

Tax & Legal Alert
December 2022



Regulatory Alert

Investment Bill, 2022

On 29 August 2022, the Government of Tanzania tabled an Investment Bill ('The Bill'). The Bill intends to replace the Investment Act of 1997. The Bill has largely maintained what was provided in the current Investment Act with an introduction of some new changes.

This alert provides a detailed summary of what is proposed in the Bill

Key Changes

1. Proposals in the Bill

Enterprises engaging in the following activities are excluded from enjoyment of the benefits granted under the bill:

- A business enterprise which is authorized to conduct prospecting or mining operations under the Mining Act or is seeking authorization to conduct such operation;
- A business enterprise which is authorized to conduct exploration or production operations or is seeking authorization to construct or operate a pipeline under the Petroleum Act; and
- A business enterprise engaging in manufacturing, marketing or distribution of hazardous chemicals, armaments or weapons, or any type of explosives.

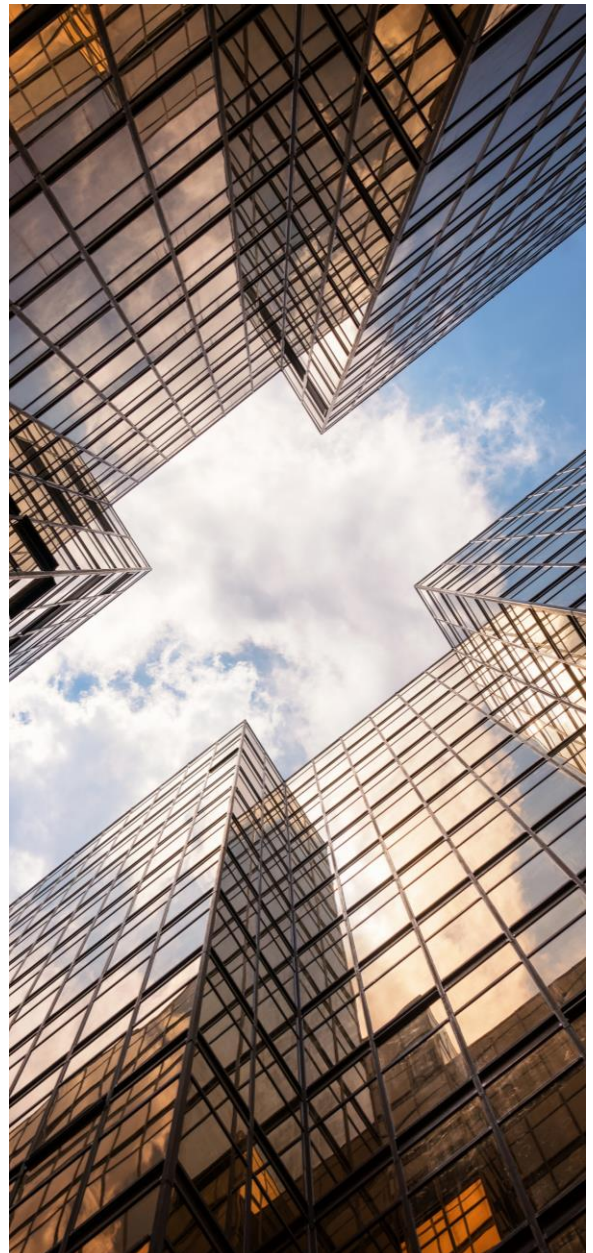
However, the enterprises engaging in the above excluded activities are entitled to protection of the rights which are provided under section 28 and 29 of the Bill. These sections fall under the rights and obligation of the investor and the government. Specifically, section 28 provides for a guarantee from the government of unconditional transferability through a bank of dividends, payments in respect of loan servicing where a foreign loan has been obtained, remittances of proceeds (net of tax) in event of sale of business and payment of emoluments to foreign personnel. Section 29 provides for the protection against acquisition by the State unless under due process of the law.

Nevertheless, the Bill provides that despite exclusions on the applicability of the bill to certain entities engaging in various activities, the Tanzania Investment Centre (“TIC”) will be required to assist all investors regardless of whether they are included or excluded by the bill. The assistance of TIC will be on licenses, permits, registration and all other requirements for one to establish an investment activity

The **investment capital requirement** for an enterprise to enjoy the benefits and protection under the bill, and which do not engage, in the excluded activities is as follows:

- For enterprises owned fully by a foreign investor or through a joint venture the investment capital should not be less than United States Dollars (“USD”) 500,000.
- For enterprises owned by a Tanzanian, the investment capital should not be less than USD 50,000. This has been reduced from what is provided under the Investment Act (i.e., USD 100,000).

“However, the enterprises engaging in the above excluded activities are entitled to protection on the rights which are provided under section 28 and 29 of the Bill”

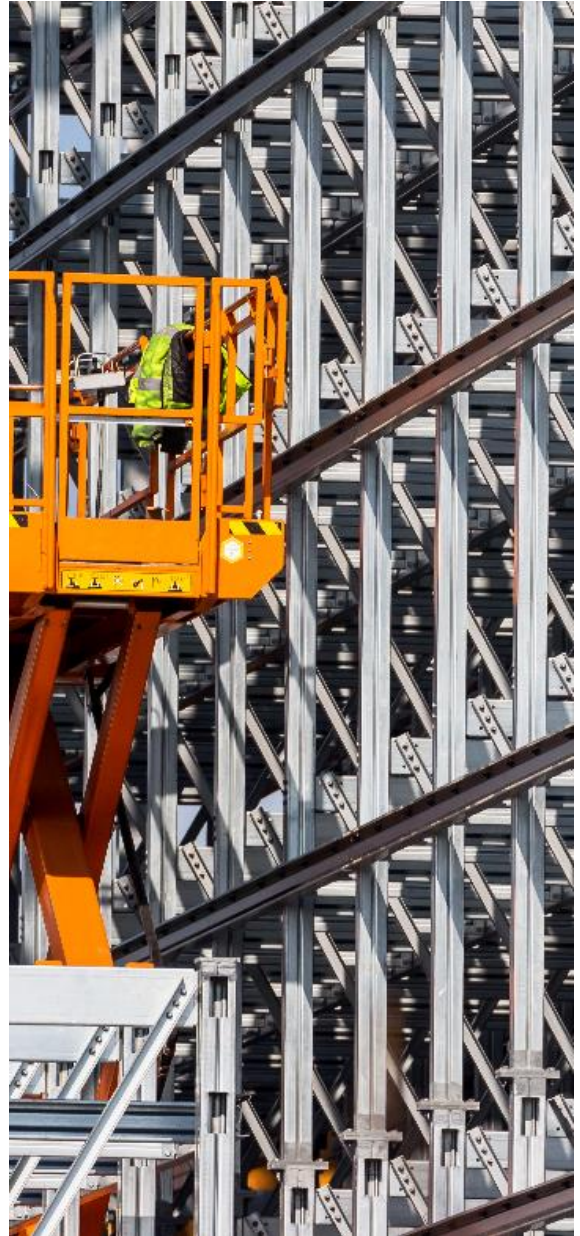


2. The Tanzania Investment Centre (“TIC”)

- The bill proposes to retain the TIC as the one stop center for investment and investors’ facilitation services.
- The TIC will remain a government agency and continue to be under general supervision of the minister responsible for investment. It will continue to be a legal entity capable of owning assets, enter into contracts and capable of suing or being sued.
- The TIC will continue to be under the Executive Director who will be responsible to carry day-to-day activities of the TIC.
- As a primary agency of the government, TIC will continue to be responsible for co-ordination, encouragement, promotion and facilitation of investment in Tanzania. Also, the TIC will be responsible to advise the Government on investment policy and other related matters.
- The Bill requires the TIC to establish an integrated electronic system that will connect all government agencies which are responsible for issuing licenses, permits, consents and permissions which are needed by an investor.

Conditions for investment

- In order to achieve the goals of the TIC as a one-stop center for investment, the Bill proposes that all government institutions and agencies are required to cooperate with the TIC.
- In case an investor is required to obtain a license or authorization from any other authority, the TIC will be required to liaise in writing with the relevant authorities for such authorization.



“...TIC to establish an integrated electronic system that will connect all government agencies which are responsible for issuing licenses, permits, consents and permissions which are needed by an investor”



“ A certificate for financial incentives shall be for a period of not more than 5 years from the date of its grant and for other incentives for the period of the life of the investment”

3. Certificate of incentives

- Application for certificate of incentives will continue to be made to the TIC.
- The certificate of incentives granted by TIC can be for financial or other incentives. A certificate for financial incentives shall be for a period of not more than five years from the date of its grant and for other incentives for the period of the life of the investment. However, the period can be extended subject to an application to and an approval by the TIC.
- The Bill retains the information which will be required to accompany the application for a certificate of incentives by an investor for both the new investment and the expansion of an existing enterprise.
- The Bill prohibits transfer of certificate of incentives granted by the TIC without a prior consent by the TIC.
- The bill provides for circumstances where the certificate of incentives can be revoked by the TIC. These include any of the following:
 - ✓ The certificate was obtained through fraud or by giving false information;
 - ✓ A holder of the certificate has violated the conditions for the grant of the incentives;
 - ✓ The certificate has been transferred to another person or investment without a prior consent by the TIC;
 - ✓ Where a holder of the certificate has not commenced operations within the first two years of issuance of the certificate without satisfactory reasons; or
 - ✓ A holder of the certificate has not provided the annual report on the implementation and progress of the project for two years consecutive.
- An enterprise which has been granted the certificate of incentives shall be entitled to enjoy the benefits which are granted to that enterprise under the provisions of the Income Tax Act, The Customs Tariffs Act, The Value Added Tax Act and any other written law for the time being in force.

Additional benefits available to a strategic investor and special strategic investment



The Bill provides that strategic investment and special strategic investment shall be entitled to additional incentives in accordance with the Bill. As such, where a project is granted a status of a strategic investment or special strategic investment, a minister responsible for investment is required to propose special additional incentives to the national investment steering committee.



However, the minister will not be allowed to submit proposal of incentives in relation to office equipment, stationeries, sugar, beverages, spirits, tiles, non-utility motor vehicles, crockeries, air conditioners, fridges, petroleum products, cutleries, bedding, cement, steel reinforcement bars, and roofing sheets, PVC and HDPE pipes with HS Code 3917.23.00 and HS Code 3917.21.00 respectively, and imported trailers classified under HS Code 8716.31.90 and 8716.40.90 and electronic equipment.



Where the national investment steering committee agrees with the proposed incentives by the Minister, the incentives will be granted under the respective laws.



The bill provides that, a business or investment shall be qualified as a strategic investment if it meets any of the following conditions:

a) For a business if:

- ✓ It is locally owned by a Tanzanian; a minimum investment capital is not less than Tanzanian Shillings (“TZS”) equivalent to 20 million United States Dollars (“USD”); and
- ✓ It is wholly owned by a foreign investor or joint venture; a minimum investment capital is not less than TZS equivalent of USD 50 million.

b) It creates at least 1,000 local employments with enough numbers holding senior positions in the projects which do not involve modern and sophisticated technology;

c) It has a capacity to increase national exportation of goods it produces by at least 50% or to reduce importation of goods;

d) It has ability to stimulate investment through linkage of different social and economic sectors;

e) It has ability to transfer new technology to Tanzanians; or

f) It has ability to produce goods or provide essential services for development of social sectors taking into account the government’s priorities at that time.

The conditions (b) to (f) above are additional to those provided under the Investment Act. The Investment Act only provides for the conditions which are provided under (a) above which the Bill has retained.

The Bill empowers the government to identify projects and grant them **a special strategic investment status**.



However, a project to qualify for a status of special strategic investment must meet the following conditions:

- a) The investment capital is not less than the equivalent in TZS of USD 300 million;
- b) The investment capital transaction is done through a registered local financial and insurance institutions;
- c) At least 1,500 direct local employment is created with satisfactory number of senior positions in the project that does not require high and sophisticated technology; and
- d) Capability to significantly generate foreign exchange earnings, produce significant import substitution goods or supply of important facilities necessary for development in the social, economic or financial sector.

The conditions provided above are same as what is provided under the Investment Act.

Rights and Responsibilities of the Government and an Investor

- The Bill contains a chapter (i.e. Chapter IV) which stipulates different rights and obligations to both the government and an investor. The Investment Act does not contain same provisions which stipulates rights and obligations to both the government and an investor.
- Chapter IV of the Bill provides for the rights of an investor which were provided under the Investment Act. These rights are:
 - ✓ A guarantee from the government on unconditional transferability through a bank of dividends, payments in respect of loan servicing where a foreign loan has been obtained, remittances of proceeds (net of tax) in event of sale of business and payment of emoluments to foreign personnel.
 - ✓ Protection against acquisition by the State unless under due process of the law
- In accordance with section 26 of the Bill, the following are investor's obligations:
 - ✓ To observe the law.
 - ✓ To submit all the required information on time to government agencies which are servicing the investors for them to timely discharge its responsibilities.
 - ✓ To observe consumer protection, environment protection and gender equality while operating.
 - ✓ Submission of annual reports to the TIC on implementation and progress of the investment projects.
 - ✓ To utilize natural resources and other resources which are available locally.
 - ✓ To allow access to the TIC officers who are following up on the incentives granted.
 - ✓ To observe limitations on employment of expatriates as provided by the laws responsible on employment of expatriates.

Dispute settlement

- The Bill has retained the same provisions regarding dispute settlement between an investor and the government. Where a dispute between an investor and the government has not been resolved through negotiations, the dispute may be referred to an arbitration in accordance with any of the following methods as may be mutually agreed by the parties:
 - ✓ In accordance with arbitration laws of Tanzania.
 - ✓ In accordance with the rules of procedure for arbitration of International Centre for the Settlement of Investment disputes.
 - ✓ Within the framework of any bilateral or multilateral agreement on investment protection agreed by the Government of the United Republic and the Government of the country where the investor originates.



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