

CHANGES BROUGHT BY THE WILDLIFE CONSERVATION (SPECIAL WILDLIFE INVESTMENT CONCESSION AREAS) REGULATIONS, 2021.

Eliaicha A. Ndowo.



ENDO & Company Advocates

Introduction.

On 21st May, 2021 via Government Notice No. 397 of 2021, the Minister for natural Resources and Tourism issued new regulation known as “the Wildlife Conservation (Special Wildlife Conservation Investment Concession Areas) Regulations, 2021” which revoked existed GN No. 28 of 2020 the Wildlife Conservation (Special Wildlife Investment Concession Areas) Regulations, 2020, to regulate all matters within a game reserve, wetland reserve or game controlled area or other areas under Tanzania Wildlife Management Authority (TAWA).

The new regulation has retained some issues in the former regulations and further introduced new issues for proper carrying out of various matters relating to the Special Wildlife Investment Concession Areas (hereinafter referred to as “SWICA”).

In this Article, I will briefly point out various issues or important changes which have been introduced in the current regulations and how they were reflected in the former regulations.

Arrangement of Regulations.

Currently, the new regulations has been extensively arranged by comparing to the former one and therefore, exhausted a lot of issues including but not limited to capital investment, security performance, resource management zone plan, prescribed fees and charges, local content, transfers, cancellation of tenure of concession contract, e.t.c.

Capital Investment.

Formerly, for the Applicant to be eligible for Concession Award must have a minimum investment Capital such as:-

- US\$ 20 Million (For a business which is locally owned)
- US\$ 50 Million (For a business which is foreign owned)

Currently, the regulations created favorable environment for local investment by placing some adjustments as follows:-

- US\$ 20 Million (For local company)
- US\$ 10 Million (For Local company which is 100% owned by the Tanzanians; whereby For foreign company it shall be US\$ 50 Million

Security Requirements for Performance of the Contract.

Currently, the Applicant is required to submit a bond of 10% for the investment capital to guarantee faithful performance of the contract and the same shall be refunded if the concession contract is not awarded.

Further, in case the Applicant is a local company which is 100% owned by Tanzanians, performance bond is supposed to be 5% for the Capital invested.

Before the introduction of the new regulations, the Applicant Investor in respect of unsolicited proposals was required to submit a bond of 2% of the minimum investment capital to be refunded incase the bid is unsuccessful. This means, currently the rate is higher compared to the former one.

Designation of SWICA.

Formerly, the Board of Directors of TAWA by the order published in the gazette was responsible for designation of SWICA in protected areas under Regulation 3 of GN No. 28 of 2020 however, as for now the Minister upon recommendation of the Board of Directors of TAWA designates area of land within Game Reserve and game controlled areas to be SWICA and therefore this has simplified the process to some extent.

General Management Plan.

In the former regulations, it was required that SWICA should have General Management Plan and the Board was to ensure it is in place. However, under the present regulations there is an option that upon absence of General Management Plan, the Authority shall cause to be prepared a Resource Management Zone Plan to be used for an interim of two (2) years. The introduction of this option has created a favourable environment for investment.

Feasibility Study.

In the former regulations, the Board required engagement of a Consultant with knowledge and experience to conduct a feasibility study before undertaking a procurement of a solicited project under Regulation 8 (1) and (2) of GN No. 28 of 2020. However, in the current regulations this requirement of engaging a consultant has not been reflected. Nevertheless, the new regulations has

imposed a duty to the TAWA itself, to carry out a feasibility study for the purpose of determining the viable solicited projects on a SWICA. These changes have an effect of simplifying the entire process.

Advertisement of Solicited Proposals.

In the previous enactment, the board was supposed to advertise for the purpose of inviting interested persons to apply for concession over such areas, however the board was required to use a competitive procurement methods. Currently, it is not the board, rather the Conservation Commissioner of the Tanzania Wildlife Management who is required to conduct procurement process by issuing a public notice inviting persons for investment in the designated SWICA through solicited proposals. Therefore, the Board has now been relieved from a lot of burdens making the process quick.

Fees and Charges.

Lastly the new regulations has indicated various prescribed fees such as annual rental fee, application fee and transfer fee which was not reflected in former regulations. In the former regulations the applicant was just supposed to pay to the Authority fees which were not prescribed. "Annual set fee which may be a flat fee in conjunction with royalty, concession, licenses, and permits or percentage of the applicant's gross revenue or percentage of all revenues and the fee payable may be gradually increased over time". Currently the payable fees have been prescribed as follows:-

- Annual rental fee which shall be calculated on the basis of a progressive sliding scale from the projected turnover and profit.

- Annual rental fee by the local company which is 100% owned by Tanzanians is only 50%
- A royalty of not less than 4% of the total investment turnover before breaking the even; shall be payable on monthly basis
- A royalty of not less than 8% after breaking the even up to completion of tenure of the concession shall also be payable on monthly basis.
- Application fees (the Board may determine)
- Fees in respect of Application for transfer of user right is US\$ 5000.00
- Fees for transfer of user right 1% of the investment capital shall be payable upon approval of transfer.

Therefore, prescription of payable fees has also created favorable environment for the intended Investor.

Reflection of Local Content.

In the former regulations, benefit to Tanzanians in respect of concession contracts was so generalized, such that, the Board of Directors of TAWA was only required to ensure before signing of the said contract, the interest of the Tanzanians are fully secured. However, the current regulations went further to oblige the TAWA to make sure all Government taxes are fully paid, participation of Tanzanians through labour, business, technology, supply of goods and services and research capability together with ensuring compliance of corporate social responsibilities to the local communities are adhered to.

Furthermore, in the current regulations the Applicant is to ensure that local content is a component of the activities engaged in.

Transfer of Concessions User Right.

The former regulations was silent on the conditions for transfer of concessions user right however in the current regulations, the same has been clearly reflected under regulation 40, that;-

- there must be prior written consent from the Minister before transfer;
- Transfer is to be made to the Applicant who was not granted during procuring process.
- Transfer request fee (US \$ 5000.00) shall be paid by the transferor.
- Upon receiving consent from the minister, the applicant will pay concession transfer fee, submit relent documents and payment of required taxes and thereafter will be issued with the letter of an award after the Conservation Commissioner satisfied that all the requirements have been met.

Tenure or Duration of Concession Contract.

Both regulations have reflected the tenure of concession contract i.e. not more than thirty (30) years unlike the former regulations which was silent on the cancellation of the said contract before expiry time. In the current regulations, the Minister may cancel at any time before expiration the allocation of the special concession area if the person granted fails to satisfy matters required by the Minister to take into consideration, commit an offence, fail to pay necessary fees and charges to the Government in the prescribed period or, has transferred the user right without prior consent of the Minister.

Guideline for SWICA.

Formerly the Director General was required to prepare administrative investment guideline and manuals for these areas subject to the Approval of the Board however, currently the Board may itself issue the guidelines.

General Observation.

It is worth saying that, the current regulations in respect of the special areas for investment in wildlife, has regulated and or captured a lot of issues compared to the former regulations and therefore created a suitable environment for investment in these areas.

Note from the Author.

This article is for the purpose of providing education on changes made by law. It should not be considered as legal advice. For any person, company or institution that would like the legal details made, they are urged to contact the author or the firm for professional advice.



@ ENDO & COMPANY ADVOCATES

6th Floor, Wing B, 3D Building, Adjacent Watumishi House, Magomeni Usalama, Ruaha Street, Morogoro Road

P.O Box 76630 Dar es Salaam, Tanzania

Tel: +255 222 172 111/Mob. + 255 713 395 845/+255 769 782 926

E-mail:info@endowoadvocates.co.tz

Web: www.endowoadvocates.co.tz