

PROJECT FINANCE FREQUENTLY ASKED QUESTIONS IN TANZANIA

Prepared

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Collateral

1. *What types of collateral are available?*

The types of collaterals available include land, ships, aircraft, equipment, mineral rights, shares, benefit of a contract, receivables, bearer securities, etc. In addition, a number of other devices can be used as collaterals without in law creating security interests. These include the reservation of title under a contract of sale, contractual set-off and cash deposit expressed not to be repayable until the debt secured has been repaid. There are broadly four types of security interests that can be created over available collaterals. These are mortgage; charge; pledge; and lien.

Mortgage

A mortgage arises when the right over an asset is conveyed by the debtor to the secured party as security for the obligations, but subject to a right to have the asset reconveyed when the obligations are performed. Land is the most important asset on which a mortgage can be created. Land can be owned either by way of right of occupancy or lease. A mortgage can be created over a right of occupancy or lease. Rights of occupancy are always given by the Government for a term not exceeding 99 years. Leases can be created out of a right of occupancy for any term which does not exceed the length of the right of occupancy.

Charge

A charge is a right which is normally given by a debtor company to a creditor to have recourse over the company's assets where the debtor fails to meet its obligations to the creditor. A charge can either be fixed (or 'specific') over identified assets or floating (or

‘not specific’) over changing pool of assets. The registrable charges are described under section 97(1) of the Companies Act, 2002. Charges cannot be created by individuals.

Pledge

A pledge is a form of possessory security available under the Law of Contract Act Cap. 345. Although it is now common practice in Tanzania for borrowers to pledge shares to lenders, share pledge remains equitable until the transfer of shares has been registered. Under section 128 of the Law of Contract Act, Cap. 345, the pledgee has power of sale in the event of a default on the secured obligations.

Lien

Lien is recognized as a security interest under section 123 of the Law of Contract Act, Cap. 345. A lienee has no power of sale in the event of a default on the secured obligations. If the power of sale is to be exercised, the lienee must bring an action in court with a view to obtaining orders allowing him to sale. If the power of sale is to be exercised over land, the provisions of the Land Act, 1999 must be observed.

Perfection and priority

2. *How is a security interest in each type of collateral perfected and how is its priority established? Are any fees or taxes payable to perfect a security interest and, if so, are there lawful techniques to minimise such fees or taxes?*

Mortgage

A mortgage is created by way of mortgage deed which must be executed in accordance with the law. Mortgage deeds over land must be sealed by the company in the presence of two directors or one director and the company secretary. If the mortgage deed over land is executed by an individual, it must be signed by that individual before the notary public. There are prescribed forms for execution by companies and individuals in land related security interests. The mortgage deeds executed by companies which do not involve land are not required to be sealed though most authorities demand sealing.

The creation of mortgage over land is subject to consent of the land authorities. The creation of mortgage over registered land is perfected by way of registration under Land Registration Act, Cap. 334. A mortgage over unregistered land must be registered in the registry of documents established under section 3 of the Registration of Documents Act, Cap. 117. The mortgage ranks according with the order in which they are registered. If the mortgage is not registered, a mortgagee is, generally, not entitled to exercise statutory recognized remedies.

Other assets which can be mortgaged are mineral rights, movable properties, book or other debts, registered securities, negotiable instruments and choses in action. A mortgage created by an individual over chattels, book or other debts, registered

securities and negotiable instruments must be registered within twenty one (21) days under the Chattels Transfer Act, Cap. 210. A mortgage over mineral rights must be registered in Registers of Minerals Rights established under section 105 of the Mining Act, Cap. 123. A mortgage over registered ships must be registered in the register of ships mortgages under section 88 of the Merchant Shipping Act, 2003. A mortgage over an aircraft can be registered by way of title sharing under Regulation 6 of Civil Aviation (Aircraft Registration and Marking) Regulations, 2006.

Mortgagees over land have four primary remedies in the event that there is a default by the mortgagor on the secured obligations: they can appoint a receiver of the income of the mortgaged land; they can lease the mortgaged land or where the mortgaged land is a lease, sub-lease the land; they can enter into possession of the mortgaged land; or they can sell the mortgaged land. The rights of entering into possession and sale of land are limited by the Land Act, 1999. The mortgagee can also sue upon the covenant to pay which appears in most mortgage instruments. The mortgagee is entitled to pursue all of its remedies concurrently or consecutively.

Debenture

The charges are normally created using debentures though the law allows the creation of charges using any form of document such as mortgage deed, trust deed, etc. A debenture is a contract that is entered into by a company and the creditor. The debenture or any other document used to create a charge must comply with execution requirements provided in the Companies Act, 2002 ('Act'). Under the debenture, the creditor is given proprietary interest over the company's assets by way of security. Proprietary interest provided by way of security entitles the creditor to resort to company property for the purpose of satisfying liability due to him and the owner of the property retains an equity of redemption to have to have the property restored to him when liability has been discharged.

The charges created by a Tanzanian company must be delivered to the Registrar of Companies for registration within forty two (42) days of the date of their creation (section 96 of the Act). Section 97(1) of the Act lists down the charges to which section 96 applies and the minister responsible for trade has powers to amend this list by removing or adding the charges which are required to be registered. Failure to deliver to the Registrar of Companies for registration within forty two (42) days of the creation of the charge the prescribed particulars, together with instrument, if any, by which the charge is created or evidenced, makes the charge void against the liquidator or administrator and any creditor of the company, and renders the company and every officer who is in default to a fine. When the charge becomes void, the money secured becomes immediately payable. Registration requirements apply to a foreign company if that company has an established place of business in Tanzania and the security is over the property that is in Tanzania. Part XII of the Act requires a company incorporated outside Tanzania to deliver prescribed documents and details to the Registrar of Companies when it is establishing a place of business in Tanzania.

The remedies available to chargee include appointment of a receiver, putting the company under administration and liquidating the company.

Pledges and liens

There are no special documents and execution formalities required for pledges and liens apart from execution requirements by companies under the Companies Act, 2002 and execution of documents relating to land under the Land Act, Cap. 113. The registration of other security interests such as pledge and lien is not compulsory. However, in most cases, pledges and liens are registered under optional registration system provided by the Registration of Documents Act, Cap. 210. The optional registration puts on notice the members of the public about the existence of security interests.

Taxes

Stamp duty is chargeable over all documents creating security interests and ancillary documents such as powers of attorney. It is the instrument and not the subject matter which is dutiable. If an instrument is executed in Tanzania, it must be stamped within thirty days from the date of execution and if executed outside Tanzania, it must be stamped within thirty days of its first arrival in Tanzania. Stamping is very important not only that, it is a tax obligation, but also makes the instrument to be admissible as evidence. Section 47 of the Stamp Duty Act, 1972 provides that no instrument chargeable with duty can be admitted as evidence for any purpose by any person having by law or consent of parties, authority to receive the evidence.

Existing liens

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

As pointed out above, there are no compulsory registration for liens and pledges. Accordingly, unless the lien is registered under optional registration system, it is very difficult for a new creditor to know the existence of the lien. A creditor must insist on disclosures from the lender of all existing security interests and should also insist that on the borrower to give warranties on absence of liens with priority to the creditor's lien.

As far as charges over companies are concerned, existing charges can easily be uncovered through conducting search at the Companies Office. Equally, existing mortgages over land can be established through conducting search at the Land Registry. However, the issuance of official search report by these government departments may sometimes take long time because of poor record keeping system.

Foreign exchange

4. *What are the restrictions, controls, fees and taxes on foreign currency exchange?*

The applicable restrictions and controls are explained in the Foreign Exchange Act, 1992, regulations issued under this Act and *ad hoc* the circulars issued by the Bank of Tanzania. If a transaction is not explicitly allowed under these instruments, one must assume that it is prohibited and must obtain approval from the Bank of Tanzania.

Outward capital transfer

Outward capital transfers for purposes other than repatriation of capital and income to foreign shareholders in respect of direct investments and servicing foreign loans are generally restricted. Outward portfolio investments, foreign lending operations in favor of non-residents, acquisition of real estates, outward direct investment, operation of offshore foreign currency accounts by residents and participation of non-residents in domestic money and capital markets are also restricted. This means that foreign based project sponsors can only raise finance in Tanzania by way of issuing corporate bonds to local markets after getting approval from the Bank of Tanzania.

Loan repayment

Repayments for foreign loans, overdrafts, financial facility, deferred payments or guarantees by residents' individuals or companies are generally allowed. The applications by a project company for foreign loans, overdrafts, financial facility, deferred payments or guarantees may be processed and approved by commercial banks.

Repatriation of capital

Payments relating to repatriation of capital and income to foreign shareholders in respect of direct investments are allowed. However, authorizing banks must demand audited accounts and authenticated tax clearances from Tanzania Revenue Authority confirming payments of all relevant taxes.

Imports

Payments for imports are also allowed. If payment is to be made directly in respect of imports, banks and financial institutions must demand production of invoices and shipping documents and report from an authorised pre-shipment inspection firm.

Transfer of foreign currency in respect of advance payments for imports, remittance may be made against properly authenticated advance payment guarantee and proforma invoice/supply contract. The customer must have an account relationship with the bank. If the payment relates to imports that require import licence, it must be produced. If payment is to be made for deferred payments for imports or any financial facilities tenure of which do not exceed 365 days, the interest rate and other charges if any

should reflect the prevailing market conditions for the relevant currency of borrowing at the time of signing the relevant agreement. Borrowings are required to be arranged in the same currencies in which repayments for imports are required to be settled.

Emoluments, consultancy fees and royalties

If the payment relates to remittance by employed expatriates, banks making remittance are required to sight relevant employment contract, resident permit, and getting details of the purposes for remittances. If the payment is for fees related to consultancy, management and royalty agreements, the project company should furnish duly executed contractual documents duly executed by parties, relevant invoice/fees notes and tax clearances from Tanzania Revenue Authority certifying that tax obligations have been settled.

Taxes

There are no special fees and taxes which are specifically dedicated on foreign exchange transactions. However, interest amount payable to foreign creditors, payments in respect of services rendered by foreign entities and payment of dividends to foreign shareholders are subject to income tax.

Remittances

5. *What are the restrictions, controls, fees and taxes on remittances of investment returns or loan payments to parties in other jurisdictions?*

Generally, there are no major restrictions on remittances of investment returns or loan payments to parties in other jurisdictions.

Repatriation of capital

Payment relates to repatriation of capital and income to foreign shareholders in respect of direct investments (including remittances in respect of proceeds in the event of liquidation) is allowed. However, authorizing banks are required to demand audited accounts and authenticated tax clearances from Tanzania Revenue Authority confirming payments of all relevant taxes.

Debt repayment

If the payment relates to transfers in respect of debt servicing, the relevant contract as approved by a commercial bank must be produced plus creditor's demand notes to that effect. Foreign exchange control laws require that interest rate in the loan agreement to reflect the prevailing market conditions for relevant currency of borrowing. Moreover, foreign exchange laws require that repayment period in the loan agreement should be tied to the ability of the project to generate enough funds to service the loans in a

progressive manner. The loan agreements should not include conditions requiring opening of foreign currency accounts with banks not registered in Tanzania.

Income tax

Income tax is chargeable on remittances of investment returns and interest payable on loans. If a creditor is not a resident in Tanzania, the payment of income tax is normally done in a form of 'withholding tax'. Currently, the withholding tax rate for non-residents is ten percent.

Transfer pricing

One of the deductible expenses in calculating the project company's taxable income is interest expense. The revenue authorities may, basing on the transfer pricing provisions in the Income Tax Act, 2004, refuse to allow the deduction of interest expense if it is unreasonably higher than the prevailing market conditions.

Repatriation

6. *Must project companies repatriate foreign earnings? If so, must they be converted to local currency and what further restrictions exist over their use?*

As pointed in response to question 4 above, outward capital transfers for purposes other than repatriation of capital and income to foreign shareholders in respect of direct investments and servicing foreign loans are restricted. Outward portfolio investments, foreign lending operations in favor of non-residents, acquisition of real estates, outward direct investment, operation of offshore foreign currency accounts by residents and participation of non-residents in domestic money and capital markets are also restricted.

However, as pointed in question 4 above, payments in relation to (i) foreign loans, overdrafts, financial facility, deferred payments or guarantees by residents' individuals or companies; (ii) repatriation of capital and income to foreign shareholders in respect of direct investments (including remittances in respect of proceeds in the event of liquidation); (iii) imports; (iii) salaries and emoluments for employed expatriates; and (iv) fees related to consultancy, management and royalty agreements are allowed.

Offshore and foreign currency accounts

7. *May project companies establish and maintain foreign currency accounts in other jurisdictions and locally?*

Generally, project companies incorporated in Tanzania are required to establish and maintain foreign currency accounts locally. If necessary, a project company can establish and maintain foreign currency account in other jurisdiction but it must obtain the approval of the Bank of Tanzania.

However, a foreign currency account that is being operated in other country by a project company incorporated in Tanzania will be monitored by the Bank of Tanzania with a view to ensuring that it is not used to facilitate unauthorized outward capital transfers.

Foreign investment and ownership restrictions

8. *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?*

Subject to the exchange control restrictions and sector specific laws, ownership of a project by foreign persons and companies is generally not restricted. Most of business activities are open to foreign investors. In a few sectors such as shipping agencies, insurance, telecommunications and broadcasting, ceilings have been placed on foreign shareholdings by licensing authorities.

Shareholding restrictions

Under the Shipping Agency Act, 2002 a license to conduct shipping agency business can only be granted to a citizen of Tanzania or body corporate incorporated in Tanzania in which more than 50% of the share capital is held directly or indirectly by a citizen of Tanzania. A licence to provide telecommunications and postal services can only be granted to an entity in which a local shareholder possesses thirty five percent of the shares. In case of broadcasting content businesses, a licence can only be granted to an entity in which a local shareholder possesses a minimum of fifty one percent of equity interest. Section 8 of the Insurance Act, 1996 provides that an insurance company to be registered in Tanzania must be locally incorporated and at least one third of the controlling interest (whether in terms of shares, paid up capital or voting rights) must be held by citizens of Tanzania and at least one third of the members of the board of directors must be citizens of Tanzania. There are also foreign shareholding limitations in companies holding certain types of mineral rights under the Mining Act, Cap. 123.

Stock exchange participation

For companies listed at Dar es Salaam Stock Exchange ('DSE'), the Capital Markets and Securities (Foreign Investors) Regulations, 2003 set out the limit of aggregate securities to be held by foreign investors. The applicable regulations provides among other things that:

- (a) Foreign investors are allowed to purchase up to a maximum of 60% of the shares floated at DSE. The remaining 40% of the shares floated must be reserved to Tanzanian investors.
- (b) For listing that is taking place in a form of initial public offering, preference to purchase the shares must be given to Tanzanian investors unless the Tanzanian investors are unable to purchase all the shares offered.
- (c) Government securities are excluded from purchase by foreign investors.
- (d) The sources of funds for the purchase of shares and bonds by foreigners must be from inward foreign currency remittances, or debits to foreign currency accounts, or withdrawals from local currency accounts opened by a foreign investor at a licensed banks operating in Tanzania provided that both foreign currency accounts and local currency accounts must be funded from external sources.

Land ownership

Land Act, 1999 restricts the right to foreigners to hold land in a form of rights of occupancy. A company is considered to be a foreigner if fifty one percent of its shareholders are foreign individuals or companies registered in other countries. Foreigners are only allowed to hold land in a form of either right of occupancy or long term lease (called 'derivative rights') for the purpose of the project registered by Tanzania Investment Centre ('TIC'). Accordingly, before acquiring land, in a form of right of occupancy or long term lease, a foreign entity must submit the project to TIC for registration. It is possible for a 'foreign entity' to enter into a contract to purchase land subject to obtaining TIC certificate. To qualify for and obtain the certificate of incentives under this Act, a minimum fixed direct investment must be at least US\$ 300,000 for projects wholly owned by foreign investors or joint ventures between Tanzanian citizens and foreign investors. Upon registration of investment, TIC issues a formal certificate of incentives, which serves as the official recognition of a company's entitlement to incentives provided under the Investment Act, 1997. There are various investment incentives that the holder of the certificate of incentive is entitled including holding land in a form of in a form of right of occupancy or long term lease.

Government approvals

9. *What government approvals are required for typical project finance transactions? What fees and other charges apply?*

The required approvals for specific key sectors are discussed in the response to question 15 below. However, there are general approvals which are needed from government agencies and departments responsible for investment promotion and protection. These agencies and departments include Tanzania Investment Centre, Special Economic Zones Authority, Export Processing Zones Authority and the Ministry of Finance and Economic Planning. While identifying sponsors, there are strict requirement placed on

all public authorities (including ministries) by the Public Procurement Act, 2004 to ensure that sponsors are competitively procured. There are various projects which have been stalled because of failure to comply with the Public Procurement Act, 2004. Accordingly, guidance should be sought from the Public Procurement Regulatory Authority on procurement requirements relevant to a particular project before concluding any contract with any public entity.

Tanzania Investment Centre

The central authority which coordinates investments (including project finance transactions) is Tanzania Investment Centre ('TIC') established under the Tanzania Investment Act, 1997 ("Act"). The TIC's mandate includes both investment facilitation and investment promotion. The functions of the TIC include, but are not limited to, assisting all investors to obtain all necessary permits, licenses, approvals, consents, authorizations, registrations, and other matters required by law for a person to set up and operate an investment.

Section 16 of the Act requires that all government agencies and other public authorities cooperate fully with the TIC in the performance of its functions. For example, if a license or approval from another authority is required by an investor, the TIC works with the relevant authority to secure the necessary license or approval. In addition, under Section 18, the TIC coordinates the establishment of all business enterprises to which the Act applies.

Under the Act, large investors are eligible to receive a certificate of incentives, which provide them with a package of tax, immigration, guarantee, and land advantages. The minimum investment to qualify for and obtain a Certificate of Incentives is US\$100,000 for projects that are wholly owned by Tanzanian citizens and US\$300,000 for projects that are wholly owned by foreign investors or if a joint venture. The investment may relate to new, rehabilitation and expansion projects.

Special Economic Zones Authority

If a project locates in special economic zone established under the Special Economic Zones Act, 2006, the key administering authority is Special Economic Zones Authority ('SEZA'). SEZA is a high powered authority chaired by the President and has overall responsibility of approving and supervising projects locating in special economic zones.

Export Processing Zones Authority

For projects locating in export processing zones established under the Export Processing Zones Act, 2002, the administering authority is Export Processing Zones Authority ('EPZA'). EPZA has powers to approve and supervise projects locating in export processing zones.

Ministry of Finance and Economic Planning

If a project requires a government guarantee, the minister responsible for finance has powers to give government guarantees in accordance with the provisions of the Government Loans, Guarantees and Grants Act, Cap. 134.

Foreign insurance

10. *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?*

Generally, insurance policies are required to be placed with Tanzanian insurers (Section 111 of the Insurance Act, Cap. 394). Where a class of insurance policy cannot be provided by local insurers, that class of insurance policy can be provided by foreign insurance companies provided that a prior approval of the Commissioner of Insurance must be obtained.

Classes of insurance which can be provided by Tanzanian insurers over project assets include insurance over motor vehicles, railway rolling stock, aircraft, ships, goods in transit, fire, certain categories of nature forces, damage to property, credit suretyship (including performance bonds), legal expenses, accident, general liability, etc (First Schedule to Insurance Act, Cap. 394).

Foreign employee restrictions

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

Section 15 of the Immigration Act, Cap. 54 ('Act'), provides among other things that all foreign nationals intending to reside in Tanzania for business or any other purpose require a residence permit. There are three types of permit:

- Class A – for self-employed investors who are owners or shareholders in the business (Section 19 of the Act).
- Class B – for employment with an established company (Section 20 of the Act).
- Class C – missionaries, researchers, students and volunteers (Section 21 of the Act).

Applications for Class A and C permits are forwarded directly to the Director of Immigration Services, while applications for Class B permits are forwarded to the Director of Immigration Services through the Labour Commissioner, who makes a positive or negative recommendation to the Department of Immigration. Applications for Residence Permits should also be submitted while the applicant is outside the country unless he/she is in possession of valid visa to stay in Tanzania. Class A permit is granted to investors who demonstrate that they are in possession of at least US\$ 300,000.

In most cases, a maximum of five permits will be issued to any one company. However, it is possible to apply for more, as long as each applicant shows the relevant qualifications and experience. A company may be asked to advertise for the position to see whether there is a qualified local applicant to fill the position. It is important to comply precisely with the immigration requirements of Tanzania, as failure to do so can result in arrest, detention and prosecution by the immigration authorities.

Equipment import restrictions

12. *What restrictions exist on the importation of project equipment?*

Generally, there are no major restrictions on importation of project equipment. Project equipment can generally be imported subject to payment of applicable duties and taxes. However, there are some restrictions imposed under Imports Control Act, Cap. 276.

Import licence

Under the Imports Control Act, Cap. 276, there are items which require obtaining import licence prior to importation. If specific import licence is not required, the Act provides that an open general licence must be used. If specific import licence is required, the authorities have powers to refuse to issue the licence or may issue subject to conditions. The items which require import licence are listed in the Open General Licence Notice, 1993. Briefly, these are specified items for health reasons (such as asbestos) and security reasons (such as crude oil, petroleum, coal lignite, peat, coke, gas tar, electric current, explosives and combustible preparations,) and items categorized as luxuries.

Import duties

There are import duties on imported goods imposed under the East African Community Customs Management Act, 2004. The import duty is levied at an ad-valorem rate on the CIF value of goods imported into the country. There are three tariff bands as follows:

- 0% is applicable on raw materials, capital goods and other prescribed goods;
- 10% is charged on finished goods and finished inputs; and
- 25% is charged on final consumer goods and finished commercial goods.

Excise duty

The excise duty is charged either on specific or ad-valorem rate on importation of certain consumer goods into the country. The ad-valorem rates are: 10% for luxury cars with engine capacity exceeding 2000 cc; 30% is charged on consumer luxury goods; and 120% is charged on plastic shopping bags. Items which are charged excise duty at specific rates include petroleum products.

Value Added Tax

Value Added Tax ('VAT') at 20% is levied on all taxable imports made by persons whether or not registered for VAT. Importers who are registered for VAT can claim as an input the amount of VAT paid on imported goods or services.

Nationalisation and expropriation

13. *What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?*

The Constitution is the fundamental law in Tanzania, overriding all other legislation. Chapter 24 of the Constitution guarantees the right to own property and to protect it in accordance with the law. There is full recognition of private property and protection against any non-commercial risks. Tanzania is an active member of the Multilateral Investment Guarantees Agency. Tanzania is also a member of The International Centre for Settlement of Investment Disputes and has ratified the New York Convention.

The incentives available to investors under Tanzania Investment Act, 1997 include guarantee against nationalization and expropriation and unrestricted right to international arbitration in the case of disputes with the Government. In addition, Tanzania has signed bilateral investment treaties with Germany, United Kingdom, Sweden, Denmark, Switzerland, Egypt, South Korea, Mauritius, Malawi and Zimbabwe. Most of these bilateral investment agreements have provisions which guarantee foreign investors from contracting countries against nationalization and expropriation.

Fiscal treatment of foreign investment

14. *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?*

General investment incentives

Under the Investment Act, 1997 ('Act'), large investors are eligible to receive a certificate of incentives, which provide them with a package of tax, immigration, guarantee, and land advantages. The incentives available to holders of certificates of incentives include the following:

- (a) zero percent (0%) 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 vehicle and inputs for manufacturing pharmaceutical products.
- (b) ten percent (10%) import duty for semi-processed inputs and spare parts other than for motor vehicles.

- (c) fifteen percent (15%) import duty for fully processed inputs and motor vehicle spares.
- (d) twenty five percent (25%) import duty for final consumer goods.
- (e) abolition of the mandatory pre-shipment inspection on imported raw materials that have zero rate of import duty.
- (f) pay and refund scheme for excise duty paid on fuel purchased by eligible companies.
- (g) 50% allowance of capital expenditure for all classes of assets for the first year.
- (h) VAT exemption on ground transport run by tour operators, milk packaging materials, computers, printers and accessories, hospital equipment and drugs used by victims of HIV/Malaria and TB and locally produced yarn.
- (i) deferment of VAT payment on project capital assets (deferment is done in a form of special reliefs under Value Added Tax Act, 1997).
- (j) import duty drawback on raw materials used to produce goods for exports and deemed exports.
- (k) locally procured building materials are deemed to be capital and therefore subject to VAT deferment.
- (l) zero-rated VAT on exports.
- (m) straight line depreciation allowance on capital goods.
- (n) indefinite carry forward of losses against future profits.
- (o) corporate tax rate of 30% and withholding tax rates on dividends of 10% and 0% on loan interest in both priority and lead sectors.
- (p) right to transfer outside the country 100% of foreign exchange earned, profits and capital.
- (q) easiness in obtaining other permits such as residence/work permits, industrial license, trading license etc.

Under Section 20 of the Act, “strategic or major” investors may be eligible for additional investment incentives (including fiscal incentives). Currently, a strategic or major investor is one who satisfies the following criteria:

- (a) the investment is at least US\$20 million;
- (b) the investment creates employment;
- (c) the investment brings technology into Tanzania;
- (d) the investment has the potential to create exports; and
- (e) the investment is located in a disadvantaged region of Tanzania.

Applications from strategic investors are reviewed on a case-by-case basis by the National Investment Steering Committee. Applications from strategic investors must be forwarded to Executive Director of Tanzania Investment Centre.

Special economic Zones

- (i) The incentives available to a developer of infrastructure in a special economic zone include:

- (a) exemption from payment of taxes and duties for machinery, equipment, heavy duty vehicles, building and construction materials and any other goods of capital nature to be used for purposes of development of the purpose of the special economic zone infrastructure;
 - (b) exemption from payment of corporate tax for an initial period of ten years;
 - (c) exemption from payment of withholding tax on rent, dividends and interest for the first ten years;
 - (d) exemption from payment of property tax for the first ten years;
 - (e) remission of customs duty, value added tax and any other tax payable in respect of importation of one administrative vehicle, ambulances, fire fighting equipment and fire fighting vehicles and up to two buses for employees' transportation to and from the special economic zone;
 - (f) exemption from payment of stamp duty on any instrument executed in or outside the special economic zone relating transfer, lease or hypothecation of any movable or immovable property in or situated within the special economic zone or any document, certificate, instrument, report or record relating to any activity, action, operation, project, undertaking or venture in the special economic zone;
 - (g) entitlement to an initial automatic immigrant quota of up to five persons during the start up period;
 - (h) exemption from payment of value added tax on utility charges;
 - (i) exemption from pre-shipment or destination inspection requirements;
 - (j) on site customs inspection of goods within special economic zones; and
 - (k) treatment of goods destined into special economic zones as transit cargo.
- (ii) Incentives available to investors in a special economic zone whose primary markets are within the customs territory include the following:
- (a) remission of customs duty, value added tax and any other tax charged on raw materials and goods of capital nature related to the production in the special economic zone;
 - (b) exemption from payment of withholding tax on interest on foreign sourced loan;
 - (c) remission of customs duty, value added tax and any other tax payable in respect of importation of one administrative vehicle, one ambulances, fire fighting equipment and fire fighting vehicles and up to two buses for employees' transportation to and from the special economic zone;
 - (d) exemption from pre-shipment or destination inspection requirements;
 - (e) on site customs inspection of goods within special economic zones;
 - (f) provision of business visa at the point of entry to key technical, management and training staff for a maximum of two months;
 - (g) entitlement to an initial automatic immigrant quota of up to five persons during the start up period;
 - (h) access to competitive, modern and reliable services available within the special economic zones; and
 - (i) unconditional transferability through any authorized dealer bank in freely convertible currency of:-

- net profits or dividends attributable to the investment;
 - payments in respect of loan servicing where a foreign loan has been obtained;
 - royalties, fees and charges in respect of any technology transfer agreement;
 - the remittance of proceeds (net of all taxes and other obligations) in the event of sale or liquidation of the licenced business or any interest attributable to the licenced business;
 - payments of emoluments and other benefits to foreign personnel employed in Tanzania in connection with the licenced business
- (iii) Incentives available to investors in a special economic zone licensed primarily for export markets in non manufacturing or processing sectors include following:
- (a) subject to compliance with applicable conditions and procedures, accessing the export credit guarantee scheme;
 - (b) remission of customs duty, value added and any other tax charged on raw materials and goods of capital nature related to the production in the special economic zone;
 - (c) exemption from payment of corporate tax for an initial period of ten years;
 - (d) exemption from payment of withholding tax on rent, dividends and interests for the first ten years;
 - (e) exemption from payment of all taxes and levies imposed by the local government authorities for products produced in the special economic zones for a period of ten years;
 - (f) exemption from pre-shipment or destination inspection requirements;
 - (g) on site customs inspection of goods in the special economic zone;
 - (h) provision of business visa at the point of entry to key technical, management and training staff for a maximum of two months;
 - (i) remission of customs duty, value added tax and any other tax payable in respect of importation of one administrative vehicle, ambulances, fire fighting equipment and vehicles and up to two buses for employees' transportation to and from the special economic zones;
 - (j) treatment of goods destined into special economic zone as transit cargo;
 - (k) exemption from value added tax on utility and wharfage charges;
 - (l) entitlement to an initial automatic immigrant quota of up to five persons during the start up period;
 - (m) access to competitive, modern and reliable services available within the special economic zones; and
 - (n) unconditional transferability through any authorized dealer bank in freely convertible currency of-
 - net profits or dividends attributable to the investment;
 - payments in respect of loan servicing where a foreign loan has been obtained;
 - royalties, fees and charges in respect of any technology transfer agreement;
 - the remittance of proceeds (net of all taxes and other obligations) in the event of sale or liquidation of the business enterprises or any interest attributable to the investment; and

- payments of emoluments and other benefits to foreign personnel employed in Tanzania in connection with the business enterprise.

Export processing zones

Incentives available to an investor in the export processing zones include the following:

- (a) subject to compliance with applicable conditions and procedures, accessing the Export credit guarantee scheme;
- (b) remission of customs duty, value added tax and any other tax charged on raw materials and goods of capital nature related to the production in the export processing zones;
- (c) exemption from payment of corporate tax for an initial period of ten years;
- (d) exemption from payment of withholding tax on rent, dividends and interest for the first ten years;
- (e) exemption from payment of all taxes and levies imposed by the local government authorities products produced in the Export Processing Zones for a period of ten years;
- (f) exemption from pre-shipment or destination inspection requirements;
- (g) on site customs inspection of goods in the Export Processing Zones;
- (h) provisions of business visa at the point of entry to key technical, management and training staff for a maximum of two months;
- (i) remission of customs duty, value added tax and any other tax payable in respect of 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;
- (j) treatment of goods destined into Export Processing Zone as transit cargo;
- (k) exemption from value added tax on utility and wharfage charges;
- (l) entitlement to an initial automatic immigrant quota of up to five persons during the start up period;
- (m) access to competitive, modern and reliable services available within the Export Processing Zones; and
- (n) unconditional transferability through any authorized dealer bank in freely convertible currency of-
 - net profits or dividends attributable to the investment;
 - payments in respect of loan servicing where foreign loan has been obtained;
 - royalties, fees and charges in respect of any technology transfer agreement;
 - the remittance of proceeds (net of all taxes and other obligations) in the event of sale or liquidation of the business enterprises or any interest attributable to the investment; and
 - payments of emoluments and other benefits to foreign personnel employed in Tanzania in connection with the business enterprise

Elimination of double taxation

Tanzania has signed treaties for elimination of double taxation with Canada, Denmark, Finland, India, Italy, United Kingdom, Norway, Sweden, and Zambia. Tanzania is also in the process of negotiating treaties for elimination of double taxation with several countries including Belgium, Burundi, Iran, Lebanon, Malaysia, Mauritius, Pakistan and Rwanda.

In addition to treaties for elimination of double taxation, section 77 of the Income Tax Act, 2004 allows the revenue authorities to unilaterally avoid double taxation by providing foreign tax credit (not exceeding tax amount assessed in Tanzania) for foreign income tax paid by the taxpayer to the extent to which it is was paid in a foreign country in respect to the same income taxable in Tanzania.

Government authorities

15. *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?*

Generally, the key government departments in most sectors are parent ministries. The parent ministries are responsible for approving major projects. The term ‘major project’ is subjective and it is recommended that project sponsors should seek guidance from the relevant ministry before entering into an agreement with any authority or agency under the ministry. If proper procedures are not followed, the project may end up in political quagmire and may not take off.

Power, minerals, oil and gas

Ministry of Energy and Minerals (‘MEM’) is the overall supervisor of energy and minerals sectors in accordance with specific legislation. MEM approves major projects relating to power generation, transmission and transmission, oil, gas and minerals extraction.

Minerals

As far as the mineral sector is concerned, the specific legislation is the Mining Act, Cap. 123 (‘Act’). This legislation establishes the office of the Commissioner for Minerals (‘Commissioner’) within the MEM. The Commissioner is appointed by the President of the United Republic of Tanzania. The Commissioner has a responsibility to supervise and regulate minerals exploration and extraction activities. The Act also establishes a Mining Advisory Committee which has the responsibility of advising the minister responsible for minerals on matters concerning minerals sector generally. The Act empowers the minister to grant, renew, suspend or cancel licences for minerals exploration, production or trading. Section 10 of the Act allows the minister to conclude minerals development agreement with a holder of a mineral right (normally special mining licences). The objectives of the minerals development agreements is to guarantee the fiscal stability of a long-term mining project, define the circumstances or manner in which the minister may

exercise his discretion conferred on him by the legislation, lay down environmental requirements and to define the dispute settlement mechanism arising out or relating to the agreement.

Oil and Gas

With regard to oil and gas, the specific legislation is the Petroleum (Exploration and Production) Act, Cap. 328 ('Act'). Section 8 of this Act establishes the office of the Commissioner for Petroleum Affairs ('Commissioner'). The Commissioner is appointed by the President of the United Republic of Tanzania and has powers to carry out general administration of oil and gas exploration and development activities. The Act empowers the Minister to grant, renew, suspend or cancel licences for oil and gas exploration or development. In addition, section 14 of the Act allows the Minister to enter into an agreement with any person for grant of exploration or development licence and stating the conditions and benefits given to the licence holder.

Electricity

The Electricity Act, 2008 ('Act') have liberalized the electricity generation, transmission and distribution sector. The effect of liberalization is to remove the monopoly of state owned electricity company to generate, transmit and distribute electricity.

The MEM and Minerals and the Energy and Water Utilities Regulatory Authority ('EWURA') are key institutions in project finance transactions. New projects are supposed to be directed to EWURA which in turn will liaise with other institutions. Section 5 of the Act, gives EWURA powers to approve initiation of the procurement of new electricity supply installations, award licences, approve and enforce tariffs and fees and approve terms and conditions of electricity supply. In exercise of its functions, EWURA is generally required to consult the minister responsible for energy though the minister is more powerful when it comes to approving the projects. Section 4 of the Act gives the minister responsible for energy overall supervisory and oversight in the electricity supply industry. The projects that require to be licenced by EWURA include generation, transmission, distribution, supply, system operation, cross-border trade in electricity, physical and finance trade in electricity and electricity installations. EWURA has powers to approve key power purchase agreements under section 25 of the Act.

With regard to projects involving supply of electricity in rural areas, the relevant legislation is the Rural Energy Act, 2005. This legislation establishes Rural Energy Board which has powers, through a special implementing agency, to approve projects and allocate grants necessary to subsidize the capital costs of projects.

Telecommunications, Roads, Airports, Ports and Railways

The Ministry of Infrastructure Development approves major projects relating to telecommunications, ports, airports, railways and toll roads and bridges. There are regulatory authorities which are under these ministries which grant licences to projects

which have been approved by the Ministry. In addition to regulatory agencies, there are implementing agencies for airports, roads and ports sectors.

Telecommunications

Telecommunications projects can generally be directed to Tanzania Communications Regulatory Authority ('TCRA'). TCRA is a regulatory agency established under the Tanzania Communications Regulatory Act, 2003. TCRA has powers to grant all types of licences to projects relating to telecommunications and broadcasting. Before granting a major licence, TCRA normally obtains clearance from the minister responsible for infrastructure. The private sector can be easily involved in telecommunications projects subject to compliance with shareholding restrictions that at least thirty five percent of the equity in the project company must be owned by Tanzanians.

Roads and railways

Section 4 of the Roads Act, 2007 empowers the Ministry of Infrastructure Development to, among other things, promote involvement of the private sector in development, maintenance and management of roads. The Minister responsible for infrastructure has powers to appoint a road authority which has jurisdiction to construct and maintain roads in a specified area. The appointed authority for a specified area has powers to, among other things, negotiate concession agreements with private sector entities to facilitate financing and development of selected roads in accordance with the guidelines prescribed by the minister responsible for infrastructure. Currently, road tolls is imposed on diesel and petrol, transit fees, heavy vehicle licences and vehicle overloading fees and is collected by toll collectors designated under the Road and Fuel Tolls Act, Cap. 220.

As far as railway projects are concerned, the entity empowered to develop rail infrastructure is Reli Assets Holding Company Limited ('RAHCO') established under the Railways Act, 2002 and incorporated under the Companies Act, 2002. RAHCO has mandate to develop rail infrastructure and entering into contractual obligations with other entities in a form of concessions, joint ventures, public private partnerships or other means. Accordingly, projects relating to development of ports infrastructure are required to be directed to RAHCO which in turn must obtain approval of the minister responsible for infrastructure.

Once the project takes off, the operator have to be licensed by Surface and Marine Transport Regulatory Authority ('SUMATRA') which is a regulatory agency for all modes marine and surface of transport. SUMATRA was established under the Surface and Marine Transport Regulatory Authority Act, 2001 and has powers to grant, modify, cancel and renew licences, monitoring operators' behaviour and ensuring they do not abuse any local monopolies. In addition, the Surface and Marine Transport Regulatory Authority Act, 2001 establishes standards for the terms and conditions of supply of regulated services and framework for resolution of complaints and disputes.

Airports

Tanzania Civil Aviation Authority ('TCAA') (established under Tanzania Civil Aviation Authority Act, 2003) grants licences air services operators. In addition to TCAA, there is Tanzania Airports Authority ('TAA') which is a semi autonomous implementing agencies which assist in, among other things, project preparation and supervising the implementation.

Ports

Currently, major projects relating to developing port infrastructure are required to be performed by Tanzania Ports Authority ('TPA'). TPA is established under the Ports Act, 2004 and has a mandate to develop port infrastructure and superstructure and entering into contractual obligations with other entities in a form of concessions, joint ventures, public private partnerships or other means. Accordingly, projects relating to development of ports infrastructure are required to be directed to TPA which in turn must obtain approval of the minister responsible for infrastructure. The project proposals can also be submitted directly to the minister responsible for infrastructure for approval.

Tourism

The Ministry of Natural Resources and Tourism ('MNRT') approves major projects relating to tourism such construction of major lodges in national parks. The Tourism Act, 2008 provides a legal framework for tourism promotion. In relation to projects, section 6 (1) of the Tourism Act, 2008 provides among other things that the tourism division within the MNRT have powers to appraise investment proposals concerning tourism industry. The Tanzania Tourism Licensing Board grants relevant licences to tourism facilities and activities (section 19 of the Tourism Act, 2008).

Water and sewerage

Major projects relating to provision of water supply and sewerage services must be approved by the Ministry of Water and Irrigation. Currently the provision of water supply and sewerage services is mainly done by public authorities. Section 3(1) of the Waterworks Act, Cap. 272, allows the minister to designate areas where public water authorities are allowed to provide water supply and sewerage services. Most cities and towns in Tanzania have been designated as areas where public water authorities are allowed to provide water supply and sewerage services (Regulation 2 of the Waterworks Regulations, 1997). However, section 3(3) of the Waterworks Act, Cap. 272 allow the minister responsible for water to permit any other entity to provide water supply and sewerage services in the designated areas. Basing on this provision, water supply and sewerage services projects must be approved by the minister responsible for water under section 3(3) of the Waterworks Act, Cap. 272. There is a special legislation for Dar es Salaam city, namely, Dar es Salaam Water and Sewerage Authority Act, Cap. 273. This legislation creates Dar es Salaam Water and Sewerage Authority ('DAWASA') and defines DAWASA designated area. DAWASA is allowed, subject to approval of the

minister responsible for water, to make concession to other operators through lease and temporary transfer of its assets to the operator for the purpose of providing water supply and sewerage services (section 8(1) of the Dar es Salaam Water and Sewerage Authority Act, Cap. 273. The authority responsible for regulating operators in water supply and sewerage services sector is the Energy and Water Utilities Regulatory Authority.

International arbitration

16. *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 has ratified the ICSID Convention and the Convention establishing the Multilateral Investment Guarantee Agency. Tanzania has also signed bilateral investment treaties with Germany, United Kingdom, Sweden, Denmark, Switzerland, Egypt, South Korea, Mauritius, Malawi and Zimbabwe. Accordingly, any dispute arising between the Government and investors may be settled amicably through negotiations or may be submitted for arbitration under the international agreements or any other forum and rules agreed in the relevant contract.

In addition, Tanzania has ratified the New York Convention. A foreign arbitration award is therefore enforceable in Tanzania using the mechanism provided under New York Convention.

A foreign arbitration award is generally enforceable in the High Court of Tanzania. Any foreign award which would be enforceable under Arbitration Act, Cap. 15 is treated as binding for all purposes on the persons as between whom it was made and may be relied on by any of those persons by way of defence, set-off or otherwise in any legal proceedings. In order for a foreign arbitration award to be enforceable, it must be final. A foreign arbitration award is not deemed to be final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.

In order for a foreign award to be enforceable, it must:

- have been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed;
- have been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties;
- have been made in conformity with the law governing the arbitration procedure;
- have become final in the country in which it was made;
- have been in respect of a matter which may lawfully be referred to arbitration under the law of Tanzania; and
- not be contrary to the public policy or the law of Tanzania.

A foreign arbitration award cannot generally be enforceable if the court is satisfied that:

- the award has been annulled in the country in which it was made;
- the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case or was under some legal incapacity and was not properly represented; or
- the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration.

If the award does not deal with all the questions referred, the High Court of Tanzania may, if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the court may think fit.

The party seeking to enforce a foreign award must produce:

- the original award or its copy duly authenticated in the manner required by the law of the country in which it was made;
- evidence proving that the award has become final;
- such evidence as may be necessary to prove that the award is a foreign award and that the conditions for enforceability are satisfied; and
- authentication of all documents by the Tanzania embassy in a country where it was made or, if there is no Tanzanian embassy, any embassy of the country that is member of British commonwealth.

Applicable law

17. *Which jurisdiction's law typically governs project agreements? Which jurisdiction's law typically governs financing agreements? Which matters are governed by domestic law?*

Under Tanzanian rules of private international law, parties entering into an agreement are free to choose the law which will apply to their contract and the forum which will determine their rights. Most international agreements entered by Tanzanian entities are always governed by foreign law and in most cases, English law is preferred. There is a preference of English law because the Tanzanian legal system is based on English common law.

However, the freedom to choose another forum other than Tanzanian courts is subject to restriction. Section 28 of the Law of Contract Act, Cap. 345 provides that, except for matters referred to arbitral tribunals, contracts which restrict absolutely the parties from enforcing their rights by usual legal proceedings in the ordinary Tanzanian tribunals are void. Accordingly, contracts giving exclusive jurisdiction to foreign courts are regarded as void.

In addition, Tanzanian Courts may decline to give effect on foreign law on aspects conveniently governed by domestic law (such as revenue and penal laws and liquidation, administration, reorganisation, receivership of a company registered in Tanzania) and

may also decline to give effect on foreign law on other aspects regardless of contract provisions to the contrary such as:

- claims barred under the Tanzanian laws relating to limitation of actions;
- provisions of the contracts to the extent that they may be illegal or contrary to public policy in Tanzania;
- provisions in the contract to the extent that they conflict with or breach economic or other sanctions imposed in respect of certain states or jurisdictions by any treaty, law, order or regulation applicable to Tanzania;
- any provisions of the contract purporting to fetter any statutory power in Tanzania;
- any provisions in the contract which would involve the enforcement of any foreign revenue or penal laws;
- enforcement of any obligations which may be invalidated or vitiated by reason of fraud, duress, misrepresentation or undue influence under Tanzanian law; and
- foreign judgment which do not comply with section 11 and 12 of the Civil Procedure Code.

Jurisdiction and waiver of immunity

18. *Is a submission to a foreign jurisdiction and a waiver of immunity effective and enforceable?*

Tanzanian companies are not subject to any immunity. As far as the Government is concerned, Tanzania has ratified ICSID Convention and New York Convention and has concluded various bilateral investment treaties. Under Tanzanian legal system, international treaties override domestic law after ratification and incorporation into domestic law. Accordingly, submission by Tanzania Government to dispute settlement mechanism under ratified treaties is a waiver of immunity which is effective and enforceable.

For cases not covered by treaties, the relevant law is Government Proceedings Act, Cap. 5 ('Act'). Section 3 of this Act provides that the Government is subject to all proceedings arising in any manner such as contract, quasi contract and tort to which a private person of full age and capacity is subjected and claims arising from these proceedings can be enforced against the Government in accordance with the provisions of the Act. This provision demonstrates that submission by Tanzania to dispute settlement mechanism under a contract is a waiver of immunity which is effective and enforceable. However, section 16 of the Act limits the methods of execution of orders against the Government by requiring that claims relating to money and liquidated sum must be paid by the ministry of finance in orderly manner. The attachment of public assets is not allowed.

Generally, a foreign judgment is conclusive except where it is otherwise not conclusive in a manner prescribed under sections 11 and 12 of the Tanzanian Civil Procedure Code. Unless the decree handed down by a foreign court falls under the exceptions stipulated in sections 11 and 12 of the Civil Procedure Code, that judgment will, generally, be conclusive and, without new evidence and facts, it cannot be easily discharged. The

enforcement can be done by way of registering a foreign judgment with the High Court of Tanzania.

There is also a special legislation governing enforcement of foreign judgments. This legislation applies to judgments of courts from specified countries which have agreed with Tanzania on reciprocal enforcement of judgments. Currently, the countries which have agreed with Tanzania on reciprocal enforcement of judgments are Lesotho, Botswana, Mauritius, Australia (New South Wales), Zambia, Seychelles, Somalia, Zimbabwe, Swaziland and United Kingdom.

Bankruptcy

19. *What entities are excluded from bankruptcy proceedings and what legislation applies to them? What processes are available to seize the assets of a business outside of court proceedings?*

All companies incorporated in Tanzania are subject to local insolvency law. Tanzanian corporate insolvency law is mainly contained in the Companies Act, 2002 ('Act') and applies to companies incorporated in Tanzania. This Act is supplemented by Insolvency Regulations, 2005. Apart from the Act, there are special procedures provided for banks and insurance companies under the Banking and Financial Institutions Act, 2006 and Insurance Act, 1996 respectively.

Corporate insolvency procedures under the Tanzanian law include the process of appointing 'receiver and manager' and 'administrative receiver', 'company voluntary arrangement', 'schemes of arrangement', 'administration' and winding-up by the court'. In all procedures, claims of foreign creditors are treated the same as the claims of local creditors. Briefly, these insolvency procedures can be described as follows:

- Receiver and manager route (sections 405 to 415 of the Act) allows the creditor to seize the assets of debtor out of court proceedings. Receiver and manager can be appointed by a creditor under the terms of the debenture.
- Administrative Receiver (sections 416 to 423 of the Act) is a special status of a receiver and manager appointed over the whole or substantially the whole of the company's property. Unlike receiver and manager whose primary objective is to collect debts, the statutory objective of the administrative receiver is to enable the business to be sold as a going concern. Like receiver and manager procedure, administrative receivership also allows the creditor to seize the assets of debtor out of court proceedings.
- The voluntary arrangements (sections 240 to 246 of the Act) apply to any composition in satisfaction of debts or to a scheme of arrangement of company's affairs. The purpose of the arrangement is to enable a scheme to be effected with minimal involvement by the court. The principal feature of this procedure is that a

voluntary arrangement must be voted upon by creditors must be reviewed, endorsed and administered by an insolvency practitioner.

- Scheme of arrangement can be promoted and sanctioned under sections 229 to 232 of the Act. Section 229 provides that if a compromise or arrangement is proposed between a company and its members or creditors, or any class of them, is approved by a majority in number representing 75 per cent in value of those present in person or by proxy at meetings of each class of member or creditor, and is subsequently sanctioned by the court, it shall be binding upon all members or creditors, or upon the class of members or creditors, and upon the company.
- Administration (sections 247 to 266 of the Act) is a court sanctioned corporate restructuring procedure equivalent to Chapter 11 of US Bankruptcy Code. The Act prescribes a number of purposes for which the order can be sought, and there must be an expectation that the order will achieve one or more of them.
- Liquidation is a process by which life of a company is brought to an end and its property administered for the benefit of its members and creditors. Liquidation or winding-up begins either by court order (compulsory liquidation) or by members passing a resolution to wind-up. The process of liquidation is described under section 274 to 404 of the Act.

Title to natural resources

20. *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?*

Oil and gas

Section 4 of the Petroleum (Exploration and Production) Act, Cap. 328 ('Act') vests the entire property in and control over oil and gas in any land to the United Republic of Tanzania. Private parties (including foreign parties) can be licensed to conduct exploration or production. The licences normally do not cover surface rights although the Act limits the rights of the third parties over surface rights in a licensed area. In case third party surface rights interfere with exploration or production, section 74 of the Act allows the licences holder to remove third parties after making compensation. In addition to licences, agreements can be entered by private persons and the Government adding conditions or benefits to a licence. Licences are transferable subject to approval of the minister responsible for petroleum.

Minerals

Section 5 of the Mining Act Cap. 123 ('Act') vests the entire property in and control over minerals in any land to the United Republic of Tanzania. Private parties can be licensed to carry out prospecting, exploration or trading. Certain categories of licences either

cannot be granted to foreign parties or require the foreign parties to have local shareholders in their companies. The licences normally do not cover surface rights although the Act limits the rights of the third parties over surface rights in a licensed area. In case third party surface rights interfere with production, the Act allows the licences holder to remove third parties after making compensation. In addition to licences, the Act allows the minister to conclude minerals development agreement with a holder of a mineral right (normally special mining licences). The objectives of the minerals development agreements is to guarantee the fiscal stability of a long-term mining project, define the circumstances or manner in which the minister may exercise his discretion conferred on him by the legislation, lay down environmental requirements and to define the dispute settlement mechanism arising out or relating to the agreement. Licences are transferable subject to approval of the minister responsible for minerals.

Water

Section 8 of the Water Utilization (Control and Regulation) Act, Cap. 331('Act') vests all water in the United Republic of Tanzania. Private person (including foreign parties) have to obtain water rights to divert, dam, store, abstract and use water from such source. Water rights can be declared to be appurtenant to the land described in the water rights and if declared so, the benefit of water rights is enjoyed and can be enforced by any person who is entitled to the possession of the land. Water rights declared to be appurtenant to the land are automatically transferable to the new owner of the land upon transfer of the ownership of the land. If water rights are not appurtenant to the land, the rights cease to exist upon transfer of the land and the new owner of the land has to make a new application under the Act.

The requirement to obtain water rights does not however cover (i) abstraction of water for domestic purpose which does not entail construction of any works; (ii) abstraction of water by owner or occupier of any land by way of well or borehole not exceeding 22,700 per day subject to compliance with well or borehole location requirements; and (iii) construction of any work for rainfall conservation and use of the conserved water. The Act has specific provisions on use of water for by holders of the exploration and production licences for minerals, oil and gas and use of water for forestry purposes.

Royalties on the extraction of natural resources

21. *What royalties and taxes are payable on the extraction of natural resources, and are they revenue - or profit-based?*

General taxes

As stated in the response to question 14 above, companies holding TIC certificate of incentives or locating in special economic and export processing zones which enjoy special fiscal regime. There is also exclusive fiscal framework for mining companies as explained below. Normal taxes apply to companies not covered by these special fiscal

frameworks. Tax rates for domestic parties are generally low comparing with foreign parties. Key tax rates for non-resident companies are as follows:

- 30% on gains or profits (corporate tax).
- 10% on repatriated income of branch.
- 10% on dividends from other companies.
- 10% on interest income.
- 15% on royalty payments.
- 15% on technical service fee.
- 15% on service fee.
- 30% on disposal of investment assets including shares.
- 20% on sale of land and property.
- 15% withholding tax on other payments.
- 37.5% depreciation allowance for computers and data handling equipment together with peripheral devices, automobiles, buses and minibuses, construction and earth moving equipment.
- 25% depreciation allowance for buses with a seating capacity of 30 or more passengers, heavy general purpose or specialized trucks, trailers and trailer mounted containers, railroad cars, locomotives, and equipment, vessels, barges, tugs, and similar water transportation equipment, aircraft other self propelling vehicles, plant and machinery (including wind mills, electric generators, and distribution equipment) used in manufacturing or mining operations, specialized public utility plant and equipment, and machinery or other irrigation installations and equipment.
- 12.5% depreciation allowance for office furniture, fixtures and equipment, any asset not included in another class.
- 20% depreciation allowance for natural resource exploration and production rights and assets in respect of natural resource prospecting, exploration and development expenditure.
- 100% depreciation allowance on plant and machinery (including windmills, electric generators and distribution equipment) used in agriculture.
- Import duties and excise duties at rates explained in the response to question 12 above.
- 20% VAT on supply of taxable goods and services and importation of taxable goods and services.
- 0% VAT on export of goods and certain services from Tanzania.

Mining

There is a special tax regime for mining companies (including those owned by foreign parties) as detailed below:

- Depreciation allowance for exploration and mining equipment is deducted at a rate of 100 per cent on capital expenditure;
- Losses may be carried forward indefinitely until recovered against income;

- Expenditure on prospecting and mining operations in respect of another licence area may, for the purpose of calculating taxable income, be treated as part of the expenditure incurred in respect of the mining operations;
- Withholding tax on payments for technical services and on management fee is capped at 3 per cent where the technical services fee, or management fee, does not exceed 2 per cent of the amount claimed as deduction from income in respect of operating expenses incurred in mining operations, and 20 per cent for any excess amount;
- Import duties by a mining company or its subcontractors is charged at 0 per cent during exploration and in the first year of operation, and thereafter it is capped at 5 per cent;
- VAT on imports and local supplies of goods and services to a mining company or its subcontractors are exempted. Any VAT paid by mining companies on local supplies or imports of goods or services, is recoverable. Exports of minerals are zero-rated; and
- Royalties' rates for minerals are 5% and 3% for diamonds and other minerals respectively on the net back value of minerals produced under licence. Net value is defined in the Mining Act, Cap. 123 as the market value of minerals 'free on board' at the point of export from Tanzania, or in case of consumption within Tanzania, at the point of delivery within Tanzania, less cost of transport, insurance and handling charges, from the mining area to the point of export or delivery and the cost of smelting and refining or other processing costs.

Export of natural resources

22. *What restrictions, fees or taxes exist on the export of natural resources?*

The Export Control Act Cap. 381 ('Act') is a general legislation which regulates exports. Section 4 of the Act empowers the President of the United Republic of Tanzania to declare any goods to be export controlled. For goods declared to be export controlled, a special export licence is required. For goods not declared to be export controlled, the exporter is required to obtain open general licence. Trade liberalization in 1990s removed most goods from export controlled.

Minerals

Export of minerals is governed by the Mining Act, Cap. 123. Export of all minerals requires a permit from the Commissioner for Minerals ('Commissioner'). The export process must comply with the export procedure described under the Mining (Mineral Trading) Regulations, 1999. There are fees which are payable before the export permit is granted. In addition, provisional royalty or provisional payment in lieu of royalty must be paid before issuance of export permit. The Commissioner has powers to re-value minerals to be exported. The consignment of minerals to exported must be sealed by the Commissioner before is taken out of the country.

Forest products

Export of forest products is regulated by the Forests Act, 2002 and is subject to the permits issued by the minister responsible for forests. There is a ban on logs and charcoal exports. There are fees and taxes which must be paid.

Marine products

Export of marine products is regulated by the Fisheries Act, 2003 and is subject to the permits issued by the minister responsible for fishing. There are fees and taxes which must be paid.

Environmental, health and safety laws

23. *What laws or regulations apply to typical project sectors? What regulatory bodies administer those laws?*

Environmental Laws

The main legislation is Environmental Management Act, 2004 ('Act'). For minerals sector, there are additional regulations, namely, Mining (Environmental Management and Protection) Regulations, 1999 issued under the Mining Act, Cap. 123.

Section 232 of the Act provides that where any provision in the Act is in conflict or otherwise inconsistent with the provisions of any other law, the provision of the Act has to prevail. This legislation establishes National Environmental Management Council ('NEMC') which is national environmental protection agency responsible for administration of the Act and other environmental laws. It also provides for legal and institutional framework for impact and risk assessments, prevention and control of pollution, waste management, environmental quality standards, public participation, compliance and enforcement, and implementation of international instruments on environment. This legislation also lays down the procedure for conducting Environmental Impact Assessment ('EIA'). EIA is one of the important components in project finance in Tanzania and it must be taken seriously by the sponsors and lenders. The steps for conducting EIA are described for under the Environmental Impact Assessment and Audit Regulations, 2005 ('Regulations'). These Regulations were made under the Act. EIA is required for all projects that are likely to have significant adverse environmental impacts. The EIA is generally required with a view to determining the scale, extent and significance of the impacts and to identify appropriate mitigation measures.

The list of project requiring mandatory EIA include projects in the areas of agriculture, forestry, fisheries, wildlife, energy, petroleum, leather industry, chemical industries, extractive industries (including mining), non-metallic products industries, tourism and recreational development, transport and infrastructure, food and beverage industries, textile industries, building and civil engineering industries, metal and engineering industries, waste treatment and disposal, water supply, land planning and development

and wood, paper and pulp industries. If the project does not fall under mandatory EIA requirement, it must be registered with NEMC for screening. If, after project screening, NEMC finds that the project has no significant impact on the environment, it will approve the project without requiring the developer to undertake EIA. If NEMC finds that the project will have significant impact on environment and the project report discloses no mitigation measures, NEMC will require the project developer to undertake EIA.

Health and Safety Laws

The main legislation is Occupational Health and Safety Act, 2003 ('Act'). The Act establishes the office of chief inspector which has powers to administer the Act. The chief inspector's powers include carrying out inspection in factories and other workplaces to ensure compliance with health and safety standards prescribed in the Act. The Act has detailed provisions on, among other things, protection of (i) safety, health and welfare of persons at work in factories and other places of work; and (ii) persons other than person at work against hazards to health and safety arising out of or in connection with activities of persons at work. The Act provides for health and safety standards and requires the compliance certificate to be obtained by the occupier of a factory or work place every twelve months. It also requires registration of a factory or workplace and all hoists, lifts, chains, ropes or any other lifting tackle, cranes, and lifting machines prescribed in the Act. It also requires steam boilers to be examined by the chief inspector before being put into use.

There are additional regulations for minerals sector, namely, Mining (Safe Working and Occupational Health) Regulations, 1999. Under these regulations, the chief inspector of mines appointed pursuant to the Mining Act, Cap. 123 and have powers to administer mining health and safety laws.

Project companies

24. *What are the principal business structures of project companies? What are the principal sources of financing available to project companies?*

Business Structures

The most common form of business structure in Tanzania is creation a special purpose vehicle ('SPV') as a limited liability company. Limited liability companies may be public or private companies. A private company is the one which by its articles: restricts the right to transfer its shares; limits the number of its members (other than employees of the company) to fifty; and prohibits any offer for the subscription of any shares or debentures to the public.

For a private company, the minimum number of shareholders is two, while a public company must have at least seven shareholders. There is no requirement for directors and shareholders to be residents in Tanzania. However, if all shareholders are non-residents,

a Tanzanian resident must be appointed to be the company's local representative. Shareholders may be individuals or corporate bodies, and non-residents may hold any or all of the company's shares. Shares must be in Tanzanian shillings denomination, and shares without par value are not permitted. There is no minimum amount of share capital required (other than the requirement that on subscription, each subscriber must subscribe for at least one share), nor is there any prescribed ratio between share capital and borrowings.

Financing

Most project finance transactions are funded through loans to SPV by banks, pension funds and international development financial institutions. Another common financing method is subscription of new shares by the sponsor. Lease financing is also available though it has not been widely used in project finance transactions. There is no clear legal framework for other financing sources such as issuance of corporate bonds.

Foreign loans whatever form they take such as overdrafts, financial facility, deferred payments or guarantees are generally allowed. If a loan is concluded with affiliated companies, the terms of the loan particularly the level of interest must be at arm's length. In addition to exchange control requirements, under the Income Tax Act, 2004, one of the deductible expenses in calculating the borrower's taxable income is interest expense. The revenue authorities have, basing on transfer pricing provisions, discretion to refuse to allow the deduction of interest expense if it is unreasonably higher than the prevailing market conditions.

When the method of financing is subscription of new shares by the sponsors, the SPV normally increases its authorized share capital and issues new shares to acquiring company. There are no payable taxes in transactions involving shares subscription. However, there are specific formalities that must be followed in this method of financing. The SPV must resolve to increase its share capital and a notice of increase of share capital must be filed at the Companies Office within thirty days of the date of resolution. The notice must include among other things the conditions on which the new shares are to be issued and the effect of increase of authorized share capital to existing classes of shares. Normally, increase of authorized share capital and issue of new shares is followed by amendment of articles of association and, if the shareholders wish to do so, signing the shareholders' agreement.