



TOWARDS A VIBRANT MINING SECTOR IN UGANDA: A REVIEW OF THE NEW MINING AND MINERALS ACT, 2022.

Introduction

Uganda is a mineral rich country with vast deposits of gold, uranium, limestone, marble, graphite, iron, copper, and cobalt, among others. Whereas its mining sector once accounted for 30% of the country's export earnings in the 1950's and 1960's, today the sector's contribution is about 0.8%. This decline has been attributed to a weak legislative framework to award, protect and enforce mineral rights; a significant informal mining sector; a paucity of foreign investors; environmental degradation; and human rights abuses.

To boost the mineral sector, the Government of Uganda introduced a new mining and mineral policy in 2018 whose goal is to develop the mining industry through increased investment, value addition, national participation, and revenue generation. The policy was followed by the recently passed Mining and Minerals Act, 2022 (the "MMA") which came into force on

13th October 2022, replacing the Mining Act, 2003. The MMA aims to fill the gaps identified in

the repealed law to align Uganda's legislative framework with global trends.

Some of the key amendments under the MMA include:

I. New Classes of Mineral Rights

The MMA creates new classes of mineral rights that may be acquired. These are large-scale mining licence; medium scale mining licence; small scale mining licence; and artisanal mining licence. The creation of small-scale licences and artisanal mining licences aims to formalize small scale and artisanal mining which are presently unregulated. This will expand the government's revenue base and improve the monitoring and regulation of small-scale mining in the country.

The MMA also broadens the scope of applicants for mineral rights to include a body corporate registered under the laws of Uganda, a partnership, a cooperative society, a trustee, or an association or business registered under any other written law. It is hoped this will increase the players in the mining industry.

II. A new regulatory framework

The MMA introduces a new regulatory framework for the mining industry. The Directorate of Geological Surveys and Mines (“DGSM”) has been created to administer and regulate the mining sector.

Within the DGSM there are various departments namely: -

- a) A Mining Cadastre Department whose duty is to administer mineral rights and maintain the cadastral registers.
- b) The Mineral Exploration Unit which undertakes detailed exploration and evaluation of mineral occurrences; and
- c) The Mineral Protection Force protects minerals against malpractice and is responsible for enforcing the provisions of the MMA.

III. Local governments

The MMA creates a role for local governments to collaborate with the Directorate. Local governments are expected to create awareness of mining activities within their areas of jurisdiction, facilitate dialogue between the local communities or project affected persons and mineral rights holders and to participate in dispute resolution.

IV. Uganda National Mining Company

The MMA establishes the Uganda National Mining Company (UNMC) which is wholly owned by the State to manage Uganda's commercial holding and participating interests in mineral agreements. Under the MMA the grant of a large scale or medium scale mining licence may give the State an ownership interest, at no cost, of up to a maximum of fifteen per cent (15%), in that enterprise. This interest is to be held by UNMC and is not to be diluted by eventual increases in

capital of the holder of a large scale or medium scale mining licence.

The 15% government stake has raised concern within the private sector. Whereas this will boost fiscal revenue for the government through receipt of dividends and capital gains, it is an expense for investors in addition to various licensing fees, royalties, taxes, all of which can make investing in Uganda less profitable. We are yet to see whether this provision of the law will maintain the delicate balance of attracting investors while also maximizing economic returns for the State and its citizens.

V. Exploration, Extraction and Direct Use of Geothermal Resources

The MMA provides for the regulation and management of geothermal resources for direct use. The Act defines direct use to include application in greenhouses, horticiculture, aquaculture, heating buildings, drying crops, pasteurizing milk, natural spas and any other industrial or commercial processes or applications as may be prescribed by the regulations.

VI. Value Addition and Beneficiation of Minerals

One of the country’s goals under ‘Vison 2040’ is to promote local beneficiation to establish an industrial base for local production of consumer and industrial goods. The MMA promotes this goal by regulating value addition and beneficiation of minerals. It requires all persons involved in beneficiation of minerals to obtain a licence.

VII. Commercial exploitation of building substances

Unlike the Mining Act, 2003 which limits exploitation of building minerals to domestic use, the MMA provides for the right to exploit

building substances for commercial purposes. To be able to prospect, explore, mine, retain, process, or dispose of any building substance for commercial purposes, one must possess a quarry licence issued by the DGSM, as well as authorisation under the National Environment Act, 2019.

VIII. National Content

The MMA introduces new provisions on national content in the mining industry. It emphasizes knowledge transfer, employment of Ugandan citizens, prioritization of Ugandan goods and services, technology transfer and research and training.

A holder of a mineral right licence is now required to commit to maximising knowledge transfer to Ugandan citizens and to establish in the country, management, technical capabilities, and any necessary facilities for technical work.

Additionally, a holder of a mineral right, licensee, contractor, and subcontractor is required to give preference to goods which are produced or available in Uganda and services rendered by Ugandan citizens and companies.

IX. Environmental and Human Rights Protection

The MMA prohibits a holder of a mineral right, licence or permit from polluting the environment and requires the holder of a mineral right to preserve the natural environment. The holder of a mining licence is also required to assist in the development of mining communities affected by its operations, to promote sustainable development, enhance the general welfare and the quality of life of the inhabitants. A mineral rights holder ought to recognise and respect the rights, customs, traditions, and religion of local communities.

The MMA provides for occupational safety and health, by requiring a holder of a mineral right, licence or permit to ensure that mining operations and licensed activities are conducted in a manner that enables a high level of safety.

The MMA protects the rights of workers by requiring the holder of a mineral right, licence or permit to show proof of insurance coverage for mining and related risks prior to the start of operations.

X. Establishment of the Earth Scientist Registration Board

The MMA establishes a Board known as the Earth Scientists Registration Board to regulate earth scientists and associated professionals. The functions of the board include monitoring and exercising general supervision and control over professional earth science standards.

XI. Mineral Revenue Management

All fees, charges, and royalties payable to the State under the Act are to be paid to the Uganda Revenue Authority. Such payment should be accompanied by a statement from the holder stating the details of the mineral or mineral product, and the relevant point of sale.

The MMA also revises royalty sharing propositions such that the government receives 70%, district local government receives 15%, sub-county/town council 10% and the registered or customary owner, or lawful or bona fide occupant of the land 5%.

XII. Offences and penalties

The MMA creates a number of offences such as: conducting prospecting, mining or exploration operations without a valid mineral right, licence, or permit; falsifying a certificate of origin or any material information on a certificate of origin of minerals or mineral products; employing

children below the minimum working age as defined under the Employment Act, 2006 in mining operations; and exploiting minerals without complying with standards for environmental protection, health and safety.

XIII. Mineral traceability and certification scheme

The MMA provides for implementation of a mineral traceability and certification scheme which is in line with the Mineral Certification Scheme of the International Conference on the Great Lakes Region (ICGLR) and the international Conference on the Great Lakes Region (Implementation of the Pact on Security, Stability and Development in the Great Lakes Region) Act, 2017.

This is intended to eliminate mineral smuggling and illegal exploitation of tin, tungsten, tantalum, and gold which are referred to as designated minerals under the ICGLR. The DGSM is charged with preventing illegal exploitation of designated minerals.



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XIV. Dispute Resolution

The MMA makes provision for dispute resolution mechanisms such as arbitration and culturally relevant local dispute resolution mechanisms. The Act also authorizes the Minister to pass regulations regarding, among other things, procedures in respect of dispute resolution and appeals lodged under the Act.

Conclusion

The vast endowment of Uganda with numerous minerals is without question. However, the full exploitation of this potential has been slow. The new MMA aims to reinvigorate the mining sector in Uganda and time will tell whether these goals will be met. Nonetheless, considering the incentives being given under the country's tax and investment laws, as well as the adoption of best global practices, there is optimism about the possibilities.



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