



MINISTRY OF MINES AND MINERALS DEVELOPEMENT

REGULATORY IMPACT ASSESSMENT ON THE ENACTMENT OF A STATUTORY INSTRUMENT RESTRICTING MINING RIGHTS TO FIVE MINING RIGHTS

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1.0 INTRODUCTION

The Regulatory Impact Assessment is being proposed by the Ministry of Mines and Minerals Development ((hereinafter referred to as the "Ministry") to introduce a Statutory Instrument (SI) to restrict the number of mining rights to five (5). This was after consultations with Government and quasi Government Institutions, Private sector (Mining Companies), Civil Society Organizations, Academia, Mining Associations, Trade Unions and the Chamber of Mines among others.

The purpose of introducing the SI was necessitated by the audit of the Mining Cadastre Department which revealed various irregularities in the issuance and administration of mining rights. The audit revealed that some entities and individuals held large numbers of mining rights for speculative purposes resulting in an imbalance in the development of the mining sector by depriving credible investors of the opportunity to mine in the tenements.

This situation was exacerbated by lack of provisions in the Mines and Minerals Development Act No. 11 of 2015 (hereinafter referred to as the "Mines Act") to restrict the number of mining rights that an individual or entity can hold. In this regard, the Ministry developed the proposed SI to address the inadequacy in the Mines Act. The implementation of the SI is expected to unlock tenements to be accessible by other credible investors in order to contribute in developing the sector to accelerate the attainment the target of 3 Million Metric tonnes of copper production per annum by 2031.

2.0 BACKGROUND

Historically, Zambia has been a major mining country for about a century, and mining has therefore remained the mainstay of its economy. At the end of 2021, the mining sector in Zambia accounted for 17.5 % of Gross Domestic Product (GDP) and 70% of export earnings.

The Ministry's core mandate is to develop and regulate the mining sector in a sustainable manner for the benefit of the people of Zambia. The Ministry carries out its mandate through four (4) technical departments namely; Mines Development, Geological Survey, Mine Safety and Mining Cadastre. It is worth to note that regulation of the mining sector is better carried out if it is coupled with adequate legislation. This helps in monitoring and regulating the mining sector.

Previously, under the repealed Mines and Minerals Development Act No. 7 of 2008, investors were allowed to hold huge areas for exploration. This meant that most areas were not explored because some companies had no capacity to explore such huge areas and hence new players could not be come on board to explore over these areas which were already under license holders.

The enactment of the Mines Act was among others meant to free some areas for other players to participate by reducing the area sizes of the mining rights.

With this measure, it was anticipated that companies that had huge areas would free excess areas for other players to participate. However, this was not the case as many big companies opted to subdivide the excess areas and created sister companies who in turn acquired mining rights to the excess areas.

The other objective of the Mines Act was to restrict the cumulative area size in for companies with multiple mining rights to a specified hectareage of land. To circumvent this measure, companies opted to form related companies in order to access additional mining rights. This has resulted in some companies holding over 50 mining rights most of which are dormant and contributed in promoting illegal mining.

Furthermore, it has been observed that mining rights have been held by individuals and entities that may not have immediate intentions to explore the minerals or indeed undertake mining activities. This situation has resulted in huge mining tenements being held by individuals or entities without any development and hence blocking other potential investors with financial capacity from investing in the mining sector.

There is need therefore, to put in place interventions that to address the challenges highlighted above and accelerate the country's socio-economic development through increased production in the mining sector. This will also contribute towards the country's achievement of the 3 Million Metric tonnes of copper production in the next nine (9) years as envisaged under the National Mineral Resources Development Policy of 2022.

3.0 STATEMENT OF THE PROBLEM

Over the years, there has been an imbalance between the large number of mining rights owned against the overall contribution of the mining sector to national development. This is associated with the undeveloped tenements which have not been exploited by the holders of the mining licences.

Currently, the Ministry has **3,607** valid mining rights of which an estimated **1,200** are dormant, as such blocking other individuals or potential entities with financial capacity to develop the tenements. Further, it has been observed that the underdeveloped tenements have also perpetuated illegal mining. The underdeveloped tenements have led to: imprudent environmental conservation, development and use of non-renewable mineral resources; unsatisfactory mineral resources exploitation and development which contribute negatively to socio-economic development; compromised safety, health and environmental protection; wasteful mining practices which is counterproductive to sustainable development; prevent citizens from equitable access to mineral resources and benefits; and lack of contribution to the development of local communities in areas surrounded by mining rights.

This has ultimately led to lower than expected level of investment in the mining sector; lower than expected output for the sector; and inadequate contribution to economic development.

3.1 BASELINE

The table below shows the trend on the number of licenses granted on yearly basis from 2017 to 2021.

COMPARISON OF TYPES OF LICENSES GRANTED FROM 2017 TO 2021

S/N	Description	2017	2018	2019	2020	2021
1	Artisan Mining Rights (AMR)	100	116	185	237	230
2	Small Scale Exploration License (SEL)	160	369	366	568	457
3	Large Scale Exploration License (LEL)	233	368	235	445	413
4	Small Scale Mining License (SML)	19	19	20	18	52
5	Large Scale Mining License (LML)	1	4	1	10	7
6	Mineral Processing License (MPL)	9	10	11	14	19
	TOTAL	522	886	818	1,292	1,178

4.0 OBJECTIVES

To increase the level of output in the mining sector in order to enhance the sector's contribution to economic development from the current 17.5% to 25% GDP by 2030.

The following are the specific objectives:

- (a) To enhance investment in exploration and mining operations by eliminating all dormant mining rights by June 2023 in order to increase output;

- (b) To ensure safety, health and environmental protection in mining rights which are currently being abused by June, 2025 in order to ensure sustainable exploitation of mineral resources and;
- (c) To curb illegal mining in mining rights by June, 2030 in order to enhance transparency and accountability in mineral resource development.

5.0 IDENTIFICATION OF OPTIONS

The Ministry considered the following options;

- (a) Do nothing or maintain the status quo;
- (b) Self-regulation;
- (c) Amend existing legislation; and
- (d) Introduce new legislation.

5.1 DO NOTHING

The option entails maintaining the status quo. Currently, entities acquire as many mining rights as they wish regardless of their capacity to operate them in accordance with the general principles of mining as espoused under section 4 of the Mines Act. If this continues, holding mining rights for speculative purposes, compromised safety, health and environmental protection, illegal mining, unequitable access to mineral resources and wasteful mining practices - just to mention but a few -will remain the order of the day in the mining sector. This will ultimately lead to lower than expected level of investment in the mining sector; lower than expected output for the sector; and inadequate contribution to economic development.

5.2 SELF REGULATION

This option entails lobbying key stakeholders such as the Chamber of Mines and other mining associations to encourage their members to only obtain mining rights according to their capacity. This option assumes that the intervention of such key stakeholders will address the challenge of the appetite of some players to obtain mining rights for other economic reasons than self-use. This includes players who obtain mining rights exclusively for "sale", speculative or holding purposes. The option also assumes that players will ensure equitable access to mineral resources by avoiding incorporation of multiple companies for the sole purpose of acquiring mining rights with hectareage of land in excess of what is provided for under the Mines Act thereby disadvantaging other potential players in the mining sector.

5.3 AMEND EXISTING LEGISLATION

This option entails amending some provisions of the Mines Act such as section 21(3) which limits the cumulative total area of mining rights an entity and its subsidiaries can have under their control at a given time. The option assumes that the players will comply with the resultant amendment. This is however, at the backdrop of the rights holders failing to comply with the current provision that limits the total area that an entity with multiple mining rights can have at a given time by circumventing it through incorporating multiple entities which have been used to acquire up to maximum permissible area under the law. The option also entails the involvement of Parliament over which the Ministry has no control, and therefore, the amendment process may take longer than anticipated.

5.4 INTRODUCE NEW REGULATIONS

This option entails introducing new regulations under section 119 of the Mines Act to strengthen the existing law by restricting the number of mining rights, and requiring information on beneficial ownership. Beneficial ownership requirement is key in order to counter the practice of incorporating multiple entities for the sole purpose of defeating legal provisions on maximum cumulative area of mining rights owned by a single entity and its subsidiaries. This measure will ensure equitable access to mineral resources by all potential players in the mining sector thereby stimulating growth of the sector and therefore increase output necessary to grow the GDP from 17.5% to the targeted 25% by 2030. The measure will also curb the growing trend of obtaining mining rights for the sole purpose of selling them as opposed to using them for exploration and mines development which is necessary for socio-economic development of the country.

6.0 COMPARISONS OF THE COST AND BENEFITS OF OPTIONS

In comparing the costs and benefit of options, a qualitative analysis was employed.

6.1 DO NOTHING

This option costs nothing in terms of implementation of the measure but it maintains the status quo which means lower than expected level of investment in the mining sector; lower than expected output for the sector; and inadequate contribution to economic development.

No.	Description	Costs	Benefits
1	Government		
	Lost multi-million Dollar investment	USD 9.5Bn	
	Total non-tax revenue		USD 7.5m
	Stakeholder engagement cost	USD 9,300	

	Lost opportunity for formalization of illegal miners	USD 5Bn	
	Taxes from mining investment	USD 180m	
2	(a)Business (Current License holders)		
	Investment opportunities		USD 9.5Bn
	(b)Business (Potential Investors)		
	Lost opportunity to acquire mining rights	USD 12Bn	
	(c)Business (Suppliers)		
	Lost opportunity for enhanced business opportunities	USD 2.8Bn	
3	Society		
	Lost opportunity for enhanced socio-economic development	USD 20Bn	
	TOTALS	USD 49,480,009,300	USD 9,507,500,00

6.2 SELF REGULATION

This option assumes that the intervention of key stakeholders will address the challenge of the appetite by some players to obtain mining rights for other economic reasons than self-use.

No.	Description	Costs	Benefits
1	Government		
	Lost multi-million Dollar investment	USD 9.5Bn	
	Total non-tax revenue		USD 7.5m
	Lost opportunity for formalization of illegal miners	USD 5Bn	
2	(a)Business (Current License holders)		
	Area charges	USD 9,300	
	Investment opportunities		
	(b)Business (Potential Investors)		
	Lost opportunity to acquire mining rights	USD 12Bn	
	(c)Business (Suppliers)		
	Lost opportunity for enhanced business opportunities	USD 2.8Bn	
3	Society		
	Lost opportunity for enhanced socio-economic development	USD 20Bn	
	TOTALS	USD 49,480,009,300	USD 7,500,000

6.3 AMEND EXISTING LEGISLATION

This option entails amending some provisions of the Mines and Minerals Development Act such as section 21 (3) which limits the cumulative total area of mining rights an entity and its subsidiaries can have under their control at a given time.

No.	Description	Costs	Benefits
1	Government		
	Multi-million Dollar investment		USD 9.5Bn
	Total non-tax revenue (licensing plus area charges)	USD 9,300	USD 7.5m
	Opportunity for formalization of illegal miners		USD 5Bn
2	(a) Business (Current License holders)		
	Licensing plus area charges	USD 7,500,000	
	(b) Business (Potential Investors)		
	Opportunity to acquire mining rights		USD 12Bn
	(c) Business (Suppliers)		
	Opportunity for enhanced business opportunities		USD 2.8Bn
3	Society		
	Opportunity for enhanced socio-economic development		USD 20Bn
	TOTALS	USD 7,509,300	USD 49,307,500,000

6.4 DEVELOP NEW REGULATION

This option entails introducing new regulations under section 119 of the Mines and Minerals Development Act to strengthen the existing law by restricting the number of mining rights and requiring information on beneficial ownership to counter the trend of incorporating multiple entities for the sole purpose of defeating legal provisions on maximum cumulative area of mining rights owned by a single entity and its subsidiaries. This would mean Cabinet approval and subsequently parliament approval.

No.	Description	Costs	Benefits
1	Government		
	Multi-million Dollar investment		USD 9.5Bn
	Total non-tax revenue (licensing plus area charges)	USD 9,300	USD 7.5m

	Opportunity for formalization of illegal miners		USD 5Bn
2	(a)Business (Current License holders)		
	Licensing plus area charges	USD 7,500,000	
	(b)Business (Potential Investors)		
	Opportunity to acquire mining rights		USD 12Bn
	(c)Business (Suppliers)		
	Opportunity for enhanced business opportunities		USD 2.8Bn
3	Society		
	Opportunity for enhanced socio-economic development		USD 20Bn
	TOTALS	USD 7,509,500	USD 49,307,500,000

7.0 CONSULTATION

In order to ensure that there was transparency and support from all relevant stakeholders in the mining sector, a national virtual meeting was held in order to get views, concerns and recommendations from all stakeholders. However detailed responses are included as an annex to this RIA report.

NO.	REGULATORY ISSUE	STAKEHOLDER SUBMISSIONS	ACTION BY REGULATOR
1.	Formulate a Statutory Instrument to restrict mining rights to five (5)	Agreeable	Draft Statutory Instrument was discussed with various Stakeholders and the SI to be forwarded to Business Regulatory Review Agency (BRRA)
2.	Criteria to determine capacity to hold more than five licenses.	What would be the criteria to determine capacity to hold more than five licenses	Ministry stated that the Mines Act provided the criteria for awarding of mining and non-mining rights which was the ability to develop the mining operations and compliance with the provisions of the law
3.	Use it or Lose it Principle	stakeholders advised the Ministry to adopt the "Use it or Lose it" Principle	The Ministry responded that this provision already exists under

			Section 112 of the Mines Act.
4	Hectarage of licenses	stakeholders proposed for the inclusion of the maximum size or hectarage of licenses in the SI	The Ministry clarified that the maximum number of licenses for those who will qualify to hold more than five will be tied to the maximum area size as provided in the Mines Act.
5	Beneficial Ownership	stakeholders noted that systems should be developed on how the determination of the beneficial owners would be identified in the awarding of mining rights	The Ministry agreed with the submission and indicated that mechanisms will be strengthened to ensure beneficial owners' identification was enhanced in the process of awarding mining rights.

8.0 PREFERRED OPTION – INTRODUCE NEW REGULATORY FRAMEWORK

The option of introducing a new regulation under section 119 of the Mines Act is preferred as it had the highest net benefit of **USD 49, 307, 507**. Further, stakeholders supported the recommended option as it will bring sanity to the sector by introducing a component of beneficial owners.

9.0 KEY RECOMMENDATION

The key recommendation is that new legislation is passed in order to restrict mining right.

THE IMPLEMENTATION PLAN

Strategic Objective	Activities	Output	Outcome	Performance Indicator	Responsible Institutions	Baseline (2022)	Grand Target	Annual Targets		
								2023	2024	2025
To enhance investment in exploration and mining operations by eliminating all dormant mining rights by June 2023 in order to increase output	Monitoring and Audits	Monitoring and Audits conducted	Reduced number of dormant mining rights	Area size of tenements freed	MMMD	1,200 Mining rights	2,000	500	500	500
To ensure safety, health and environmental protection in mining rights which are currently being abused by June, 2025 in order to ensure sustainable exploitation of mineral resources	Monitoring and inspection on safety, health and environmental activities	Compliance levels on safety, health and environmental protection	Monitoring and inspections enhanced	5000	MMMD	2000	5000	2000	2000	1000
To curb illegal mining in mining rights by June, 2030 in order to enhance transparency and accountability in minerals resource development	Sensitization on formalization on illegal mining activities	Illegal Miners sensitized and formalized	Licenses issued to formalized miners	5000	MMMD	2000	5000	2000	2000	1000