

Feature Article

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Update on the new Tanzania's Mining (Government Mineral Warehouse) Regulations, 2021

1.1 Setting the context

On 28th January 2022 the Minister of Finance published in the *Government Gazette*, the Mining (Government Warehouse) Regulations, 2021, Government Notice No. 58 of 2022. The Regulations signify an increasingly drive by the Government to ensure that there is a coordinated, transparent and safety procedure in dealing with deposit and transportation of certain valuable minerals.

The industry will recall that since 2017, the Government has taken various legal and administrative measures to ensure that the extractive industry benefits the Government, locals and investors by upholding a win-win situation and balancing the competing interests.

In this regard, by the Written Laws Miscellaneous Amendment Act No. 7 of 2017, the Parliament empowered the Mining Commission to establish the Mineral and Gem Houses ("MGHs") to deal with mineral auction, mineral exchange and serve as mineral clearing houses. The object was to make MGHs a one stop center for mineral transactions so as to address the phenomenon of mineral smuggling and unregulated mineral business that had impacted the Government and key business stakeholders for years. In 2019, the Minister for Minerals promulgated the Mining (Mineral and Gem Houses) Regulations, G.N. No. 418 of 24 May 2019 to operationalize the activities in the MGHs.

In 2017 and 2019, the Parliament mandated the Minister of Finance in consultation with the Mining Commission and the Governor of the Bank of Tanzania to establish Government mineral warehouses (GMWs). The GMWs would serve as central custodians of all metallic minerals and gemstones won by mineral rights holders except small scale miners who may opt to or not to deposit minerals with GMWs. The object was to put a safe and secured storage procedure where minerals will be deposited and regulate its removal or transportation. Consequently, the Minister of Finance has in January 2022 under section 27E of the Mining Act, [Cap. 123 R.E 2019] promulgated the subject GMWs regulations to provide for procedures and fees on deposit and transfer of minerals by mineral rights holders in GMWs.

1.2 The GMWs Regulations

As intimated, the GMWs Regulations chiefly regulates the procedure for placing of minerals for custody or storage in GMWs ("deposit), withdraw and transportation of minerals to and from GMWs.

The Scope of the Regulations

Understanding the realm or horizon of the Regulations is critical to foster compliance on the intended subjects. While it is apparent that the Regulations apply to GMWs under the Regulations, the substantive scope is worthy appreciating and stems from section 27E of the Mining Act where the GMWs Regulations are conceived from. Under section 27E (1), GMWs are established as central custodians of *“all metallic minerals and gemstones won by mineral rights holders”*. This entails that, while the definition of minerals may be broad, the minerals subject of GMWs are **“metallic minerals”** (gold, silver, copper, iron, nickel, zinc, Aluminium, platinum e.t.c) and **“gemstones”** (diamonds, tanzanites, e.t.c). Other minerals such as gypsum, limestone, soda ash, coal and others are excluded under the Regulations.

Second, these two set of minerals should be owned by *“mineral rights holders”*. For purposes of the GWH Regulations a “mineral rights holder” is a holder of any of the licences provided under section 7 of the Mining Act. These includes a prospecting licence, a gemstones prospecting licence, a special mining licence, a mining licence, a primary mining licence, a processing licence, smelting licence and a refining licence.

The Act provides that the warehousing requirement is option for ‘small scale miners’. Small scale miners are holders of a primary mining licence. As such, holders of primary mining licence are generally not subjects of the Regulations even when they deal with metallic minerals and gemstones unless and until they voluntarily wish to be subject themselves within the Regulation horizon.

A Government Mineral Warehouse

Literally a **“warehouse”** is a building or part of it (in its widest sense) that is used for storing goods or merchandise. In the context of the GMWs Regulations Warehouse means:

“a government mineral warehouse that is established at the Bank of Tanzania head office or its branches or other designated premises (i.e. any other premises or a site where minerals are produced) that are controlled and managed by the Bank of Tanzania”.

In terms of Regulation 4 (5) and 4(6), the “designated premises” must have unimpeded access, a secure neighbourhood and with impregnable specifications, i.e. strongly built and not capable of being penetrated. The premises should be constructed in accordance with best construction standards and should be fitted with fire alarm systems, intrusion detection systems, 24hrs surveillance monitoring cameras, secured safes and combination locks and keys. Holistically speaking, the designated premises and equipment must have unquestionable safety and security protocols with facilities for keeping in custody the minerals deposited.

A Warehouse Keeper

A GMW is charged by the Ware House Keeper (“WHK”) who is appointed by the Governor of the Bank of Tanzania. A WHK must possess a Diploma or higher qualification in the field of warehouse management or its equivalent in the same field. In discharge of his duties of mineral verification, packaging, labelling, mineral receipt, enforcement of the GWHs Regulations, Keeping mineral records in the warehouse and implementation of security measures; the WHK should be guided by the *principles relating to protection of interest of mineral rights holders*. This principle requires that WHK

discharges their responsibility with the view on the benefits and best interest of mineral rights holders whose minerals are in WHK charge.

1.3 Transportation of Minerals from Mines to GMWHs

The Regulations provide for the procedures when a mineral rights holder (MRH) wants to transport minerals from the mine to the GMWHs. We wish to summarize the procedures for your ease:

- (a) The MRH should lay the information of the intended mineral transportation to a Mines Resident Officer and apply for a transport permit provided in Form I of the Regulations.
- (b) The Mines Resident Officer submits the Form and a copy of a report on mining, sorting and valuation of raw minerals to the Mining Commission within 24hrs of receipt.
- (c) The Mining Commission's authorized officer, TRA and other officer of relevant state organs verifies the group and type of minerals sought to be removed from the mine to the GMWHs. After verification, the Mining Commission issues within three days, a transport permit in Form 2 and notifies the Bank of issuance of the permit and transportation logistics. The permit allows the MRH to proceed with packing the minerals as guided by the Commission. It should be noted that transporting minerals without a permit is an offence under the Regulations with stern penalties; a fine equivalent to three times the value of minerals transported; confiscation of the minerals without pay; and revocation of the licence of the MRH.
- (d) Once packed, the Commission seals the packages in presence of MRH, TRA and relevant state organ ready for transport through a mode of transport that is approved by the Commission. Transportation is done under escort of authorized officers of the Commission, TRA and relevant state organs from 08:00 am to 05:00 pm. It should be noted that costs relating to transportation of minerals to and from the warehouse are borne by the MRH. The Regulations makes it an offence for an MRH to transport minerals through a mode of transport that is not approved by the Mining Commission, that is; a fine equivalent to three times the value of minerals transported, confiscation of the minerals without pay and revocation of the licence of the MRH.

1.4 Deposit and Withdrawal of Minerals in GMWHs

The transported mineral will be delivered to the respective warehouse and upon delivery the following procedures will ensure:

- (a) The Authorised officer of the Commission (who should be different from the one who verified the same at the mine) and the Ware House Keeper shall open the seal and verify all information including physical verification of the minerals as against all details in the Mineral Transport permit. Once satisfied that the minerals is authentic and all details are correct, the minerals will be repacked and sealed. Where there is discrepancy of particulars as to mineral purity, group type and quantity the WHK will refuse deposit unless the defect is rectified, or a surcharge fee is paid for a conditional storage by the MRH.

- (b) In event of no discrepancy, the MRH will, together with the Authorised officer, TRA and any officer of the relevant state organ, sign Form No. 3 and thereafter hand over the mineral parcel to the WHK who shall assign and mark the parcel with a unique system generated reference number for identification and storage.
- (c) Minerals are stored for an initial period of one month at a fee prescribed in the Regulations. Following the expiry of an initial period, minerals will be stored for an extended period of two months at a fee. Where after expiry of an extended period the MRH does not withdraw the minerals in the GMWH, the Bank or the Government may after reaching an agreement with a MRH, if the minerals meet the purity test, purchase the minerals and pay the MRH in TZS. Such payments will be subject to deductions of all applicable taxes, royalties and accrued storage fees.
- (d) In an event a MRH wants to withdraw the minerals from the warehouse, she will apply to the Commission by Form I accompanied by a deposit form. All procedures applied for removal and transportation from mine will apply on withdraw subject to necessary modification being made.

2. Our Assessment on the GMWHs Regulations

The Regulations signals the continued monitoring and control by the Government into the mining industry following the post 2017 initiatives. They operationalize in terms of transport, deposit, storage and withdrawal procedures of minerals to, in and from GMWHs in Tanzania.

It is apparent to tap out that the introduction of GMWHs seeks to: -

- a) first, regulate and control storage of minerals of high value (metallic minerals and gemstones) in GMWHs. GMWHs are not necessarily the bank of Tanzania head office or its branches but also other designated premises including the mine site where minerals are produced.
- b) Second, regulation and control of the safety measures to and from GMWs for interest of MRHs.
- c) Third, regulating transportation of minerals from the mines, its storage and withdraw.
- d) Fourth, upholding interest of MRHs and the Government (i.e., collection of fees and broad benefits when the minerals are sold or exported outside Tanzania).
- e) Fifth, a mandatory use of GMWHs to MRHs except holders of primary mining licence (small scale miners). We rather opine that, the punishment imposed by the Regulation is very severe and has wide far-reaching implications to MRHs.

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