

# Project Finance

in 45 jurisdictions worldwide

# 2015

Contributing editor: Phillip Fletcher



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**Project Finance 2015**

**Contributing editor:**  
**Phillip Fletcher**  
**Milbank, Tweed, Hadley & McCloy LLP**

*Getting the Deal Through* is delighted to publish the fully revised and updated eighth edition of *Project Finance*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 45 jurisdictions featured. New jurisdictions this year include Canada, China, the Dominican Republic, Greece and India. This year the publication again includes quick reference tables, focusing on public-private partnerships in US states.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

*Getting the Deal Through* gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would also like to extend special thanks to contributing editor Phillip Fletcher of Milbank, Tweed, Hadley & McCloy LLP for his continued assistance with this volume.

**Getting the Deal Through**

London  
 August 2014

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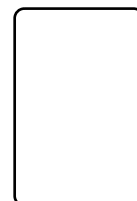
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# Tanzania

Angela Thorns, Kamanga Wilbert Kapinga and Jacqueline Tarimo

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## Creating collateral security packages

### 1 What types of collateral are available?

The most common types of assets granted as collateral in project finance transactions include land rights, machinery, fixed assets, trading stock, shares, intellectual property, goodwill, contractual rights, receivables, licences, aircraft and bank accounts.

A security interest may be created by way of pledge, assignment, mortgage, charge or lien, depending on the asset being provided as collateral.

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

- charge over bank accounts;
- pledge of shares;
- all-asset debenture creating fixed and floating charges;
- assignment or pledge of contractual rights or licences; and
- mortgage over land rights.

### 2 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.

All land in mainland Tanzania and Zanzibar is vested in the Presidency in trust for the people of the United Republic of Tanzania. Consequently, 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 is granted by a company, the mortgage deed must be sealed in the presence of two directors or one director and the company secretary. Consent by the Commissioner for Lands has to be obtained prior to the creation of a mortgage. Perfection occurs when the mortgage and the applicable statutory form are registered with the Land Registry, which keeps a record of any right, title or interest over land and any dispositions, transmission and encumbrances of and over registered land. Among other information, the Land Register will state the date of registration of the mortgage and

the details of the property encumbered. Registration is essential for the mortgagee to be able to exercise any of his or her remedies under that mortgage as a mortgage will only take effect once it is registered. Further, registration also determines priority since mortgages rank according to the order in which they are registered. Payment of registration fees consisting of 160,000 Tanzanian shillings in respect of a mortgage over land is required and must be accompanied by the stamp duty levied on mortgage deeds of 1,000 Tanzanian shillings.

When a mortgage is granted by a company over any of its property, the mortgage and the applicable statutory form must be registered with the Registrar of Companies (Registrar) at the Companies Registry within 42 days of 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 will issue a certificate evidencing the registration of the encumbrance indicating the amount thereby secured. Failure to effect registration with the Registrar will render the mortgage void against any creditor, receiver, administrator or liquidator. Registration fees consisting of 15,000 Tanzanian shillings and stamp duty of 10,000 Tanzanian shillings apply.

Mortgages may also be granted over moveables such as ships, aircraft, machinery, fixed assets and vehicles. 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 or a share therein. It also establishes a register for the purpose of recording the date and time the mortgage was created and its ranking.

### Charge over company assets

A charge is a security interest that confers on the chargee a right to resort to specific assets (known as a fixed charge), or a shifting pool of assets, whether present or future (known as a floating charge), in satisfaction of a debt. As charges are created by companies these are regulated by the Companies Act, 2002. Charges can be created over any asset including contractual rights, shares, goodwill, intellectual property, book debts or for the purpose of securing an issue of debentures. The Act also allows for the creation of a floating charge on the undertaking or property of the company. Although charges may be created by using any form of document such as a mortgage deed, charges tend to be created by way of debenture. Similar to a mortgage, a company is required to file the instrument creating or evidencing the charge, if any, and the statutory form stating the prescribed particulars of the charge with the Registrar within 42 days after creation of the charge. Subject to this requirement being fulfilled, ranking is determined according to the date of creation of the charge. Failure to register the charge with the Registrar within the requisite time limit renders it void against any creditor, receiver, administrative receiver or liquidator.

A fixed charge attaches forthwith to a charged asset, which is definite or is capable of being ascertained and, consequently, the asset should be defined as specifically as is possible in the document

creating the charge. Conversely, a floating charge is created over a fund of changing assets and is generally used to create security over assets that the debtor needs to deal with in the ordinary course of his or her business or over those assets that are not caught under the fixed charge. Another difference lies in the fact that a fixed charge requires the lender to have control over the charged asset, while, in the case of a floating charge, the lender does not need to have control over the asset.

A floating charge crystallises upon the occurrence of specified events set out in the document creating the charge. Once crystallised, the floating charge becomes a fixed charge.

As indicated earlier, it is commonplace for an all-asset debenture to be granted containing both fixed and floating charges over all assets of the company granting the charge. However, it is also possible to create a charge over specified assets only, such as commodities and bank accounts.

An instrument creating a charge is stamped with nominal stamp duty of 10,000 Tanzanian shillings and registration fees of 15,000 Tanzanian shillings are payable.

### 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. Although the Law of Contract Act, Cap 345, RE 2002, regulates pledge of 'goods' as security for the payment of a debt or the performance of a promise, it is common practice for shares of Tanzanian companies to be pledged. In the absence of specific provisions regulating a pledge of shares, a number of steps ought to be taken by lenders to ensure that their rights are properly secured.

A share pledge agreement has to be executed by the parties whereby the shareholders pledge and cede to the creditor the shares 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. Further, the 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 agreement is notified to the company whose shares are being pledged and that it is registered with the Registrar of Documents in accordance with the Registration of Documents Act, Cap 117. The filing fees are approximately 80,000 Tanzanian shillings, in addition to stamp duty of 1,000 Tanzanian shillings payable on the share pledge agreement.

It is also possible for a licence to be utilised 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 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.

### 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 competent authorities attracts registration or filing fees per instrument. In the case of land rights, filing fees apply per title registered.

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

Tanzanian law does not regulate the concept of a 'security trustee' or 'security agent'. However, in practice, the lenders and borrower can agree to appoint a security trustee for the purpose of holding collateral in trust in accordance with the provisions of the facility agreement and any applicable transaction document. In the absence of specific provisions of law regulating this concept, it is recommended that the role of the security trustee is clearly defined and its powers clearly stated in the transaction documents. By doing so, in the event of a default, the security trustee would be the rightful entity responsible for enforcement of the security in accordance with the provisions of the applicable transaction documents.

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

It is advisable that title to the property is verified and assurances sought from the borrower that no liens with priority to the creditor's lien exist. Where possible, searches with all relevant authorities should be carried out. Investigations on the certificate of title should extend to any matter that affects the ability of the lender to sell the property in the event of an enforcement and cover any matters that would affect the value of the property.

In the case of immovable 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 of the title under which the property is held and term of tenure;
- rent or other dues payable on the property per annum;
- reservations, if any, on the tenure;
- the identity of the 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 and to verify the internal records of the company. Companies registered in Tanzania are required to maintain a register of members, register of debenture holders and a register of charges.



- 4 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, Cap 113, RE 2002, a mortgagee would, upon default, have power to appoint a receiver, lease or sub-lease the mortgaged land, enter into possession of the land, or sell the rights or interests over the mortgaged land by public auction or private sale. Consequently, a well-drafted mortgage would include all the above rights along with a power of attorney appointing the mortgagee and any receiver as the mortgagor's attorney.

The Land Act requires a 60-day notice period that must be given before enforcement may take place. Further, where the mortgaged property constitutes a matrimonial property additional notice requirements are in place. Publicity requirements also apply in the case of a public auction.

The best method of enforcement would be for the receiver to exercise the power of sale over the mortgaged property and realise the outstanding funds.

#### Charges

After giving notice of default, the remedies available include the appointment of a receiver over the charged assets. On enforcement, a fixed charge holder will rank prior to other creditors, while a floating charge holder will be paid only after fixed charge holders and preferential creditors are paid. Notice of appointment of a receiver has to be given to the Companies Registry in the prescribed form. Other remedies include putting the company under administration and liquidating it.

#### 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 sell them, on giving the pledgor reasonable notice of the sale. If the proceeds of the sale are less than the amount due to the pledgee, 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.

#### Contractual Lien

In the event of a default the creditor would be able to exercise the power of sale upon obtaining an order from the courts authorising the sale.

- 5 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 corporate insolvency law, which is mainly contained in the Companies Act and 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 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 creditors.

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 the administration or winding up, 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 requesting it to make such an 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 the administration or winding up, 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 presumed to be invalid unless it is proved that the company, immediately after creating the charge, was solvent.

#### Foreign exchange issues

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

The applicable restrictions and controls are contained 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 obtain prior approval from the Bank of Tanzania.

- 7 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. Authorising banks will require audited accounts and authenticated tax clearances from the Tanzania Revenue

Authority confirming payments of all relevant taxes before affecting payment. 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.

In the case of loan facilities, the Bank of Tanzania is to be informed of the loan and requested to confirm the arrangement. On doing so, the Bank of Tanzania must be provided with a copy of the loan agreement together with a disbursement and debt-servicing schedule. The purpose of this is to obtain a debt record number that will serve as the reference for the disbursement and debt servicing of the loan.

Once the debt record number is issued, all payments made in respect of the loan may be made 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 inward and outward funds. Failure to notify it will lead to restrictions on the movement of funds outside Tanzania. No fees or taxes are payable in respect of the notification to the Bank of Tanzania.

A withholding tax of 10 per cent applies on interest payments.

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

Foreign currency accounts may be maintained locally. Specific approval from the Bank of Tanzania must be sought by resident companies prior to opening a bank account abroad.

#### Foreign investment issues

- 10** 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 oil and gas, mining, insurance and telecommunications. In the case of land, foreign investors are allowed to hold a right of occupancy or long term lease in relation to a project involving a minimum fixed direct investment of US\$500,000 registered with the Tanzania Investment Centre (TIC). On registration a certificate of incentives is issued in accordance with the Tanzania Investment Act, 1997.

To overcome this, a foreign investor can either enter into an agreement with a Tanzanian citizen who will hold a stake in the project or incorporate a Tanzanian company with a percentage of its shares held by Tanzanian citizens.

Restrictions continue to apply to foreign investors irrespective of foreclosure.

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

- 11** 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 arising 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.

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

Foreign nationals seeking to reside in the Tanzania for investment, business, employment or any other legal activity are required to have 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 for self-employed individuals;
- Residence Permit class B for individuals having a specified employment in Tanzania and who possess qualifications or skills necessary for that employment; and
- Residence Permit class C for individuals intending to enter and reside in Tanzania for purposes other than those specified for the grant of Residence Permit class A or B.

- 13** What restrictions exist on the importation of project equipment?

Generally, there are no restrictions on the importation of project equipment, subject to payment of duties and taxes and 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.

- 14** 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 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.

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**Fiscal treatment of foreign investment**


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- 15** 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 investment and fiscal incentives for projects wholly owned by foreign investors or joint ventures that have been approved by the TIC, including:

- the recognition of private property and protection against any non-commercial risks;
- 100 per cent repatriation of all profits, dividends and capital after tax;
- 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 plant, machinery, cranes, etc.

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. Further, once this is done the instrument becomes admissible as evidence in terms of the Act.

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**Government authorities**


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- 16** 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. Further, 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.

**Mining**

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), is a wholly-owned government entity. Alongside EWURA and pursuant to the Electricity Act, 2008, it is charged with generation, transmission and distribution of electricity in Tanzania.

**Ports, transport and roads**

The Ministry of Works 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 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 RE 2002, 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.

**Competition**

Finally it is also worth mentioning that all projects to be undertaken in Tanzania must ensure that they comply with notification requirements under the Fair Competition Act where a merger is taking place. The Fair Competition Commission is responsible for the monitoring and regulating of all competition matters in the country.



### Regulation of natural resources

- 17** 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?

Title to natural resources in Tanzania is vested in the government of the United Republic 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 that the government and governmental authorities may seek to impose.

- 18** 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 payable on the extraction of minerals under the Mining Act, 2010, 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)
3	General rate
1	Gems

The basis for calculating mineral royalties is gross value.

- 19** 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 RE 2002 are adhered to. A permit is required from the Commissioner for Minerals for export of minerals as per the Mining Act and applicable regulations. The latter set out the procedure for export and applicable export fees to be paid.

### Legal issues of general application

- 20** 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 7.

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 regarding proof of payment of taxes.

- 21** 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?

Although not mandatory, it is advisable that key financing or project documents are filed with the Registrar of Documents for registration.

- 22** 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 Germany, Switzerland and the United Kingdom.

The Arbitration Act, 2002, Cap 15 RE 2002 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. Further, 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.

- 23** 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.

Matters relating to land or assets situated in Tanzania and documents creating security over such assets are governed by Tanzanian law.

- 24** 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.

**Update and trends**

Construction, infrastructure, natural resources and energy continue to underpin the majority of the deals being carried out in Tanzania.

On mainland Tanzania it is expected that infrastructure projects under PPP arrangements will increase. Authorities such as the Tanzania Ports Authority and TANROADS are seeking to use PPP structures for development and expansion of existing infrastructure and port facilities and construction of new roads respectively.

In Zanzibar, a PPP unit was established within the President's Office for Finance, Economy and Development Planning (POFEDP) with a view to supporting the development of a PPP policy for Zanzibar. Zanzibar is focusing on the need to expand coverage, improve quality, and ensure efficient delivery of infrastructure services by tapping into PPPs.

The Finance Act 2014 introduces certain new measures including:

- in order to qualify for the benefits afforded under the Tanzania Investment Act to strategic investors, minimum investment by foreign nationals wishing to qualify as strategic investors has risen to US\$50 million;
- the Business Licensing Act, Cap 25 RE 2002 was amended to regulate business licences, which are renewable annually. At the time of renewal a fee is payable, depending on the type of business licence required; and
- withholding tax exemption on rent charges on aircraft leases paid to non-residents has been removed.

A Value-Added Tax Bill has recently been published and it is expected that a new Value-Added Tax Act will be promulgated by Parliament in the coming months.

**Environmental, health and safety laws**

**25** 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 overseeing the environmental management issues in Tanzania. The objects for which NEMC is established are to undertake environmental enforcement, compliance, review and monitor environmental impact statements, research and raise awareness on environmental matters.

The principal law governing health and safety standards is the Occupational Health and Safety Act 2003. The Act sets out procedures for registration of all machinery and equipment and granting and renewal of compliance certificates for factories or other places of work. 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.

**Project companies**

**26** 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.

**Public-private partnership legislation**

**27** 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 (PPP Act) provides an institutional framework for development and implementation of PPP agreements between public sector and private sector entities and applies in mainland Tanzania.

The main sectors targeted by the PPP Act include agriculture, infrastructure, industry and manufacturing, exploration and mining, health, environment and waste management, information and communication technology, natural resources and energy.

PPPs in Tanzania, may be initiated by the public sector (solicited) or the private sector (unsolicited). Solicited and unsolicited PPPs are governed by the Public Procurement Act, 2011 and the Public Private Partnership Regulations, 2010, in addition to the PPP Act.

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**PPP – limitations**

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

One of the practical difficulties with PPPs is that of coordinating the various aspects of a project between the various 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. As a result of this change after the approval of the project agreement by the minister responsible for the sector, the application together with other supporting documents will be submitted to the coordination unit for assessment and approval.

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**PPP – transactions**

**29** 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 involving a joint venture between the Tanzanian National Development Corporation and China-based Sichuan Hongda. The joint venture company, Tanzania China International Mineral Resources Limited manages the project worth US\$3 billion, which involves development of the Mchuchuma coal mine and a thermal power station concession and Liganga iron ore concession in the south of the country. 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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