

AFRICA

A Legal Guide for Business
Investment and Expansion

TANZANIA



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TANZANIA

FIRM PROFILE: YAKUBU AND ASSOCIATES CHAMBER

Our Vision: To be a world class international legal services powerhouse.

Our Mission: To provide affordable, accessible and quality legal services to clients and stakeholders.

Tanzania is experiencing an unprecedented inflow of capital and with this has come both opportunities and challenges. Challenges in the form of quality and affordable legal counsel have sometimes affected the progress of investment and other commercial projects. On a positive note, capital inflow has opened hitherto unexplored ventures. Some of these have taken the form of public private partnership projects and mergers and acquisitions transactions.

Our team at YAC has the necessary skills and grit to ably advise on complex commercial transactions.

The city of Dar es Salaam traces its heritage to a resilient culture of local commerce and trans-oceanic trade. This sense of commercial awareness and sensitivity continues to define our practice. We have endeavoured to balance this with a strong commitment to the highest levels of ethical conduct in all our business practices.

Our easy to navigate site highlights our core service areas and expertise, our opinions on local and global topical issues and members of our corporate advisory, corporate services and litigation teams.

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1. What role does the government of the United Republic of Tanzania play in approving and regulating foreign direct investment?

The government plays an active role in approving and regulating foreign direct investment. The regulatory framework is composed of a number of state entities and attendant laws as detailed below:

The Tanzania Investment Centre (TIC) was established under the Tanzania Investment Act 1997, to act as a one-stop centre for investors. It has a number of roles including the co-ordination, encouragement, promotion and facilitation of investment in Tanzania. It also advises the government on investment policy and related issues. The TIC mandate includes and applies to both local and foreign investment although its focus is centred more on foreign investment.

The Business Registrations and Licensing Agency (BRELA) is another state entity through which government approves and regulates foreign direct investment. BRELA was established through the Executive Agencies Act 1997. Its main focus is the supervision of business administration and the enforcement of business laws pertaining to the following: Companies Registration, Business Names Registration, Trade and Service Marks Registration, granting of Patents and issuing of Industrial Licenses.

There are additional sections of legislation that are relevant to government's regulation and approval of foreign direct investment. These include the Public Private Partnership Act Cap 103 as amended; the Export Processing Zones Act Cap 373; the Fair Competition Act 2003; the Income Tax Act Cap 332 [R.E 2014]; and Value Added Tax Cap 148.

2. Provide advice on best entry strategies to employ in the United Republic of Tanzania and common corporate structures used.

In our experience, most foreign investors commence operations in the country through the incorporation of private companies limited by shares. These are companies incorporated under the Companies Act Cap 212 as amended. In most cases the law allows foreign promoters to incorporate companies in the country. Also, apart from a few sectors, the law allows foreign investors to hold shares, including majority shares in companies incorporated in Tanzania.

3. How does the United Republic of Tanzania government regulate commercial joint ventures between foreign investors and local firms?

Joint ventures between foreign investors and local firms are not subject to any specific regulations by the government. However, the Fair Competitions Act 2003 regulates mergers and acquisitions between businesses in Tanzania. The law applies

to both local and foreign firms. In addition, the Public Private Partnership Act Cap 103 as amended, regulates joint business activities between government entities and private investors. This includes foreign investors.

4. How does the United Republic of Tanzania government regulate proposed activities by foreign investors and are there any areas of the economy where they are prohibited (e.g. natural resources, energy, telecommunications or real estate)?

The government has set uniform standards for both local and foreign investors. In some sectors, however, there are restrictions on the participation of foreign investors as noted below.

The Tourism Act of 2008 prohibits foreign companies from undertaking certain activities. The Tourism Act 2008 also restricts the operation of car rental services, tour guide activities and travel agencies to local investors. Government has recently enforced provisions in the Electronic and Postal Communications Act of 2009, which require telecommunication companies to list on the Dar es Salaam Stock Exchange. The Minister of Energy and Minerals also has powers under the Mining Act 2010 to demand shares for the government in a foreign mining company prior to the signing of a mining development agreement.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

The Employment and Labour Relations Act 2004 and the Employment and Labour Relations (General) Regulations 2017 provide regulations on employment in Tanzania. Expatriate workers must fulfill all immigration requirements prior to their being granted residency and work permits. The specific requirements of employing expatriate workers are provided in the Non-Citizens (Employment Regulations) Cap 436.I

6. Capital availability and access considerations in the United Republic of Tanzania – any major capital, infrastructure or labour constraints to be aware of and strategies to mitigate?

Capital is available for investments in Tanzania. Many foreign investors are able to secure a percentage of their finance requirements from their local bankers. The usual financing options such as syndicated loans are available in Tanzania. Records show that many foreign investors arrive in Tanzania with financing from foreign firms in their jurisdictions or other foreign jurisdictions.

Local laws require investors, who are entering into loan agreements with foreign lenders, to apply to the Bank of Tanzania for a debt record number. It is important that this requirement is considered during such transactions.

7. What types of taxes, duties, and levies should a foreign investment in the United Republic of Tanzania expect to encounter?

There are various type of taxes that foreign investors may have to pay in Tanzania. The common taxes, duties and levies include Income Tax for individuals; Corporation Tax; Pay as You Earn (PAYE) for employees; Skills Development Levy; Withholding Tax; Value Added Tax; Capital Gains Tax; Excise Duty and Stamp Duty.

Corporations are charged the following taxes:

Corporation Tax at 30% for Resident Corporations and Permanent Establishment of Non-Resident Corporations. Newly listed corporations are charged corporation tax at the rate of 25%.

Corporations are required to pay Value Added Tax for taxable goods and supplies at the rate of 18%. Exported goods and services are zero rated upon proof of consumption outside Tanzania.

Withholding Tax is charged at between 5 and 15%.

8. What are the main IP law provisions likely to be most relevant to inbound investors and/or foreign imports and their distributors (e.g. trademark protection, licensing, other)?

Copyrights are protected by the Copyright and Neighboring Rights Act of 1999, Act No. 7 of 1999; trademarks are protected by the Trade and Service Marks Act No. 12

of 1986; patents are protected by the Patent (Registration) Act, [Cap 217 R.E. 2002].

Tanzania has also ratified the Agreement on the Creation of the African Regional Industrial Property Organization, 1979 (effective for Tanzania as from 12 October 1983); and the Protocol on Patent and Industrial Designs within the Framework of African Region Industrial Property Organization (the Harare Protocol, 1982) (effective for Tanzania as from 01 September 1999)

9. If a commercial dispute arises, will local courts or international arbitration offer a more beneficial forum for dispute resolution to foreign investors?

Both local courts and international arbitration are available forums for dispute resolution in Tanzania. Foreign investors usually prefer international arbitration as a forum for dispute resolution.

Under the Arbitration Act Cap 15, the High Court recognises and enforces foreign arbitral awards without re-examining the merits of the decisions.

10. What laws and business practices are peculiar to the United Republic of Tanzania?

Legislation on local content for the oil and gas sector is yet to be enacted. However, the Local Content Policy of Tanzania for the oil and gas sector 2014, which aims to encourage meaningful participation of citizens in the oil and gas sector, guides stakeholders on local content in the sector.

11. What are the regulations, protocol, and practicalities around public procurements and financing in the United Republic of Tanzania?

The Public Procurement Act No 7 of 2007 and the Public Procurement Regulations of 2013 regulate public procurement. Provisions on public and private partnerships in both these laws have been amended by the Public Private Partnership Act Cap 103.

12. What kind of actions should investors take to avoid corrupt practices in the United Republic of Tanzania?

Investors should sign the integrity pledge that is required by the Business Registration and Licensing Authority during registration of a new business. Investors are also advised to implement anti-bribery policies and to share these policies with their employees.

Trends:

Tanzania has recently revised its legislation on natural resources. The new legislation provides for various substantive changes to existing and future agreements on natural resources.

The new legislation includes:

The Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act, 2017, The Natural Wealth and Resources (Permanent Sovereignty) Act 2017 and the Written Laws (Miscellaneous Amendments) Act, 2017

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