



Overview

Global factors, particularly the move towards sustainable energy, have aligned to create significant opportunities in the African mining sector, which is primed to perform strongly regardless of geopolitical or economic downturn pressure.

According to Fitch Solutions' South Africa Mining Report for Q2 2023, the continent houses an abundance of 'green' metals, such as lithium, cobalt, nickel, graphite, rare earth minerals, iron, copper, phosphate and platinum group metals. The move towards low-carbon energy also creates opportunities for platinum group metals. In addition, many countries are looking to use their mineral resources to develop their economies through processing and refining. For example, lithium-rich countries, including Namibia and Zimbabwe, are working towards challenging China's dominance in this space.

We have seen a significant uptick in mining M&A and vertical integration plans. The question is whether cash flush majors will continue to watch and wait or make strategic investments.

Developments in four of the jurisdictions in which Bowmans is located – Kenya, South Africa, Tanzania and Zambia – are outlined herein.

KENYA



LEGAL AND POLICY DEVELOPMENTS

Kenya's mining legislation was overhauled in 2016 when the Mining Act became law. The growth of the sector has been hampered since 2019 by a government moratorium on the issuing of licences and processing of renewal applications. Recent pronouncements by the new Government indicate a possible end to the moratorium, with the President highlighting the need for a conducive business environment for investors and a pledge to unlock the potential of the sector.

The following developments from the recent weeks are key to note:

The High Court of Kenya, on 12 May 2023, delivered a judgment declaring the Mining (Prescription of Royalties on Minerals) Regulations 2013 to be unconstitutional for lack of public participation in the process leading up to their enactment. Therefore, from the date of the judgment, the underlying legal framework supporting the collection of royalties by the Ministry of Mining, Blue Economy, and Maritime Affairs (Ministry) is annulled. The Ministry is yet to make any formal statement leaving sector players and communities in limbo regarding the next steps.

In its 2023 [Africa's Resource Future Report](#), the World Bank recommended that Kenya scrap the local equity participation requirement. Currently, the Mining (Local Equity Participation) Regulations, 2012, provide that it shall be a condition of every mining licence that the mineral right in respect of which the licence is issued shall have a component of local equity participation amounting to at least thirty-five per cent (35%) of the mineral right. Small scale players have been highly critical of this proposal by the World Bank to scrap the local equity participation requirement, which they view as an attempt to encourage foreign investments to the detriment of local players.



STATE OF THE SECTOR

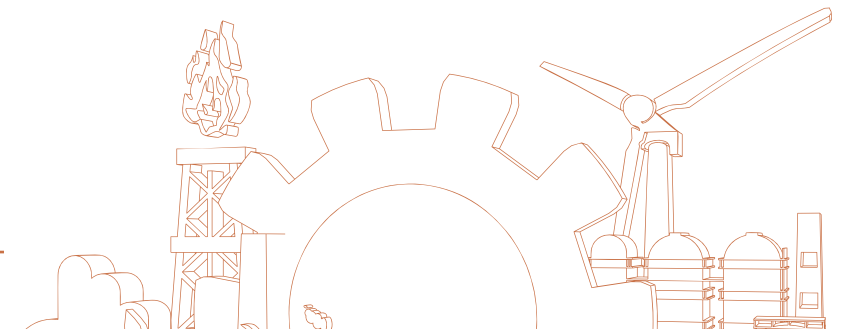
Kenya's mining sector is largely under-explored and productivity remains low, despite its potential to grow the economy significantly. If pronouncements by the new administration are actualised, they may be the much-needed catalyst to revive and expand the sector. Interestingly, even with the moratorium in place, the M&A market continues to present possible opportunities in existing operations for willing investors.

The Kenya National Bureau of Statistics reported in its 2023 Economic Survey that the total earnings from mineral production increased by 16.6% to KES 35.2 billion in the year 2022.



CONSIDERATIONS

- **Environmental footprint and sustainable mining practices** – mining companies will need to implement appropriate mechanisms to address environmental concerns, particularly in light of the Government's focus on climate change combined with commitments by global mining companies to pursue decarbonisation efforts and net zero goals. Participating in offsetting schemes within Kenya's rapidly developing carbon markets could provide them with opportunities to mitigate their carbon footprints.
- **Renewable energy** – the President has said that Kenya will aim to achieve 100% renewable energy by 2030. To this end, the Cabinet recently lifted a moratorium on power purchase agreements with independent power producers. This is expected to ignite continued investment in Kenya's energy sector and increase the number of mining projects. We may also see the development of renewable power plants for power supply to mines.
- **Community engagement** – community engagement continues to be a paramount consideration for mining projects, particularly where significant benefits are to be realised from mining operations. Local community acceptance of projects is critical in Kenya, and projects have failed due to lack of 'buy-in' by local communities. The Mining Act makes community development agreements with local communities a pre-requisite for the issuing of a mining licence. The Mining (Community Development Agreement) Regulations require community consultations with all stakeholders at the village level. The Mining (Licence and Permit) Regulations state that the support of community leaders shall not substitute the need for community consent.
- **Government pre-emption** – the pre-emption right to strategic minerals continues to be a key issue for most investors. Depending on the minerals discovered during exploration, it remains to be seen to what extent the State will exercise this right and what impact it will have on future investments. In our experience, the State grants mining licences to the holder of the prospecting licence who discovered the minerals.
- **Land rights** – securing land rights will remain a key consideration for those seeking to invest in new projects and/or expand existing projects. Careful navigation of Kenya's land regulatory framework is critical for the bankability of mining projects, particularly in relation to the different land tenure systems and compliance with local and national legislation and authorities regarding land issues.





SOUTH AFRICA



LEGAL AND POLICY DEVELOPMENTS

The Department of Mineral Resources and Energy has taken significant steps to introduce a new system to enable mining exploration and has cut its backlog in processing mining and exploration licences by half. The country is now well placed to attract more investment in new mining projects.

Government expects to conclude the procurement process for a new mining cadastral system by the end of 2023. It will opt for a system that is in use in many other mining jurisdictions.



STATE OF THE SECTOR

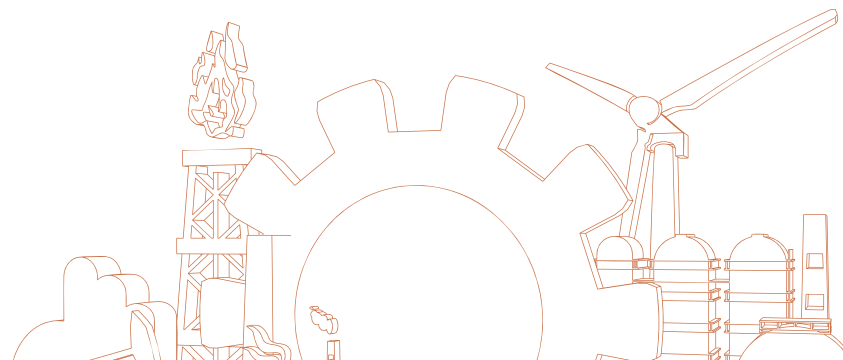
According to Fitch Solutions' South Africa Mining Report for Q2 2023, South Africa has significant mineral reserves that support the sector's long-term growth outlook. The country's mining output is forecast to increase strongly in 2023, buoyed by supportive external market conditions and elevated metals and energy commodity prices.

South Africa has a competitive mining sector with both local and international players from large and diversified to mid-tier and junior miners. Mining houses play a significant role in the country's economy and will continue to do so.



CONSIDERATIONS

- **Renewable energy** – According to a statement released by the Mineral Council South Africa, high costs and unreliable energy supply are among the chief issues of concern for mining operations where electricity is projected to rise to 12.5% of costs by 2024 from 9% now. We are working with our clients to reduce the strain with renewable sources of power at mining sites.
- **Access to water** – According to the Council for Scientific and Industrial Research, there are about 200 mines in water-scarce South Africa, and the sector consumes 2% to 5% of the country's available water. A chemicals and explosives group is expanding its water-treatment technologies into mines in the rest of Africa after its latest water purification applications helped two local mines to save 2.2 billion litres of water a year.
- **Demand for coal** – Eskom's largest coal supplier showed confidence in the commodity's future by giving one of its mines an extra 25 years on its life of mine. According to Fitch Solutions' South Africa Mining Report for Q2 2023, 'the long-term outlook for South Africa's coal production is positive, supported by the country's vast reserves and new coal-fired Eskom power plants coming online'. The report predicts a 1.9% year-on-year growth in coal production during 2023.
- **Gold reserves** – South African Market Insights reports that as of 2023, the country holds 38 more years of gold reserves before depletion.



TANZANIA



LEGAL AND POLICY DEVELOPMENTS

Investor attitudes toward Tanzania have improved exponentially as the country's newly appointed President Hassan continues to create a more business and investor-friendly environment.

This will be further supported by the removal of trade barriers between Tanzania and Kenya, as well as the renewed effort to boost trade and investment throughout the East African Community and the planned East African Monetary Institute.



STATE OF THE SECTOR

While mining in Tanzania has historically been centred on gold, there are now numerous new projects currently in development, with a particular focus on battery minerals (including graphite and rare earths).

Foreign-owned gold producers make up the bulk of Tanzania's mining landscape. The largest of these is leading global major Barrick Gold, which completed the full acquisition of Acacia Mining in September 2019.

Steady growth in gold mining production will be the main driver of Tanzania's mining sector over the coming decade. Significant gold reserves and a gradually improving regulatory environment will encourage investment by both local and international companies. Furthermore, the development of several gold refineries in the country means that Tanzania could start to process gold produced in neighbouring countries such as Kenya and Zambia.

The likely beginning of commercial cobalt and nickel production in 2025 also bodes well for Tanzania's mining growth. Its nascent nickel mining sector has the potential to attract new investors in the coming years following a major investment by Kabanga Nickel into a world-class nickel deposit in the country.

**Over
500
Lawyers**



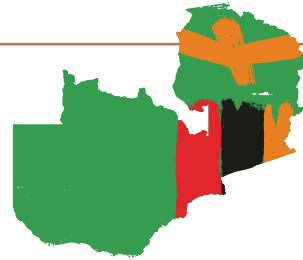
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With over 500 lawyers, Bowmans delivers integrated legal services to clients throughout Africa from seven offices in five countries

Bowmans' advice uniquely blends expertise in the law, knowledge of local markets and an understanding of clients' businesses. Clients include corporates, multinationals, funds and financial institutions as well as state-owned enterprises and governments.



ZAMBIA



LEGAL AND POLICY DEVELOPMENTS

Mining has always been a key sector in Zambia. The new Government is taking a more pragmatic, market-oriented approach in dealing with mining companies compared with the more interventionist stance of the previous Government.

This is evident in several engagements with mining companies since August 2021 and recent changes around mineral royalties. Policy changes have been introduced to encourage the opening of new mines and increase production in existing ones. The goal is to increase production to 3 million metric tonnes by 2032. Policy changes have also been introduced to promote exploration and exploitation of both mineral and petroleum resources. The aim of this is to diversify the sector into minerals such as gold, gemstones, and manganese.

In February 2022, Minister of Mines and Minerals Development suspended the issuance of mining licences and instituted an audit which was concluded in October 2022. Thereafter, the Government introduced a policy that every miner will only be allowed to have five exploration licences, while those wishing to get more will need to explain to the Ministry of Mines why they should be given them. This is intended to stop the trend of holding exploration licences for speculation purposes.



STATE OF THE SECTOR

According to the Fitch Solutions (2023, Q2) Zambia Mining Report, Zambia's government has improved the business environment for foreign mining companies. The latest developments arising from the recent policy changes and government attitude include investment pledges by:

- First Quantum Minerals Limited of USD 1.5 billion into new expansion projects;
- Lubambe Copper Mine of USD 1.0 billion in expansion projects;
- US-based artificial intelligence exploration firm KoBold Metals of USD 150 million to own, explore, and develop the Mingomba Mine (copper-cobalt), which is claimed to be the world's highest-grade undeveloped large copper deposit.

With these developments and government interventions, it is expected that by 2026, copper output will increase to 1.5 million metric tonnes from 868 000 metric tonnes in 2020. The value of mineral exports (excluding copper and cobalt) is expected to increase to at least USD 1 billion by 2026.



CONSIDERATIONS

- **Local participation, beneficiation, and value addition** – the Government is pushing for local participation, beneficiation, and value addition to minerals as the country positions itself to tap into regional and global markets and value chains. In April 2022, Zambia and the Democratic Republic of the Congo signed cooperating agreements to start manufacturing electric batteries and also explore minerals available in both countries that are key raw materials in the manufacturing of electric car batteries.
- **Legacy issues** – the Government is addressing legacy issues including sovereign debt, litigation with Vedanta, and ownership of Mopani Copper Mines. For example, it is understood that the Government is in the process of finding a private investor to ramp up production at the Mopani Copper Mines (one of the biggest mines in the country).

Mining expertise



We provide strategic advice on all relevant legal and regulatory matters (e.g. environmental, social and governance issues; mining and health and safety compliance; mining title opinions; prospecting and mining right applications; mine incident enquiries; review applications; appeals; due diligences)



We provide support through every aspect of mining and resource-related M&A, financing and other commercial transactions, including the initial due diligence through to regulatory compliance and negotiating and closing deals.



We have a strong record of executing complex and time-sensitive mandates including some of the largest and most innovative M&A, stream, royalty and debt and equity capital market transactions on the continent.



Whether clients are negotiating offtakes, supply side contracts or require day-to-day support with agreements, we have the depth of expertise and skills to assist.

Key contacts



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