



Review of the Minerals Regulation Commission Bill

Introduction

The Zambian government is set to usher in a new era of mineral resource management with the introduction of the Minerals Regulation Commission Bill of 2024 (the “**Bill**”). This legislation is poised to repeal and replace the Mines and Minerals Development Act of 2015 (“**Existing Act**”). The Bill seeks to regulate the exploration, mining, processing, and trading of minerals and emphasises the critical importance of the promotion of citizen participation within the industry.

This Article highlights some key provisions of the Bill and considers the impact of such sections to the current mining regime.

Provisions promoting Zambian participation

From the onset, it should be stated that in terms of local content provisions, the Bill does not depart

significantly from the Existing Act. The Bill does not contain provisions requiring Zambian shareholding in large scale mining licences or large-scale exploration licences but preserves this requirement for artisanal and small-scale mining licences.

The Bill does however introduce a few provisions that are aimed at enhancing citizen participation over mineral resources in Zambia.

The salient provisions of the Bill are discussed below.

Establishment of the Minerals Regulation Commission

Part II of the Bill introduces the establishment of the Minerals Regulation Commission (the “**Commission**”). Section 5 of the Bill establishes the Commission as a corporate body with perpetual succession. It has the legal capacity to sue and be sued in its own name, allowing it to engage in legal

actions and be held accountable in court as an independent entity.

According to section 6 of the Bill, the Commission is tasked with a broad range of responsibilities to regulate and oversee the mining industry in Zambia. Its functions include ensuring compliance with the Bill and associated regulations, granting, suspending, and revoking mining and non-mining rights, and monitoring industry operations. The Commission is also responsible for regulating mineral marketing, providing laboratory services for mineral analysis, and collaborating with other authorities on safety, health, and environmental issues.

Section 7 of the Bill further provides that the governance of the Commission is managed by a Board, which is responsible for implementing the Bill and providing strategic policy direction.

Section 9 of the Bill provides that the administration of the Commission is overseen by the Director-General, who acts as the chief executive officer responsible for the day-to-day operations of the Commission. The Board appoints the Director-General, along with a Secretary and other staff members as needed.

The establishment of the Commission basically moves the mineral regulation from the Ministry of Mines to a separate regulatory body. The

intention is that the Commission will streamline and expedite the licencing process to ensure a specialised focus on mining regulation, leading to more effective oversight and tailored policies.

Increase in range for which a mining right can be granted

Section 11 (3) of the Bill increases the range for which a mining right can be granted to a citizen-influenced, citizen-empowered and citizen-owned company. The Existing Act provides for the range of 2 cadastre units to 120 cadastre units (6.68 hectares to 400.8 hectares). The Bill on the other hand proposes to increase the range from 6.68 hectares to a maximum of 1000 hectares.

This section basically has the effect of limiting the size of mining rights available to foreign-owned companies.

Partnerships with local artisanal miners

Section 21 (5) of the Bill allows a company or foreign national to work in partnership or any form of agreement with a holder of an artisanal mining right provided they obtain prior written approval of the Commission and written consent from the artisanal mining right holder.

This proposed provision was not available to foreign entities and the proposed provision can

facilitate partnerships between large-scale or foreign investors and local artisanal miners, potentially enhancing the technical and financial capabilities of artisanal operations. For foreign investors, it provides a structured way to engage with the artisanal sector, potentially opening new avenues for investment and resource extraction.

Employment of citizens

Section 22 (3)(f)(ii) of the Bill requires the applicant to employ and train citizens and promote local content. The Bill however does not specify what number a mining right holder should employ neither does it specify what is meant by “promotion of local content” on the part of the mining right holder. It may be assumed that the specific undertaking shall be given more clarity under the conditions of the mining licence.

It is also worth noting that similar provisions exist under the Existing Act under section 31 (1)(f)(ii) of the Act save that the existing provisions do not create the obligation for the mining right holder to promote “local content”.

Mandatory insurance requirements

Section 44 of the Bill requires a holder of a mining right or mineral processing licence to obtain and maintain insurance coverage within

Zambia in amounts and against risks that may be prescribed. This requirement is also extended to contractors hired by the licence holder. The insurance coverage should align with the prescribed regulations and must be maintained throughout the lifetime of the mining right or mineral processing licence. Section 44 (1) of the Bill further provides that the amounts and risks to be insured against shall be as prescribed.

Section 44 (3) of the Bill mandates that a statutory instrument developed under the mining regulations must outline insurance coverage requirements that align with internationally recognised standards and good mining industry practices. The Statutory Instrument to be passed in respect of section 44 of the Bill has not yet been passed. Therefore, it remains unclear what thresholds and periods will be prescribed to mining right holders under this new Bill.

Notably, similar provisions exist under the Existing Act under section 63 (1) of the Act save that the existing provisions provide that the Minister will prescribe by statutory instrument the amounts and risks to be insured against in the insurance coverage.

Priority of applications for mining or non-mining rights

The introduction of Section 13 (2) of the Bill allows the Commission, on prescribed conditions, to deviate from processing mining and non-mining right applications strictly based on their order of receipt.

This flexibility means that the Commission can prioritise applications under prescribed conditions, which may not only introduce uncertainty for applicants but also allow for a more nuanced approach to handling applications based on criteria beyond submission time. It is worth noting that the ambiguity around what constitutes “prescribed conditions” in subsection 2 adds a layer of uncertainty to the application process. Without clear definitions or criteria, it may be challenging for applicants to understand how their submissions will be evaluated or prioritised.

It may be assumed that the prescribed conditions will be set out in a statutory instrument promulgated in respect of the Bill once the Bill is enacted.

Minister’s right to hold an interest in a mining licence

Section 15 of the Bill permits the Minister of Finance (in consultation with the Minister of

Mines) to acquire an interest in a proposed exploration area before granting an exploration licence to an applicant of an exploration licence.

Further, once minerals are discovered, the Bill states that the Minister of Finance shall maintain the interest acquired under the exploration area.

The Bill, however, does not state what is meant by an ‘interest’ in a mining right. In addition, it is unclear how much of an interest the Minister of Finance may be entitled to own and what rights such interest may come with.

Section 15 (3) of the Bill also empowers the Minister to reserve specific areas for government investment and obtain mining rights which in turn are granted to a Government investment company. Such areas shall be reserved for investment by Government and are not subject to an application for the acquisition of a mining right by any person.

The implication of this on foreign investors is that certain exploration and mining rights may be unavailable for private investment if the government opts to acquire them.

Validity of an exploration licence

Section 18 (1) of the Bill proposes to shorten the validity of an exploration licence from a maximum period of 10 years to a maximum period of 7 years.

This reduction could impact foreign investors by shortening the timeframe they have to develop exploration projects and realise returns on their investments. They may face increased uncertainty and need to expedite their exploration activities or seek additional extensions, potentially altering their investment strategies.

Safety, health, and environmental protection

Section 61 (1)(b) of the Bill introduces the condition for prevention of any social-economic impact or harm to human health in or on the land subject to the right or licence.

In addition to the already subsisting condition of protection of human health, section 61(1)(b) of the Bill establishes a condition requiring mining right or licence holders to prevent socio-economic harm and health risks in areas under their operations. This provision enhances regulatory oversight by mandating companies to mitigate negative impacts on local communities and human health. It aligns with environmental and social governance

principles, encouraging responsible mining practices and increased stakeholder engagement.

Mineral royalties and charges

The Bill provides a detailed mechanism for the assessment and collection of mineral royalties. It sets guidelines on how royalties are to be calculated, the deadlines for payment, and the penalties for late or non-payment.

Section 69 (1) of the Bill establishes the mineral royalty rates applicable to various types of minerals, outlining specific percentages based on the nature of the mineral produced or recoverable under a mining licence. A 5 percent royalty is imposed on the norm value of base metals, excluding copper, cobalt, and vanadium. Similarly, a 5 percent royalty applies to the gross value of energy and industrial minerals. For gemstones, the rate is set at 6 percent of the gross value, while precious metals are subject to a 6 percent royalty on their norm value.

Section 69 (2) of the Bill outlines the mineral royalty rates for copper, applying an incremental approach based on the norm price per tonne. Specifically, a 4 percent royalty is applied when the norm price of copper is less than USD 4,000 per tonne. When the norm price reaches USD 4,000 or higher but remains

below USD 5,000 per tonne, the rate increases to 6.5 percent. For copper priced between USD 5,000 and USD 7,000 per tonne, the royalty is 8.5 percent. Finally, when the norm price of copper is USD 7,000 or higher per tonne, a 10 percent royalty is imposed. These rates align closely with those provided in the Existing Act, ensuring consistency in the application of mineral royalties for copper production.

Appointment of Inspectors

Sections 76-78 of the Bill propose to introduce the appointment of inspectors for purposes of ensuring compliance with the Bill.

The provisions in these sections are designed to ensure stringent compliance with the Bill. By granting inspectors broad powers to inspect, audit, and seize, the Bill aims to address potential breaches and enforce regulatory standards effectively. This could lead to more robust oversight and potentially deter non-compliance within the sector.

However, the broad powers of inspectors, including unannounced inspections and extensive document reviews, could lead to operational disruptions for mining companies. This may affect productivity and result in additional compliance costs.

Restriction on number of mining rights

Section 88 of the Bill introduces a limit on the number of mining rights a person can hold, restricting it to 5. However, exceptions are allowed if the person is in compliance with the existing mining rights and has the financial capacity to support additional rights.

This limitation may prevent the over-concentration of mining rights in the hands of a few entities, promoting broader participation in the sector. For foreign investors, this restriction could limit expansion opportunities and necessitate a more strategic approach to acquiring and managing mining rights. However, the exception in section 88 (2) enables well-capitalised and compliant companies to expand their operations beyond the five-right limit.

Conclusion

The Minerals Regulation Commission Bill introduces a range of new provisions that impact Zambia's mining sector, while largely preserving the core structure of the existing mining regime.

Although the Bill brings about some changes—such as creating the Commission to regulate the mining activities in Zambia, increasing the range of mining rights available to Zambian entities, and facilitating

partnerships with artisanal miners—many aspects of the existing framework remain intact. For instance, the Bill does not drastically alter local content provisions or the obligations regarding citizen employment, and it continues the practice of reserving certain rights for Zambian entities. In summary, while the Bill introduces important updates and some new obligations, it does not represent a complete overhaul of the mining regime, but rather a series of targeted adjustments designed to refine and enhance the current system.

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