

### 11 Documentation formalities

Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

As indicated in question 2, when remitting funds abroad, the project company is required to provide a copy of the executed loan agreement as well as the disbursement and debt servicing schedule to the Bank of Tanzania.

It is advisable that key financing or project documents are filed with the Registrar of Documents at the Ministry of Lands for registration.

### 12 Government approvals

What government approvals are required for typical project finance transactions? What fees and other charges apply?

Borrowing does not require a licence or permit. However, for loan servicing purposes, a debt record number is required as indicated in question 2.

Similarly, payment of interest and repayment of principal in foreign currency to foreign entities do not require licences or permits but a debt record number is required.

If the project entity is a subsidiary company registered in Tanzania, it will require approval by the Bank of Tanzania to open and maintain an offshore bank account.

Dividend payments do not require approval; however, see question 7 above regarding proof of payment of taxes.

### 13 Foreign insurance

What restrictions, fees and taxes exist on insurance policies over project assets provided or guaranteed by foreign insurance companies? May such policies be payable to foreign secured creditors?

Insurance for risks that may arise in Tanzania must be placed with an insurer licensed in Tanzania. Should it not be possible to acquire insurance cover locally, then it will be possible to obtain such cover from a non-resident insurer after obtaining the prior written approval of the commissioner of insurance.

### 14 Foreign employee restrictions

What restrictions exist on bringing in foreign workers, technicians or executives to work on a project?

Foreigners seeking to reside in the United Republic of Tanzania for investment, business, employment or any other legal activity may be issued with a residence permit. The authority to issue residence permits is vested in the principal commissioner of immigration services (PCIS).

There are three types of residence permits: residence permit class A is available to self-employed individuals. Residence permit class B is issued to foreigners having specified employment in Tanzania and whom the PCIS is satisfied possess qualifications or skills necessary for that employment. Residence permit class C is issued to foreigners intending to enter and reside in Tanzania for purposes other than those specified for the grant of residence permit class A or B.

### 15 Equipment import restrictions

What restrictions exist on the importation of project equipment?

Generally there are no restrictions on the importation of project equipment, provided the equipment contains no hazardous materials detrimental to public health and the environment. It is recommended that any application for exemption from duty payable on importation of project equipment be taken to the tax authorities before the commercial development of the project.

### 16 Nationalisation and expropriation

What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

Tanzania is a participant of numerous bilateral agreements that promote and strengthen the protection of foreign investment against nationalisation and expropriation with the likes of Denmark, Finland, Germany, India, Italy, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom and Zambia. It is also currently an active member of Multilateral Investment Guarantee Agency (MIGA), which is a member of the World Bank Group.

Tanzania is also a member of the International Centre for Settlement of Investment Disputes (ICSID), which is a leading international arbitration institution dedicated to the settlements of investment disputes between governments and private sector foreign investors.

Yet the actual advancement and security of investment in Tanzania is derived from the Tanzanian Investment Centre (TIC). The main functions of TIC are to promote and support measures that will enhance the country's investment climate for both local and

foreign investors while also guaranteeing against nationalisation and expropriation.

Some of the investment projects covered under the TIC are in the agriculture and livestock, transportation, telecommunications, natural resources, energy and infrastructure sectors.

### 17 Fiscal treatment of foreign investment

What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

Tanzania offers fiscal incentives for projects that have been approved by the TIC, including:

- the recognition of private property and protection against any non-commercial risks;
- no import duty on project capital goods, computers and computer accessories, raw materials and replacement parts for agriculture, animal husbandry and fishing, human and livestock pharmaceuticals and medicaments, motor vehicles in completely knocked down (CKD) form and inputs for manufacturing pharmaceutical products;
- 10 per cent on import duty for semi-processed inputs and spare parts other than for motor vehicles;
- 15 per cent import duty for fully processed inputs and motor vehicle spares;
- 25 per cent import duty for final consumer goods;
- zero-rated VAT on exports; and
- VAT special relief on project capital goods such as plants, machinery, cranes, etc.

Furthermore, such projects also benefit from 100 per cent repatriation of 100 per cent of profits, dividends and capital after tax. A full list of benefits can be found on the TIC official website: [www.tic.co.tz/](http://www.tic.co.tz/).

As indicated in question 1, stamp duty is chargeable over all instruments creating security interests. Instruments executed in Tanzania must be stamped within 30 days from the date the document was executed. Instruments executed outside Tanzania must be stamped within 30 days of arrival in Tanzania. It is important to have the document stamped since this is a tax obligation in terms of the Stamp Duty Act. Furthermore, once this is done the instrument becomes admissible as evidence in terms of the Act.

### 18 Government authorities

What are the relevant government agencies or departments with authority over projects in the typical project sectors? What is the nature and extent of their authority? What is the history of state ownership in these sectors?

The Energy and Water Utilities Regulatory Authority (EWURA) regulates electricity, petroleum, natural gas and water sectors, projects and activities.

It provides guidelines, tariff review and standards with regard to quality, safety, health and environment. Furthermore, EWURA is also responsible for licensing and regulating entities, operating in the above sectors.

Alongside EWURA each sector mentioned above has its specific governing legislation and governing body; for instance the Mining Act, 2010 governs projects in connection with the mineral sector. The institutional bodies that oversee mining projects within the sector are the Tanzania Minerals Audit Agency (TMAA) and the State Mining Corporation (STAMICO). Some of the main functions of TMAA include:

- monitoring and auditing quality and quantity of minerals produced and exported by large, medium and small-scale miners; and

- determining revenue generated to facilitate collection of payable royalty.

STAMICO is an agency controlled by the government that oversees the transformation of small-scale mining sub-sector into regulated, environmentally friendly, safe, productive and sustainable operations among other matters.

### Oil and gas

The Ministry for Energy and Minerals facilitates energy, oil, natural gas and mineral projects. The Tanzania Petroleum Development Company (TPDC) is the principal body responsible for the exploration of oil and gas. Its main functions are to promote, develop, distribute and manage the exploration and production of oil and gas, and to safeguard the national supply of petroleum products. The TPDC works in conjunction with EWURA in terms of the Petroleum Act, 2008.

### Electricity

The Tanzania Electric Supply Company Limited (TANESCO), alongside EWURA and the Electricity Act, 2008, governs the electricity sector in Tanzania. TANESCO is wholly government-owned and is responsible for the development, distribution and transmission of electricity.

### Ports, transport and roads

The Ministry of Infrastructure Development in Tanzania oversees all major projects relating to transport (such as railways, aircraft and roads), ports and telecommunications. Various regulatory authorities are charged with licensing such projects, for instance projects relating to the development of port infrastructure are required to be directed to the Tanzania Ports Authority, which is established under the Ports Act, 2004.

The principal body responsible for issuing and cancelling of shipping and road licences in Tanzania is the Surface and Marine Transport Regulatory Authority (SUMATRA), being a government authority established by law. SUMATRA's main function is to regulate, promote and facilitate the availability of efficient, safe, high-quality and reliable transport services in the surface and marine transport sectors through economical, competitive and fair trade practices.

The Tanzania National Roads Agency (TANROADS) is responsible for maintenance and development of the trunk and regional road network. As an executive agency established under the Executive Agencies Act (Cap 245), its functions are to improve the delivery of public service and to create an environment conducive to efficient and effective management.

### Telecommunications

The Tanzania Communications Regulatory Authority Act, 2003 merged the Tanzania Communications Commission and the Tanzania Broadcasting Commission to establish the Tanzania Communications Regulatory Authority (TCRA), a regulatory body responsible for the telecommunications and broadcasting sectors in Tanzania.

The TCRA's responsibilities are to regulate tariffs and charges, establish standards for regulated goods and regulated services. It also issues, renews and cancels licences and resolves complaints and disputes that arise within the project sector. Before granting any major licence, the TCRA must seek consent from the minister of infrastructure development.

Finally it is also worth mentioning that all projects to be undertaken in Tanzania must ensure that they are in compliance with the Fair Competition Act. The Fair Competition Commission is responsible for the monitoring and regulating of all competition matters in the country.

## 19 International arbitration

How are international arbitration contractual provisions and awards recognised by local courts? Is the jurisdiction a member of the ICSID Convention or other prominent dispute resolution conventions? Are any types of disputes not arbitrable? Are any types of disputes subject to automatic domestic arbitration?

Tanzania is a member of the ICSID Convention and is also a party to several multilateral agreements such as the New York Convention, which entered in force in Tanzania in 1964. It is also a party to 15 bilateral agreements relating to arbitration with countries such as the United Kingdom, Germany and Switzerland.

The Arbitration Act, 2002 (Cap 15 RE) is the governing law regulating arbitration in Tanzania. It oversees both domestic arbitral proceedings as well as the enforcement of foreign arbitral awards. International arbitration provisions in contractual documents are recognised by local courts; however, exceptions exist in that disputes relating to land are not arbitrable.

The Act provides that foreign arbitral proceedings shall be recognised as binding if and when they are or have been conducted in the territories of any contracting party of the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927.

The Act further outlines that in order to obtain such recognition or enforcement of an award the following are necessary:

- that the award has been made in pursuance of a submission to arbitration that is valid under the applicable law;
- that the subject matter of the award shall be capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;
- that the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;
- that the award has become final in the country in which it has been made; and
- that the recognition or enforcement of the award is not contrary to public policy or to the principles of the law of the country in which it is also sought to be relied upon.

Yet even if the above conditions are fulfilled, recognition and enforcement of the award will be refused if the court is satisfied that the award has been annulled in the country in which it was made and that the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him or her to present his or her case; or that, being under a legal incapacity, he or she was not properly represented. Furthermore, if the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration, the recognition of such an award and enforcement will be refused.

## 20 Applicable law

Which jurisdiction's law typically governs project agreements? Which jurisdiction's law typically governs financing agreements? Which matters are governed by domestic law?

In Tanzania parties to project and financing agreements are permitted to choose the applicable law that will govern their agreements.

## 21 Jurisdiction and waiver of immunity

Is a submission to a foreign jurisdiction and a waiver of immunity effective and enforceable?

Submission to a foreign jurisdiction and waiver of immunity is effective and enforceable.

## 22 Title to natural resources

Who has title to natural resources? What rights may private parties acquire to these resources and what obligations does the holder have? May foreign parties acquire such rights?

As provided by law all titles to natural resources in the country are vested in the government of Tanzania.

Accordingly, foreign private parties can acquire limited rights to natural resources for a specific duration of time and upon certain conditions and covenants, which the government and governmental authority may seek to impose.

## 23 Royalties on the extraction of natural resources

What royalties and taxes are payable on the extraction of natural resources, and are they revenue- or profit-based?

There is no distinction between the royalties and taxes on extraction payable by foreign and domestic parties. For royalties taxes payable on the extraction of natural resources please see the table below:

Mineral royalties tax	
Rate (%)	Mineral
5	Diamonds, gemstones, uranium
4	Metallic minerals (including copper, gold, silver and platinum group minerals)
1	Gems

## 24 Export of natural resources

What restrictions, fees or taxes exist on the export of natural resources?

There are no restrictions on the export of natural resources, provided that the legal requirements in the Export Control Act (Cap 381) are adhered to. Export of minerals is governed by the Mining Act and Regulations. A permit is required from the Commissioner for Minerals. An export process should follow the procedure set out in the Regulations and an export fee paid.

## 25 Environmental, health and safety laws

What laws or regulations apply to typical project sectors? What regulatory bodies administer those laws?

The principal law regulating the environment is the Environment Management Act, 2004, which provides for sustainable management of the environment while setting the standards for management, impact and risk assessments, prevention and control of pollution and associated matters. The National Environment Management Council (NEMC) enacted under the National Environmental Management Act, 1983 is the regulatory body which oversees the environmental management issues in the country. The object and purpose for which NEMC is established is to undertake environmental enforcement, compliance, review and monitor environmental impact statements, research and raising awareness.

The legislation governing the health and safety law is the Occupational Health and Safety Act 2003. The Act provides for health and safety standards and requires all machines and equipment to be registered, the compliance certificate of a factory or a work place to be renewed every 12 months. The Occupational Health and Safety Authority (OSHA) established under the Executive Agencies Act, 1997 is the governing agency that administers health and safety standards in Tanzania. The primary objective of OSHA, among others, is to ensure the creation and maintenance of an ideal work environment that is free from occupational hazards that may cause injuries or illness to employees in the workplace.

**26 Project companies**

What are the principal business structures of project companies?  
What are the principal sources of financing available to project companies?

The most common principal business structures of project companies in Tanzania are limited liability companies; these may be private or public and may also be foreign or locally owned or joint ventures. Most project companies are financed through local or foreign bank loans yet other financing methods such as share and bond issues are also widely used.

**27 Public-private partnership legislation**

Has PPP enabling legislation been enacted and, if so, at what level of government and is the legislation industry-specific?

The Public Private Partnership Act, 2010 was enacted by parliament in Tanzania on 26 May 2011. Its aim is to provide an institutional framework for the implementation of PPP agreements between public sector and private sector entities. It sets out rules for PPP procurement, development and implementation.

The main sectors targeted by the PPP Act are agriculture, infrastructure, industry and manufacturing, exploration and mining education, health, environment and waste management, information and communication technology, trade and marketing, sports, entertainment and recreation, tourism, natural resources and energy.

**28 PPP – limitations**

What, if any, are the practical and legal limitations on PPP transactions?

The PPP Regulations 2011 allow a public sector body to select specific projects for further development as a PPP from the projects notified in the Gazette, yet the guidelines do not provide any instructions for the selection step. As a result, many eligible projects are notified in the Gazette as possessing real potential to be implemented in a PPP, but are never further developed or implemented. This is damaging to the credibility of the public sector as an able and reliable partner in PPP projects.

Furthermore, non-PPP regulations such as the Environmental Impact Assessment and Audit Regulations, 2005 sometimes prevent PPPs from achieving their full efficiency potential. There is also a real lack of public awareness about PPPs and their benefits which needs to be addressed in order to further encourage and promote PPP transactions in Tanzania.

Furthermore, one of the practical difficulties with PPPs is that of coordinating the various aspects of a project between the various

**Update and trends**

International and local banks have become increasingly involved in financing a number of projects in commercial real estate development and infrastructure sectors. For instance, the National Microfinance Bank PLC, CRBD Bank PLC and Diamond Trust Bank Tanzania Limited have in the past year been involved in more than US\$60 million worth of commercial real estate projects in the city of Dar Es Salaam alone.

International Banks such as the Export-Import Bank of China have been involved in the financing of the US\$1.2 billion 512-kilometre Mtwara–Dar Es Salaam Gas Pipeline which is already under construction. The African Development Bank has recently shown interest in part financing the US\$10 billion Bagamoyo Port Project and also recently financed the US\$232.5 Million 157-kilometre Arusha–Holili–Taveta–Voi road connecting Tanzania and Kenya.

Moreover, in recent years one can identify an increase in the number of banks providing specialised financial instruments that are compliant with Islamic law. This has resulted in a larger pool of financial products that can appeal to foreign investors of Islamic background and faith. Amana Bank is the first fully shariah-compliant Bank in Tanzania. It offers both personal and business banking services, as well as the option to obtain a Hajj saving account and an Ihsan account. Another Tanzanian bank that offers Islamic financial services is the National Bank of Commerce.

ministries and authorities. For this purpose a coordination committee has been set up to facilitate such coordination.

A limitation that used to exist until recently has been removed by virtue of amendments to the PPP Act and the Public Procurement Act: unsolicited PPP projects are no longer required to go through a competitive bidding process.

**29 PPP – transactions**

What have been the most significant PPP transactions completed to date in your jurisdiction?

The most significant PPP transaction in Tanzania thus far has been the Mchuchuma-Liganga Project; where a Tanzanian party (National Development Corporation) and Chinese party (Sichuan Hongda) entered into an agreement worth US\$3 billion to develop the Mchuchuma coal and Liganga iron ore projects in the south of the country. The two projects are the single largest investment venture in East Africa. Implementation of the Mchuchuma project, among other things, aims to improve power output in the country. The exploration works have confirmed that the coal and iron ore deposits will be mined for more than 100 years.

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