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A BRIEF GUIDE TO
DOING BUSINESS
IN TANZANIA, 2019



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Foreword

This guide provides answers to questions that are frequently asked by Tanzanian business people and foreign investors with an interest in Tanzania. It gives a broad overview of the legislative regime applicable to business in the country.

INTRODUCTION



INTRODUCTION

The Country at a Glance

The United Republic of Tanzania is a unitary state. It is union between Tanganyika and Zanzibar, which was formed on 26 April 1964. Zanzibar is a semi-autonomous entity with respect to non-union matters while ceding powers for union matters. Union matters include foreign affairs, currency, home affairs, national defence and security, higher education, oil and gas and Government debts.

Tanzania's current population is 55 million people with a GDP growth rate of 6.8% for the first three quarters of 2017.

General Considerations

1. What is the legal system in Tanzania?

The Tanzanian legal system is based on English common law. Its main sources of law include:

- The Constitution of the United Republic of Tanzania, 1977;
- Common law and doctrines of equity;
- Statutory law enacted by the Tanzanian Parliament and statutes of general application which were in force in England before 22 July 1920;
- Customary law;
- Islamic law; and
- International Conventions that may have been domesticated as the laws of Tanzania.

2. What are the key recent legal developments affecting doing business in Tanzania?

Tanzania has recently enacted several pieces of legislation that widely affected the mining sector.

- **The Natural Wealth and Resources (Permanent Sovereignty) Act, 2017**

This law proclaims Tanzania's permanent sovereignty over her natural resources, which include various forms of metals such as diamonds, gold, tanzanite and other extractives such as oil and gas.

Investors in the mining sector are now required to bank with Tanzanian banks and financial institutions. Export of raw minerals is banned and processing is to be done in Tanzania. Mining development agreements are now subject to review and approval by the National Assembly.

- **The Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act, 2017**

The National Assembly is empowered under this law to direct the review and re-negotiation of unconscionable terms in existing international agreements relating to natural resources entered into between Tanzania and foreign investors.

Unconscionable terms have been defined to include submission to foreign laws and foreign dispute resolution forums, stabilisation clauses and royalty and interest clauses.

- **The Mining (Local Content) Regulations, 2018 and the Mining (Local Content) (Amendments) Regulations, 2019**

The regulations require each mining company to have a local content plan that must contain sub plans for employment and training, financial services, legal services, research and development and technology transfer.

In each of these sub plans the regulations require mining companies to give preferences to the local people unless a shortage of skills among the local people can be proved.

ESTABLISHING A BUSINESS

Business Vehicles

3. What are the most common forms of business vehicles used in Tanzania?

To establish a business in Tanzania, you need a:

- business licence;
- taxpayer identification number (TIN);
- business name registration if the entity is a partnership;
- value added tax (VAT) registration number (VRN) - the threshold for registration is
- TZS 100 million for non-professional service providers and registration is mandatory, regardless of the threshold, for professional service providers;
- incorporation of a company under the Companies Act;
- residence and work permits for foreign employees or investors; and
- other sector-specific requirements (e.g. banking, insurance, marine services telecommunications businesses require licences from their respective regulators).

4. In relation to the most common form of corporate business vehicle used by foreign companies in Tanzania, what are the registration and reporting requirements?

The most common form of business vehicle that is used by most investors is a private company limited by shares. Foreign companies may also set up branches in Tanzania. Both forms of entities are regulated by the Companies Act, 2002.

• Registration requirements

Private companies are required to have a minimum of two shareholders (but not exceeding 50 members) and two directors.

A company is required to have a memorandum and articles of association (MEMARTS).

Registration is done online by uploading the MEMARTS, a consolidated form containing particulars of the members, directors and company secretary, an integrity pledge by directors of the company, and a Form 14b declaration of compliance.

• Reporting requirements

Companies are required to file the following with the Business Registration and Licensing Authority (BRELA), the Tanzania Revenue Authority and the Labour Commissioner:

- annual returns, not more than 18 months after the date of incorporation, with the BRELA;
- annual tax returns, with the Tanzania Revenue Authority;
- statement of audited accounts for a branch company;
- notifications with respect to any changes that take place (e.g. appointments, changes and termination of directors and secretaries; increases in share capital; alterations of the MEMARTS; changes to the registered address), with the BRELA;
- charges when mortgaging the company's assets (with the BRELA); and
- returns on employment of non-citizens (to the Labour Commissioner).

- **Company management structure and key liabilities**

The Companies Act has set out key considerations for the management structure of companies as follows:

- **Company directors**

A company must have a minimum of two directors. The minimum age for a director is 21 years, while the maximum is 70 years. A director should not be a person who has been declared bankrupt. A foreign director must have a valid residence and work permit or certificate of exemption. Acts of directors bind the company. They must discharge their duties in good faith.

- **Company secretary**

Every company must have a secretary with the requisite knowledge. Most companies in Tanzania hire the services of lawyers to discharge the various secretarial duties, such as filing of annual returns and notifications of any significant changes that may have taken place.

- **Annual general meeting**

Upon each anniversary of the incorporation of the company, members of the company are required to hold a general meeting to deliberate on the accounts, appointment/removal of directors, appointment/removal of auditors and approval of dividends if any.

Investment Incentives

5. What grants or incentives are available to investors?

The Tanzania Investment Act, 1997 offers a host of incentives to both local and foreign investors. To enjoy the incentives an investor must meet a certain capital threshold, that is to say, USD 100 000 and USD 500 000 for local and foreign investors, respectively.

The processing of a certificate of incentives is done by the Tanzania Investment Centre (TIC). The nature of the incentives depends on the area where one wants to invest as follows.

- **Export processing zones**

Investments in export processing zones receive the following incentives:

- access to the export credit guarantee scheme, subject to compliance with applicable conditions and procedures;
- exemption from corporate tax for an initial period of 10 years and thereafter corporate tax is charged at the rate specified in the Income Tax Act;
- exemption from withholding tax on dividends and interest for the first 10 years;
- remission of customs duty, VAT and any other tax charged on raw materials and goods of a capital nature related to production in the export processing zones;
- exemption from payment of all taxes and levies imposed by local government authorities on products produced in the export processing zones for a period of 10 years;
- exemption from pre-shipment or destination inspection requirements;
- on site customs inspection of goods in the export processing zones;

- provision of a business visa to key technical, management, and training staff at the point of entry for a maximum of two months; thereafter the requirement to obtain a residence permit in accordance with the Immigration Act, 1995 and a work permit in accordance with the Non-Citizens (Employment Regulation) Act, applies;
 - remission of customs duty, VAT and any other tax payable in respect of the importation of one administrative vehicle, ambulances, fire fighting equipment vehicles, and up to two buses for employees' transportation to and from the export processing zones;
 - treatment of goods destined for export processing zones as transit cargo;
 - exemption from VAT on utility and wharfage charges;
 - entitlement to an initial immigrant quota of up to five persons during the start-up period; thereafter any application for an extra person is submitted to the Authority which will consult the Labour Commissioner and the Immigration Department;
 - access to competitive, modern and reliable services available within the export processing zones; and
 - unconditional transferability, through any authorised dealer bank, in freely convertible currency of the following:
 - net profit or dividends attributable to the investment;
 - payments in respect of loan servicing where a foreign loan was obtained;
 - royalties, fees and charges in respect of any technology transfer agreement;
 - the remittance of proceeds in the event of the sale or liquidation of the business enterprises or any interest in the business; and
 - payment of emoluments and other benefits to foreign personnel employed in Tanzania in connection with the business enterprise.
- **General incentives**
 - access to various services related to permits, licences and approvals in the TIC One Stop Facilitation Centre;
 - the recognition of private property and protection against any non-commercial risks (Tanzania is an active member of the World Bank Foreign Investment Insurance Wing, the Multilateral Investment Guarantees Agency. Tanzania is also a member of The International Centre for Settlement of Investment Disputes, another body affiliated to the World Bank);
 - no import duty on computers and computer accessories; human and livestock pharmaceuticals and medicaments; inputs for manufacturing pharmaceutical products; motor vehicles in completely knocked down form; project capital goods; and raw materials and replacement parts for agriculture, animal husbandry and fishing;
 - 10% import duty for semi-processed/ semi-finished goods;
 - pay and refund scheme for excise duty paid on fuel purchased by eligible companies;
 - 100% capital expenditure allowance in the agricultural and mining sectors;
 - 50% capital allowance in the first year of use for plant and machinery used in manufacturing processes and fixed in a factory; fish farming; or providing services to tourists and in hotels.
 - VAT deferment granted on project capital goods such as plant and machinery.

- **The East African Community Customs Management Act, 2004**

Any of the following goods engraved or printed or marked with the hotel logo imported by a licenced hotel for its use is not charged any import duty:

- air conditioning systems;
- carpets;
- cookers;
- cutlery;
- furniture;
- gymnasium equipment;
- kitchenware;
- linen and curtains;
- refrigerators and freezers
- televisions; and
- washing machines

- **Import duty drawback**

- import duty drawback on raw materials used to produce goods for exports and deemed exports. Deemed exports cover locally produced or manufactured goods that are sold to foreign agencies or entities operating in Tanzania that are exempt from

the payment of import duties; and

- zero-rated VAT on exports.

Foreign Investment

Tanzania has opened up its economy for foreign direct investments and has signed a number of bilateral treaties with various states inviting them to explore the opportunities in recently discovered minerals and natural gas.

6. Are there any restrictions on foreign investments (including authorisations required by the central or local government)?

Before an investor is able to fully establish and operate a business in Tanzania there are a number of authorisations that must be obtained from both the local and central governments depending on the nature of the investment in question. These include:

- a business licence from the local government;
- a special licence in respect of specific sectors (e.g. mining licence from the Mining Commission; a local content plan must also be submitted in the mining sector);
- a listing with Dar es Salaam Stock Exchange (DSE) for telecommunications companies and mining companies; for telecommunications companies 25% of the shares must be in the hands of locals, and for mining companies 30% of the shares must be locally owned;
- an environmental impact assessment (EIA) must be conducted; and
- a strategic environmental assessment (SEA) must be conducted.

Other limitations include the facts that:

- foreign ownership of land is by way of derivative right on the primary lease owned by the Government through the TIC;
- only locals are allowed to operate travel and tours agencies;
- there is a ban on the export of mineral concentrates; and
- the number of foreign employees is limited to five; and

- amendments to the Land Act by the Written Laws (Miscellaneous Amendments) Act, 2018, and the Land (Procedure for Mortgage of Land) Regulations, 2019, restrict the use of the proceeds of a loan that is secured by a mortgage over land. If the land is undeveloped or not developed in accordance with the conditions attaching to the right of occupancy, the loan proceeds must be used to develop the mortgaged land. Accordingly, undeveloped or underdeveloped land cannot be used to provide third party security.

Exchange Controls

7. Are there any exchange controls or currency regulations?

Yes, there are exchange controls and currency regulations. These include:

- the Bank of Tanzania controls the import, export, purchase, sale or other transactions in foreign exchange and gold;
- banks and financial institutions have an overall 20% limit of foreign exchange risk exposure;
- the Foreign Exchange Act, 1992 restricts the making payment outside Tanzania using Tanzanian currency by Bureau de Change outlets without the prior approval of the Bank of Tanzania;
- the Foreign Exchange (Bureau de Change) Regulations, 2015 restrict the amount that a person can take with him or her outside Tanzania to USD 10 000; and
- there is prohibition on executory dealings, and a prohibition on selling foreign currency to non-residents.

Import/ Export Regulations

8. Are there any import/ export regulations?

Yes, the East African Community Customs Management Act, 2004 regulates imports and exports in Tanzania.

Prohibited and restricted imports include all soaps and cosmetics containing mercury; false money and counterfeit currencies; fresh unprocessed fish (Nile perch and tilapia); historical artefacts; mineral concentrates; timber from any wood grown in the partner states; waste and scrap of ferrous cast iron; and wood charcoal.

Also, the Tanzania Shipping Agencies Act, 2017 gives the Tanzania Shipping Agencies Corporation exclusive mandate in relation to clearing and forwarding functions relating to import and export of minerals, mineral concentrates, machineries, equipment and products or extracts related to minerals and petroleum.

OPERATING A BUSINESS

Employment

9. What are the main laws regulating employment relations?

The following Acts regulate employment relations:

- Employment and Labour Relations Act 6 of 2004;
- Occupational Health and Safety Act 5 of 2003;
- Labour Institutions Act 7 of 2004;
- Workers Compensation Act, Cap 263 R. E 2015;
- Non-Citizens (Employment Regulation) Act 1 of 2015; and
- Social Security Regulatory Authority Act 8 of 2008.

The following regulations regulate employment relations:

- Employment and Labour Relations (Code of Good Practice) Rules, GN 42 of 2007;
- Employment and Labour Relations (General) Regulations, GN 47 of 2017;
- Labour Institutions (General) Regulations, GN 45 of 2017;
- Labour Institutions (Mediation and Arbitration) Rules, GN 64 of 2007;
- Labour Court Rules, GN 106 of 2007;
- Workers Compensation Regulations, GN 185 of 2016; and
- Non-Citizens (Employment Regulation) Regulations, GN 331 of 2016.

10. Is a written contract of employment required? If so, what terms must be included in it? Do any implied terms and/ or collective agreements apply to the employment relationship?

Yes, the Employment and Labour Relations Act, 2004 as amended in 2015 imposes a requirement of a written contract for a person employed either within or outside Tanzania. Terms to be included in the written contract are as follows:

- name, age, permanent address and gender of the employee;
- place of recruitment;
- job description;
- date of commencement;
- form and duration of the contract;
- place of work;
- hours of work; and
- remuneration, the method of its calculation, and details of any benefits or payments in kind.

The Employment and Labour Relations Act, 2004 recognises implied terms in an employment contract. For instance, employment standards set out under the Act are implied terms of any employment contract, even if not included.

Collective agreements between employees' associations or Trade Unions and employers are recognised to form part of employment relationships.

11. Do foreign employees require work permits and/ or residency permits?

Yes, the Non-Citizens (Employment Regulation) Act, 2015 and its regulations impose an obligation for an employer who wants to hire a foreigner to obtain a work permit on his or her behalf from the Labour Commissioner.

Furthermore, after obtaining work permits, the Immigration Act of 1995 requires foreign employees to obtain residence permits from the Commissioner General of the Immigration Services Department.

12. Are employees entitled to management representation and/ or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Yes, the Employment and Labour Relations Act, 2004 makes it mandatory for an employer to notify, disclose and consult with the following before dismissing employees for operational requirements:

- a registered trade union that is recognised as an exclusive bargaining agent of the employees,
- any registered trade union with members in the workplace not represented by a recognised trade union; and
- any employees not represented by a recognised or registered trade union.

13. How is the termination of individual employment contracts regulated?

The Employment and Labour Relations Act, 2004 and the Employment and Labour Relations (Code of Good Practice) Rules, 2007 regulate the termination of employment by stipulating the forms of

termination of an individual contract and the requirements for each as follows:

- **Termination by agreement:** Under this form, termination occurs for a number of reasons such as closure of the business or cessation of a fixed employment contract upon its expiry.
- **Automatic termination:** This happens by natural causes such as death, loss of profession of the business of an employer, and employees reaching retirement age. The only requirement here is for the person who is taking over the business to have regard to the former employees when recruiting new employees.
- **Resignation by employee:** This happens where an employee unilaterally notifies the employer and decides to opt out of the employment, or where the employer makes employment conditions intolerable. Constructive dismissal is deemed to have occurred when the employer makes employment intolerable, resulting in a forced resignation.
- **Termination by an employer:** This happens when an employer decides to terminate the employment of an employee. The justified reasons for this termination are conduct, capacity, and compatibility of the employee, and operational requirements. To be legal, a number of conditions must be met:
 - abiding by contractual clauses relating to termination;
 - notice of termination;
 - payment of severance pay;
 - transport to place of recruitment;
 - fair procedure of termination; and
 - fair reasons for termination.

14. Are redundancies and mass layoffs regulated?

Redundancies and mass layoffs are regulated by the Employment and Labour Relations Act, 2004.

The employer is required to:

- give notice of retrenchment;
- disclose all relevant information on the retrenchment;
- consult with the employees or their representatives and discuss, among other things:
 - the reasons for the intended retrenchment;
 - any measures to avoid or minimise the intended retrenchment;
 - the method of selection of the employees to be retrenched;
 - the timing of the retrenchments; and
 - severance pay in respect of the retrenchments.



Tax

15. When is a business vehicle subject to tax in Tanzania and what are the main taxes that apply to a business?

A business vehicle is subject to corporate income tax on its taxable income at the end of each year of income.

A year of income is defined to mean the calendar year of 12 months (i.e. 1 January to 31 December). However, a person may apply to the Commissioner General to have his or her entity's year of income changed from the calendar year or 12-month period previously approved by the Commissioner to another proposed 12-month period.

- Corporate Income Tax is charged at 30% (see paragraph 3(1) of the First Schedule to the Income Tax Act). Variations to this include a:
 - reduced rate of 25% for three consecutive years for a company newly-listed on the DSE with 30% of equity issued to the public;
 - reduced rate of 10% for five consecutive years for a company with a newly-established plant for the assembly of motor vehicles, fishing boats, tractors or out boats engines, and which has a performance agreement with Government;
 - reduced rate of 0.3% for a company with perpetual unrelieved loss, to be charged on the turnover of the third year of perpetual unrelieved loss.

- VAT at the rate of 18%.
- Stamp duty at variable rates depending on the nature of the transaction.
- Customs duty – on an *ad valorem* basis.
- Excise duty – variable rates.
- Local government taxes.

16. How are the following taxed:

- **Dividends paid to foreign corporate shareholders?** Dividends paid to foreign shareholders are taxed at 5% where the company is listed on the DSE, and at 10% where the company is not listed. They are taxed in the form of a final withholding tax.
- **Dividends received from foreign companies?** Dividends distributed by non-resident companies are included in calculating the income of the shareholder.
- **Interest paid to foreign corporate shareholders?** Interest paid to foreign corporate shareholders is taxed at the rate of 10% whether a person is a resident or a non-resident withholder. They are also taxed in the form of a final withholding tax.
- **Intellectual property royalties paid to foreign corporate shareholders?** Intellectual property (IP) royalties paid to foreign corporate shareholders are taxed at the rate of 15% in the form of a final withholding tax.

17. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

Generally, there are no restrictions on loans from foreign affiliates, provided an entity follows the procedures laid down by the Bank of Tanzania with respect to foreign loans. This involves recording the loan with the Bank of Tanzania. Failure to do so will result in an entity not being allowed to reimburse the foreign lender.

There is, however, a thin capitalisation rule under the Income Tax Act, which limits the interest amount that an 'exempt-controlled resident entity' can deduct in calculating the chargeable income to 7:3 debt to equity ratio. That is to say, the debt should not exceed 70% of the total equity. Where the debt exceeds 70% of the total equity, the restrictions on deduction of interest apply.

18. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident Tanzania (controlled foreign company rules?)

In Tanzania, companies are taxed based on residency and source principles. Moreover, companies are taxed separately from their shareholders. Thus, a resident foreign controlled subsidiary company is taxed at the standard corporate tax rate of 30%.

In addition, profits of a foreign controlled subsidiary that are distributed to the parent company (a non-resident shareholder) are subject to tax.

19. Are there any transfer pricing rules

The Income Tax Act and The Income Tax (Transfer Pricing) Regulations, 2014 provide for mechanisms to curb transfer pricing as one of the methods of tax avoidance.

The Act for instance, requires associated persons to quantify, apportion and allocate amounts to be included or deducted in calculating income between the persons as is necessary to reflect the total income or tax payable that would have arisen for them if the arrangement had been conducted at arm's length. Failure to do so entitles the Commissioner General of the Tanzania Revenue Authority to make adjustments in relation to the transaction. Further, a penalty of 100% of the underpaid amount is imposed on defaulting parties.

Further, the regulations impose a duty of preparing transfer pricing documentation for any person who engages in any controlled transaction. This must be ready prior to the filing of the income tax return for the year of income, and must be submitted to the Commissioner within 30 days upon request. Failure to observe this regulation is an offence that, on conviction, carries a penalty of six months imprisonment or payment of fine in the amount of TZS 50 million or to both imprisonment and a fine.

20. How are imports and exports taxed?

The following taxes apply to imports:

- **Customs duty**

Imports from foreign jurisdictions whose final destination is Tanzania are subject to customs duty charged on an *ad valorem* basis as per the East African Community Customs Management Act, 2004. Goods from partner states of the East African community that meet the rules of origin are not subject to import duty.

- **VAT**

Taxable imports and supplies are also subject to 18% VAT except where the import or supply is zero-rated or exempted.

Generally, all exports are duty free with the exception of a few items including:

- raw hides and skins, which are charged export duty at the rate of 80% of free on board (FOB) value or USD 0.25 per kg whichever is higher;
- raw cashew nuts, which are charged export duty at the rate of 15% of FOB value or USD 160 per metric ton whichever is higher; and
- wet blue leather, which is charged export duty at the rate of 10% of FOB value.

21. Is there a wide network of double tax treaties?

The Income Tax Act, under Section 143, recognises international tax agreements concluded between Tanzania and other countries.

Tanzania has double tax treaties with Canada, Denmark, Finland, India, Italy, Norway, South Africa, Sweden and Zambia.

22. In what circumstances are employees taxed in Tanzania and what criteria are used?

The Income Tax Act imposes a tax on an individual on profits and gains derived from employment for a year of income. The employer is required to withhold the taxable amount and remit it to the Tanzania Revenue Authority.

A resident individual is taxed irrespective of the source of income, while a non-resident individual is taxed only to the extent that the income from employment has a source in Tanzania. There is an ascending rate of tax up to a maximum of 30% of the monthly income for resident employees. The rate for non-resident employees is fixed at 20%.

A resident individual is defined under the Income Tax Act to mean an individual who:

- has a permanent home in the United Republic and is present in the United Republic during any part of the year of income;
- is present in the United Republic during the year of income for a period or periods amounting in aggregate to 183 days or more;
- is present in the United Republic during the year of income and in each of the two preceding years of income for periods averaging more than 122 days in each such year of income; and
- is an employee or an official of the Government posted abroad during the year of income.

The minimum threshold that is taxable for employees commences at a monthly salary of more than TZS 170 000.

23. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?

- **TIN:** It is mandatory under the Income Tax Act for taxable persons to obtain a TIN. This applies to both the employer and the employee.
- **Pay as you earn (PAYE):** The employer is required to withhold the taxable amount and remit it to the Tanzania Revenue Authority. The taxable amount includes, among other things, wages, salaries, fees, commissions, gratuities and other allowances paid in respect of the employment.
- **National Social Security Fund (NSSF):** The NSSF is the only social security fund that private sector employers and employees are required to make contributions to. The total rate of monthly contributions is 20% of the employee's salary divided equally between the employer and the employee.
- **Workers Compensation Fund (WCF):** The Workers Compensation Act requires employers to register with the WCF within 30 days of recruiting the first employee. It further, requires employers in the private and the public sectors to make a 1% and a 0.5% contribution of the employee's monthly earnings to the fund, respectively. The aim is to compensate employees from injuries, disablement and death sustained in the course of employment. Employers are required to make these contributions on behalf of their employees, which means that the contributions should not be deducted from the employees' earnings.



Competition

24. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single firm) conduct regulated by competition law?

Competition law in Tanzania is regulated by the Fair Competition Act, 2003 and regulations made thereunder. The watchdog on competition matters is the Fair Competition Commission.

The Act prohibits the making of agreements whose object, effect, or likely effect is to prevent, restrict or distort competition. The Act classifies these kinds of agreements as anti-competitive. Any such agreements are unenforceable to the extent of their restrictive clauses.

Moreover, the Act prohibits conclusion of agreements whose object, effect, or likely effect is to:

- engage in price fixing between competitors;
- engage in collective boycott by competitors; and
- engage in collusive bidding or tendering.

A person who indulges in anti-competitive practices as stipulated under the Act commits an offence.

For an agreement to be classified as competitive:

- neither party to the agreement should have a dominant position in the market;
- the combined shares of the parties to the agreement of each market affected by the agreement should be 35% or less; and
- none of the parties to the agreement should be competitors.

The unilateral conduct of a firm is subject to regulation under the Fair Competition Act. The Act prohibits misuse of market power for entities that have dominant positions that might result in the restriction or distortion of competition in the Tanzanian market.

According to the Act a dominant position in the market occurs if:

- acting alone, the person can profitably and materially restrain or reduce competition in that market for a significant period of time; and
- the person's share of the relevant market exceeds 35%.

The misuse of market dominance may only be permitted subject to an exemption issued by the Fair Competition Commission upon application by the parties to an agreement. The law categorises the abuse of a dominant position by a person as an offence. He or she may be required to comply with the provisions of the Act through a compliance order issued by the Fair Competition Commission.

25. Are mergers and acquisitions subject to merger control?

The Fair Competition Commission regulates mergers and acquisitions. One instance of control is the prohibition of a merger if it is intended to create or strengthen a position of dominance in the market.

The merging entities must notify the Fair Competition Commission. The threshold for this is TZS 3.5 billion. The Fair Competition Commission also reserves a right to question any acquisition done which was not in compliance with the Act, within three years.

Intellectual Property

26. Is IP protected in Tanzania?

Tanzania has ratified a number of conventions relating to IP rights and as such has legislation that endeavours to protect these.

The country is also a member of various international organisations dealing with IP, for example the World Intellectual Property Organisation and the African Regional Intellectual Property Organisation. The rights protected include:

- **Copyrights and copyrights-related rights:** are protected by the Copyright Society of Tanzania. The governing law is The Copyright and Neighbouring Rights Act 7 of 1999.
- **Trade marks/ service marks:** are protected in The Trade and Service Marks Act, Cap 326 R. E 2002.
- **Patents:** are protected in The Patents Registration Act, Cap 217 R. E 2002.
- **Industrial designs:** are protected in The Patents (Registration Act) and International Conventions.
- **Business names:** are protected in The Business Names (Registration) Act, Cap 213 R. E 2002.
- **Geographical indications:** are protected through International Conventions.

Consumer Protection

27. Are marketing agreements regulated?

Marketing agreements, like any other contracts, must comply with the provisions of the Law of Contract Act - that is to say, there must be offer and acceptance; parties must have capacity to contract; and there must be a lawful object, lawful consideration, and free consent.

Marketing agreements are to some extent regulated by the Fair Competition Act. The Act specifically prohibits unfair business practices such as bait advertising (e.g. advertising a product that is out of stock; or offering to supply goods at a specific time and price when an entity understands that it does not have such capacity).

Other prohibited practices include accepting payment without intending or being able to supply as ordered.

28. Are there consumer protection laws and if so, what are they?

There are consumer protection laws that aim to protect consumers and the general public at large against health hazards and counterfeit products, among others. The laws are:

- **The Fair Competition Act, 2003**

The Act establishes various bodies such as the Fair Competition Commission, Fair Competition Tribunal, and National Consumer Advocacy Council, which all deal with consumer protection to some extent.

It prohibits persons from misleading and deceptive conduct while trading in goods and services. It also empowers

the responsible Minister to order product recalls from the market where it appears the product concerned is injurious for public consumption.

- **The Merchandise Marks Act, Cap 85 R. E 2002 and the Merchandise Marks Regulations, 2008**

This Act provides for the control and use of marks and trade descriptions, and specifically prohibits the forgery and deceptive application of trade marks.

It also makes provision for powers to seize and store counterfeit goods.

- **The Electronic Transactions Act, 2015**

Part VI of the Act contains provisions for the protection of online consumers, among others.

- **The Standards Act, 2009**

The Act establishes the Tanzania Bureau of Standards, which has an obligation to undertake measures to ensure quality control of commodities, services and descriptions; and to promote standardisation in industry and trade

- **The Tanzania Food, Drugs and Cosmetics Act, 2003**

The Act establishes the Tanzania Food and Drugs Authority, which provides for the efficient and comprehensive regulation and control of food, drugs, medical devices, cosmetics, herbal drugs and poisons.

- **The Standard Form (Consumer Contracts) Regulations, 2014**

29. How are product liability and product safety regulated?

The main legislation regulating product safety and liability is the Fair Competition Act. The Fair Competition Commission is empowered under the Act to issue a warning notice to the public in respect of products that are under investigation on suspicion of being harmful to consumers.

Further, a supplier of consumer goods must ensure compliance with product safety standards. Failure to do so will result in the supply being prohibited.

In addition, every supplier of consumer goods must stipulate product information with respect to every product that he or she intends to supply. The information that must be disclosed includes information relating to the performance, composition, contents, methods of manufacture or processing, design, construction, finish and packaging of the goods.

Insurance

30. How is insurance regulated?

The following laws regulate insurance in Tanzania.

- The Insurance Act, 2009;
- The Insurance Regulations, 2009;
- The Micro-Insurance Regulations, 2013;
- The Insurance Ombudsman Regulations, 2013;
- Miscellaneous (Amendments), 2017, amending the Insurance Act, 2009. Under this Amendment Act, the Commissioner

of Insurance now has powers to set minimum rates of premiums payable for different classes of insurance by publishing the orders in the *Government Gazette*. This amendment now requires customers to pay insurers all premiums directly regardless of whether they are using insurance brokers or not; and

- The Insurance (Bancassurance) Regulations, 2019.

The Tanzania Insurance Regulatory Authority and the Tanzania Insurance Ombudsman Service regulate the insurance sector in Tanzania.

- **Other requirements**

Further to the business licence from the local government, a company, a broker, or an agent who wants to engage in an insurance business must:

- have a licence to conduct insurance business from the Tanzania Insurance Regulatory Authority;
- meet the minimum capital requirements for the business he or she wants to engage in (i.e. as at 31 December 2017, TZS 2.097 billion by a life or general insurer, or TZS 1.049 billion by a non-life, non-marine insurer);
- be a resident Tanzanian company;
- for foreign investors, have at least one third of share subscriptions being owned by Tanzanians; and
- have suitably qualified employees, for example managers must meet certain academic qualifications, to be able to engage into the business.

Data Protection

31. Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

There is a broad spectrum of laws regulating data protection in Tanzania including:

- **The Constitution of the United Republic of Tanzania:** Article 16 guarantees the right to the privacy and personal security of an individual.
- **The Electronic and Postal Communications Act 3 of 2010:** Sections 98 and 99 impose a duty of confidentiality upon licencees with respect to customer data and information except where the law permits for the divulging of information.
- **The Electronic and Postal Communications (Consumer Protection) Act, 2011:** This Act protects the consumer by prohibiting licencees of electronic and postal communications from disclosing consumer data to third parties.
- **The Registration and Identification of Persons Act, Cap 36 R. E 2002:** This Act imposes a duty on registration officers and immigration officers, not to disclose personal particulars, fingerprints, and photographs of persons who have been registered and issued with national identification cards.
- **Access to Information Act, 2016:** This Act provides for the protection of information that may involve unwarranted invasion of an individual's privacy or that which, if disclosed, may prejudice public interest.

- **The National Security Act, Cap 47:** This Act protects against espionage and disclosure of State's classified information by imposing a sentence of 20 years imprisonment for any person who commits such an act.
- **The Statistics Act, 2015:** This Act restricts disclosure of personal information obtained by virtue of the Act unless there is prior approval from the individual concerned.
- **The Cyber Crimes Act, 2015:** This Act prohibits the following:
 - data espionage in computer systems;
 - illegal access of information in a computer system;
 - illegal remaining in a computer system;
 - illegal interception in a computer system;
 - illegal data interference in a computer system;
 - illegal system interference; and
 - computer related forgery and fraud.

32. Are there laws protecting personal information?

There are not enough laws protecting personal information. Here are the existing ones:

- Constitution, Article 16 Right to Privacy and Personal Security;
- Cyber Crimes Act, 2015, Sections 4 to 12; and
- Electronic and Postal Communications Act, 2010, Sections 98 and 99).

E-Commerce

33. Are there any laws regulating E-Commerce (such as electronic signatures and distance selling)?

E-commerce is a relatively new concept in Tanzania. In 2015, Parliament adapted to this commercial dynamism by enacting a specific law to regulate electronic transactions.

The following laws regulate e-commerce:

- Electronic Transactions Act, 2015, which recognises electronic transactions such as electronic contracts, signatures, and e-government services;
- Law of Contract Act, as amended by the Electronic Transactions Act;
- Cyber Crimes Act, 2015, which criminalises computer-related forgery and fraud;
- National Payment Systems Act 4 of 2015;
- Payment Systems (Electronic Money) Regulations, 2015; and
- Payment Systems (Licensing and Approval) Regulations, 2015.

Fintech

34. Is fintech regulated? If so, how?

Fintech is regulated under various laws relating to e-Commerce.

The Bank of Tanzania has the mandate to issue licences to persons who want to operate financial technologies such as payment systems, electronic money, and electronic payment instruments. A company cannot operate any fintech without obtaining the necessary licences and permits from the Bank of Tanzania. The mandate is derived from the following legislation:

- National Payment Systems Act 4 of 2015;
- Payment Systems (Electronic Money) Regulations, 2015; and
- Payment Systems (Licensing and Approval) Regulations, 2015.

Environmental Considerations

35. Are there laws protecting the environment? If so, what are they?

The following legislation regulates the environment.

- Environmental Management Act, 2004;
- Environment Impact Assessment and Audit Regulations, 2005;
- Environmental Management (Prohibition of Plastic Carrier Bags) Regulations, 2019;
- Wildlife Conservation Act, 2009;
- Mining Act, 2015;
- Forest Act, 2002; and
- Water Resources Management Act, 2009.

Dispute Resolution

36. How are disputes resolved in Tanzania?

Various forums are available for the settlement of disputes in Tanzania. They range from state regulated forums to private entities engaging in the process of resolving differences that stem out of various social and political undertakings.

• The courts

The courts offer a formal mechanism for settling disputes among entities in different hierarchies. These include:

- Court of Appeal of Tanzania (the apex);
- High Court of Tanzania - a specific section, the High Court Commercial Division, handles commercial disputes;
- District Court and The Residents Magistrates Court (with concurrent jurisdiction); and
- Primary Court, which is a small claims court.

• Tribunals

These are quasi-judicial bodies that are made under the law to resolve disputes emanating from various sectors. They include, but are not limited to:

- District Land and Housing Tribunal, which handles land matters;
- Tax Revenue Appeals Tribunal, which handles tax matters;
- Tax Revenue Appeals Board; which handles tax matters;
- Fair Competition Commission;
- Fair Competition Tribunal; and
- Commission for Mediation and Arbitration; which handles employment disputes.

37. Are there any alternatives to litigation?

Disputes in Tanzania can be resolved in a number of ways in addition to adjudication by the courts of law, including:

- arbitration;
- mediation;
- reconciliation; and
- negotiations among parties to the dispute.

Anti-Corruption, Money Laundering and Bribery

38. Are there laws against money laundering and corruption? If so, what are they?

Tanzania has a number of laws that endeavour to combat money laundering and corruption. The laws are:

- Anti Money Laundering Act;
- Anti-Money Laundering (Electronic Funds Transfer and Cash Transaction Reporting) Regulations, 2019;
- Prevention and Combating of Corruption Act;
- Proceeds of Crime Act;
- Economic and Organised Crime Control Act;
- Criminal Procedure Act;
- Mutual Assistance in Criminal Matters Act;
- Extradition Act;
- National Prosecutions Service Act;
- Drugs and Prevention of Illicit Trafficking in Drugs Act, Cap 95;
- Anti-Money Laundering (Cross Boarder Declaration of

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Currency and Bearer Negotiable Instruments) Regulations, 2016;

- Anti-Money Laundering and Proceeds of Crime (AMLPOCA) Regulations, 2015;
- Anti-Money Laundering (AML) Regulations, 2012 read together with Anti-Money Laundering (Amendment) Regulation, 2019; and
- Anti-Money Laundering Guidelines for Accountants and Auditors and its Regulations, 2007.

DISSOLVING A BUSINESS

39. Are there any considerations in terminating a business?

Yes, there are issues to be taken into consideration when terminating a business in Tanzania. The following actions must be taken when terminating the business of a company as per the provisions of the Companies Act:

- Initiate a voluntary winding up of a company using the following procedure:
 - The company's board of directors must convene a board meeting. The agenda of this meeting is to call for a members general meeting to pass a resolution for the winding up of the company. The board of directors must also issue a statutory declaration of solvency 30 days before the passing of the resolution to wind up the company and submit it to the Registrar of Companies for registration.
 - Pass a resolution to wind up the company.
 - Issue a notice of resolution to complete a voluntary winding up within 14 days of the date of

the resolution and have it published in the *Government Gazette*.

- Appoint a liquidator in a company general meeting to oversee the settlement of liabilities and distribution of the company's assets.
- The liquidator must call a creditors' meeting (if the company is insolvent and cannot meet all of its financial obligations).
- The liquidator must call for an annual general meeting at the end of each year if the winding up takes more than a year.
- The liquidator must conduct a final meeting and dissolution where he or she will lay before the members the settlement of accounts that he or she has undertaken. The meeting must follow a 30 days notice published in the *Government Gazette*.
- Within 14 days after the meeting, the liquidator must deliver the accounts to the Registrar of Companies for registration.
- Within 90 days of the registration by the Registrar, the company is deemed to be dissolved.
- Settle accounts in the following order:
 - the statutory creditors must be paid first (e.g. unpaid taxes must be paid to the Tanzania Revenue Authorities);
 - secured creditors are second in priority;
 - payment of employees' arrears follows; and
 - unsecured creditors are fourth in the list of priorities.
- Write a cessation letter in respect of the TIN to the Commissioner General of the Tanzania Revenue Authority.

The company's business licence comes to an end on its expiration date.

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