

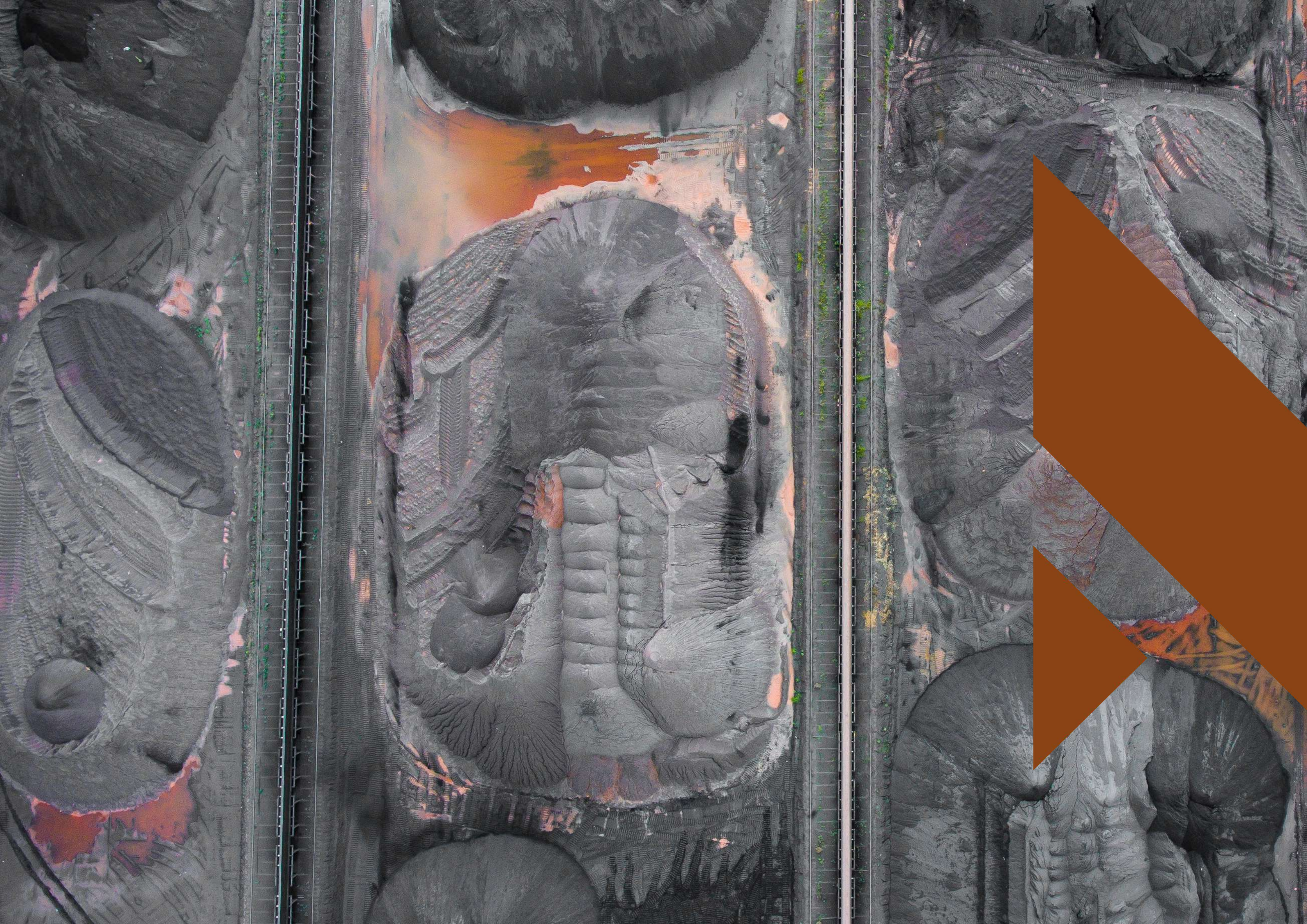
# Mineral Exploration in Zambia

A Guide to the Regulatory Framework

October 2022











# EXPLORATION IN ZAMBIA AT A GLANCE

Zambia has a robust mining industry and is the second largest producer of copper in Africa. In 2021, 70 per cent of Zambia's export earnings were from the mining industry. The traditional exports are copper and cobalt. Zambia has one of the highest copper grades in the world. Zambia also accounts for 20 per cent of world emerald production. Other major minerals include zinc, lead, uranium, coal, limestone, gold, and diamonds.

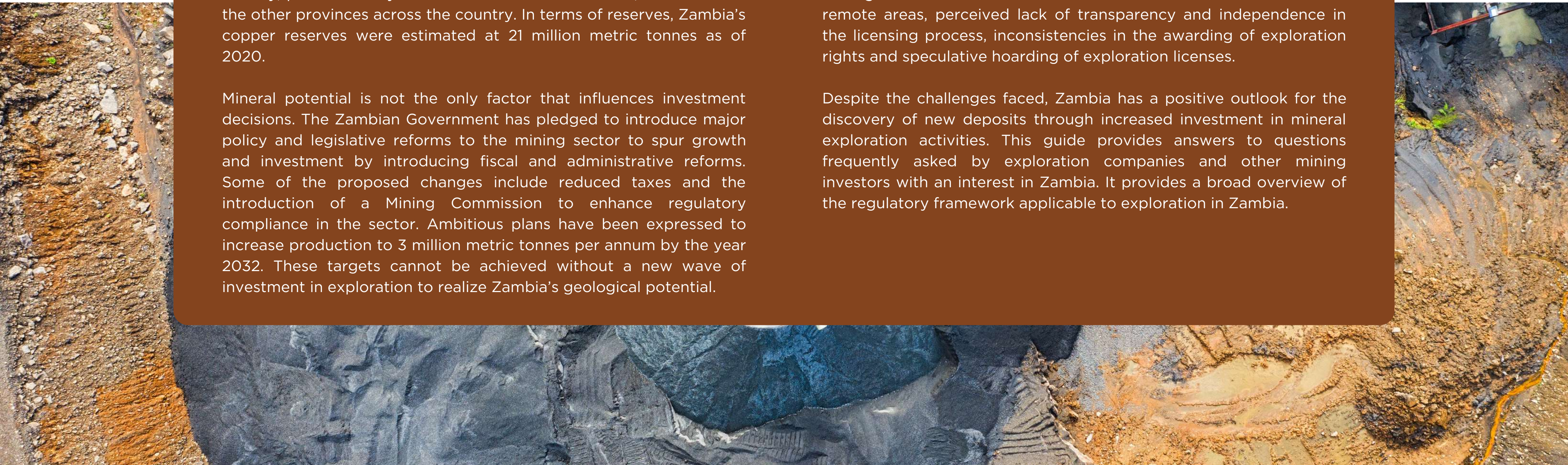
Historically, the Copperbelt Province has been the hub of mining in Zambia, but the past decade has seen a shift to increased mining activity, predominantly in the North-Western Province, but also in all the other provinces across the country. In terms of reserves, Zambia's copper reserves were estimated at 21 million metric tonnes as of 2020.

Mineral potential is not the only factor that influences investment decisions. The Zambian Government has pledged to introduce major policy and legislative reforms to the mining sector to spur growth and investment by introducing fiscal and administrative reforms. Some of the proposed changes include reduced taxes and the introduction of a Mining Commission to enhance regulatory compliance in the sector. Ambitious plans have been expressed to increase production to 3 million metric tonnes per annum by the year 2032. These targets cannot be achieved without a new wave of investment in exploration to realize Zambia's geological potential.

A major reform, effective 1 January 2022, has been the reintroduction of the deductibility of mineral royalty as a tax expense. This, coupled with the surge in demand for copper and other minerals used in electronics, electric vehicles and renewable energy technologies is expected to attract increased interest in the mining sector, particularly exploration.

However, the full potential of Zambia's mineral endowments will not be reached if certain key challenges that the mining exploration sector has grappled with in recent years are not addressed. Key among these are a lack of road infrastructure to access the more remote areas, perceived lack of transparency and independence in the licensing process, inconsistencies in the awarding of exploration rights and speculative hoarding of exploration licenses.

Despite the challenges faced, Zambia has a positive outlook for the discovery of new deposits through increased investment in mineral exploration activities. This guide provides answers to questions frequently asked by exploration companies and other mining investors with an interest in Zambia. It provides a broad overview of the regulatory framework applicable to exploration in Zambia.







## Access to Geological Data

The Director of Geological Survey maintains a register of geological data through the Department of Geological Survey. Geological data is owned by the Government through the Department of Geological Survey. One of the functions of the Director of Geological Survey is to assist members of the public with information on geological data. Geological data is publicly available for anyone to conduct a search.

## Geological Mapping

The Director of Geological Survey is responsible for the geological mapping of Zambia and the provision of data on the geology and mineral resources of Zambia. This data is available to the public upon request from the Geological Survey Department at the Ministry of Mines and Minerals Development. Mineral exploration companies would normally have the latest technologies to perform geological mapping of the areas in which they are interested and can conduct independent geological mapping exercises.

## Exploration Rights

An exploration right is a right to search for minerals under the authority of an exploration licence issued under the Mines Act. It includes the right to remove samples to test the mineral bearing qualities of an area to determine the economic value of a mineral deposit.

## Eligibility to Hold or Acquire an Exploration Licence

A Zambian incorporated company with an established registered office in Zambia is eligible to apply for and acquire an exploration licence.

A company in liquidation or a company that has a director or shareholder (holding more than 10 per cent of the issued equity) who is an undischarged bankrupt

or has been convicted (in the 5 years immediately preceding the application) for an offence involving fraud or dishonesty is disqualified from holding an exploration licence. A transaction that grants or transfers an exploration licence to a disqualified company is void.

## Types of Exploration Licences

Two categories of exploration licences exist: a small-scale exploration licence and large-scale exploration licence. A small-scale exploration is for an area measuring between 3 and 300 cadastre units i.e., between 10.02 and 1,002 hectares while a large-scale exploration licence is for an area between 301 and 59,880 cadastre units i.e., 1,005.34 and 199,999.2 hectares. The maximum area sizes for small scale and large-scale exploration licenses are rounded off to 1,000 hectares and 200,000 hectares respectively under the Mines and Minerals Development (General) Regulations, 2016.

1 cadastre unit = 3.3400 hectares or 33,400 square metres

## Exploration Area Size Restrictions

A company or its subsidiaries cannot hold or acquire exploration licences over a cumulative total area more than 299,400 cadastre units or 999, 996 hectares. A company that accumulates an exploration area more than 149,700 cadastre units (499, 998 hectares) must pay additional fees for the excess area.

## Foreign Ownership Restrictions

Generally, there are no foreign ownership restrictions that apply to the acquisition of exploration licences. However, small-scale exploration licences for areas measuring between 2 cadastre units and 120 cadastre units can only be carried out by a Zambian company

that is either citizen influenced, citizen empowered, or citizen owned.

A citizen empowered company is a company where 25 to 50 percent of its equity is owned by Zambian citizens.

A citizen influenced company is a company where 5 to 25 percent of its equity is owned by Zambian citizens and in which Zambian citizens have significant control of the management of the company.

A citizen owned company is a company where at least 50.1 percent of its equity is owned by Zambian citizens and in which Zambian citizens have significant control of the management of the company.

## Exploration in Restricted or Protected Areas

Exploration in a protected area such as a bird or wildlife sanctuary, game park or forest, requires consent of the relevant authority, such as the Department of National Parks and Wildlife before commencement of exploration. The consent would be granted subject to the condition that a wildlife impact assessment, approved by the Zambia Environmental Management Agency, be carried out. An application for an exploration licence in a protected area must therefore be accompanied by the consent of the relevant authority such as the Department of National Parks and Wildlife.

## Exploration Licence Application

An application for an exploration licence must be addressed to the Director of Mining Cadastre. However, the application is tabled before the Mining Licencing Committee for consideration. The Mining Licencing Committee must issue a licence within 60 days if the application satisfies all the requirements of the Mines Act.





An exploration licence application is made by submitting the following:

- prescribed application form and fees.
- proposed programme of exploration operations and investment commitment.
- proposal for the promotion of local business development.
- tax clearance certificate.
- proof of consent from landowner or relevant authority if exploration is in a restricted/regulated area.
- any additional information that may be requested for by the Director of Mining Cadastre.

#### **Priority of Applications**

Applications for exploration rights over the same area are considered on a first come, first-served basis.

#### **Applications Over Areas with Pre-Existing Mining or Exploration Rights**

An applicant for an exploration licence over an area with a pre-existing exploration licence or mining licence must obtain the consent of the existing licence holder. The consent must be given within 90 days of the request if the subject minerals of the applicant are different, the geographical position of the minerals is different and the integrity of the exploration or mining programme of the holder of the existing rights would not be compromised. The consent must not unreasonably be withheld. If consent is withheld, the matter may be referred to the Minister of Mines for determination.

#### **Factors Considered by the Mining Licencing Committee in Evaluating an Application for an Exploration Licence**

- financial resources and technical ability of an

applicant.

- estimated expenditure for the size and duration of exploration.
- location of the proposed exploration programme.
- environmental considerations.
- existing mining/exploration rights over the same area.
- previous compliance or breach of the Mines Act or other written law by the applicant.
- recommendations of other regulatory bodies under whose jurisdiction the exploration activities may fall.

#### **Tenure and Renewal of an Exploration Licence**

An exploration licence (both large scale and small scale) is valid for an initial period of 4 years. A large-scale exploration licence can be renewed for two further periods not exceeding 3 years each. The maximum tenure including the two renewals is 10 years.

An exploration licence for small scale exploration and gemstones, other than diamonds, is not renewable.

#### **Partial Surrender on Renewal**

At the time of each renewal, 50 per cent of the area covered under an exploration licence must be relinquished.

#### **Exploration Licence Moratorium**

An eligible company can apply for an exploration licence over an area over which that company previously held an exploration licence for the maximum 10-year period, only after the area is released from a moratorium period of one year from the date of expiry of the previous exploration licence.





## General Conditions Attached to an Exploration Licence

Exploration licence holders are required to do the following:

- commence operations only after obtaining environmental approval and approval from any other relevant authority whose consent may be required, e.g., the Department of National Parks and Wildlife.
- submit pegging certificate within 180 days of being issued a licence.
- give notice of discovery of mineral deposits of commercial value within 30 days of discovery.
- promote local business participation.
- employ and train Zambians.
- give preference to Zambian products and services.
- expend the minimum costs prescribed in the licence.
- follow the approved programme of exploration operations.
- backfill and make safe any excavations.
- permanently preserve or make safe any water boreholes and surrender water rights on expiry of the licence.
- surrender drill cores and mineral samples upon termination or expiry of licence.
- remove any plant and machinery and restore the environment within 60 days of termination or expiration of the licence, unless otherwise directed by the Director of Mining Cadastre.
- keep and preserve any records relating to environmental protection.
- submit quarterly and annual reports to the Director of Geological Survey, Director of Mines and Director of Mines Safety.
- obtain insurance for all phases of operations.
- display licence in a prominent place at the registered office.
- comply with all provisions of the Mines act.

## Transfer of Exploration Licence

An exploration licence is transferrable. To transfer an exploration licence, the approval of the Minister of Mines must be obtained, and property transfer tax must be paid. The intended transferee must be eligible to hold the exploration licence.

## Change in Control of the Holder of an Exploration Licence

A change in control of the holder of an exploration licence requires approval of the Minister of Mines. If the change in control meets the prescribed thresholds for notifiable mergers, the approval of the Competition and Consumer Protection Commission would also be required. A person or entity is deemed to be in control of a company if they hold, directly or through a nominee, fifty percent of the equity shares or if they can appoint or prevent the appointment of at least half the number of directors in a company that holds an exploration licence.

Any encumbrance, assignment, or similar arrangement over an interest in an exploration right,



also requires the consent of the Minister of Mines.

## Amendment of Programme of Exploration

An application to amend a programme of exploration can be made to the Director of Mining Cadastre.

## Amendment of Exploration Licence

An application to amend or alter an exploration area can be made to the Mining Licensing Committee. The Mining Licensing Committee will consider whether neighbouring rights or pending applications would be prejudiced. The altered area should consist of at least 25 per cent of the original area.

## Restrictions on Removal of Minerals from Exploration Area

Except for mineral analysis purposes, minerals may not be removed from an exploration area without the written consent of the Director of Geological Survey.

## Restrictions on Exercise of Rights under an Exploration Licence

Exploration rights must be exercised reasonably and subject to the terms of accompanying licence conditions and any access agreements. The general rule is that exploration rights should not prejudice the interests of the owner or occupier of land over which the exploration rights extend.

## Access to Land and Surface Rights

Subject to the terms of an access agreement, an occupier of land over which exploration rights extend retains the right to use and access water, animal grazing rights and cultivation of the land, provided that there is no interference with the exploration operations.





An owner or occupier of land cannot erect any building or structure on the land without the consent of the exploration licence holder. If consent is unreasonably withheld, it may be granted by the Director of Mining Cadastre.

Exploration licence holders are required to pay fair and reasonable compensation to holders of surface rights or occupiers of land over which the exploration rights extend for disturbance or damage done to the land.

### **Local Content or Indigenization**

Preference must be given to Zambian products and services. There is also a requirement to have a skills transfer programme for the benefit of Zambians.

### **Dispute Resolution**

Disputes on access to land may be referred to the

Director of Mining Cadastre for determination. The Director of Mining Cadastre may request the parties to submit to arbitration.

Decisions of any of the Directors or Mining Licensing Committee may be appealed to the Minister of Mines and thereafter to the Mining Appeals Tribunal. A decision of the Mining Appeals Tribunal may be appealed to the High Court within 30 days of receipt of the decision.

### **Mandatory Insurance Requirements**

An exploration licence holder is required to obtain insurance within Zambia for all phases of the project and to also ensure that its contractors always obtain and maintain insurance.

### **Abandonment of Licence Area or Part of Licence Area**

Application is made to the Director of Mining Cadastre at least 90 days before the date on which the abandonment of the whole or part of the land is to take effect. The application must include a certificate of closure issued by the Director of Mines Safety. Abandonment relates to inactive licences.

### **Surrender of an Exploration Licence by a Holder**

An exploration licence holder that does not intend to continue with exploration project must write to the Director of Mining Cadastre. The Director of Mining Cadastre then specifies the terms and conditions under which the licence may be surrendered.





## Suspension or Revocation of Exploration Licence

The Mining Licence Committee may suspend or revoke an exploration licence if the holder:

- obtained the right by fraud or submission of false information or statements.
- contravenes the Mines Act, any other written law relating to the right or any terms and conditions of the licence.
- fails to pay annual area charges.
- fails to execute the approved exploration programme.
- has ceased to fulfil the eligibility requirements under the Mines Act.
- the suspension or revocation may also be done in public interest.

The Mining Licence Committee gives notice of an intended suspension or revocation, stating the reasons. A licence holder has not more than 60 days to state why the licence should not be suspended or revoked. If remedial measures are taken within the given period, the licence is not suspended or revoked.

## Environmental Obligations

Before commencing exploration activities, a holder of an exploration licence must conduct an environmental impact assessment approved by the Zambia Environmental Management Agency (“ZEMA”). The decision letter issued by ZEMA contains conditions which must be adhered to throughout the life-cycle of an exploration project.

## Social Licence to Operate

Exploration activities are generally conducted in remote areas under the jurisdiction of local chiefs. Before an exploration licence is granted, an applicant

must provide written consent from the chief in whose area they intend to carry out exploration activities. In other words, there must be buy-in from the chief, allowing an exploration company to conduct exploration activities in that community.

There is a general lack of understanding of the exploration process and many community stakeholders do not differentiate between exploration and mining. As a precursor to mining, mineral exploration may take several years before deposits of economic potential are discovered. Many communities expect mineral exploration companies to invest in the communities in which they operate.

However, as no economic gains or profits are made during the exploration phase with exploration companies failing to meet the communities’ expectations of social investments, the social licence to operate is negatively affected. According to the Association of Zambia Mineral Exploration Companies, sentiments like “they have been exploring for a long time and we have not seen any tangible development” are common-place. This affects investor confidence and comfort of security of tenure. Exploration companies, chiefs and the Ministry of Mines should make deliberate efforts to educate local communities on what exploration involves and how tangible development may only be actualised during the mining phase.

## Trends and Developments

- **Restrictions on beneficial ownership and increased transparency**

The Minister of Mines and Minerals Development announced that Government intends to restrict the number of mining rights (which includes explorations licences) that can be held by the same







beneficial owner. Currently, there are no restrictions on the number of licences that can be held by the same beneficial owner, and this is seen as having contributed to the practice of holding licences speculatively.

To implement and monitor this restriction, the Mining Cadastre system is to be linked to the Patents and Companies Registration Agency system which requires disclosure of, and changes to beneficial ownership of companies.

- **Promotion of mineral exploration**

In the 8th National Development Plan (2022 –

2026), Government aims to increase mineral production by promoting exploration of both traditional and non-traditional minerals. Tax reforms will be implemented as part of the process to achieve this.

- **New mining legislation**

The Government is expected to enact new mining legislation that will be in line with international best practice to achieve stability and predictability in how the sector is regulated. The following are the two major policy and regulatory changes to be introduced:

**Mining Commission**

The new legislation is expected to introduce a Mining Commission that will regulate the industry and help improve compliance levels as part of the sector reforms.

**Acquisition of Golden Shares in Companies**

Government has indicated that it will enhance its participation in mining industry through the acquisition of golden shares. Details of how the acquisitions will occur and how this strategic policy move will be actualised have not yet been provided. It is not clear which companies in the mining sector may be the target of acquisitions.







# CONTACT

**SHARON SAKUWAHA**

Co-Managing Partner

M: +260 966 082 780

E: sharon.sakuwaha@moiramukuka.com

**MUMBI MULENGA**

Senior Associate

M: + 260 968 511 535

E: mumbi.mulenga@moiramukuka.com

# ABOUT

We are a dynamic business law firm at the intersection of law, business and innovation. We embrace new thinking to deliver impactful solutions to business. We have put a lot of thought in creating our firm so that our size, structure, and processes never interfere with us providing you with the efficiency and flexibility you need to operate in an unpredictable business environment.



business@moiramukuka.com | +260 211 410 055 | www.moiramukuka.com

## Our Offices

Block A, First Floor, LA Complex Plot 4987, Los Angeles Boulevard, Longacres, Lusaka. P. O. Box 320152, Lusaka, Zambia.

The contents of this guide are intended to be for general information and cannot be relied upon as legal advice. You should seek specialist legal advice about your specific circumstances.





## ABOUT AZMEC

**AZMEC** is the Association of Zambia Mineral Exploration Companies.

**AZMEC** aims to provide a discussion forum and dedicated lobby group for mining and exploration companies, government representatives, NGO's, service providers, academic institutions, and other interested parties in Zambia with the view to contributing to the growth, promotion, and sustainable development of the sector in this country.

Please contact us below to find out about membership.

Email: [info@azmec.co.zm](mailto:info@azmec.co.zm)

| Phone: +260 211 257 964

| Website: [www.azmec.co.zm](http://www.azmec.co.zm)



