

Newsletter

Whats new IN THIS ISSUE

05

THE COST OF A WARNING
ALREADY RECEIVED:
TANZANIA'S EL NIÑO
FORECAST IS RESHAPING
MINING LIABILITY, AND
THE SAME DOCTRINE OF
FORESEEABILITY NOW
REACHES ANY BUSINESS
SITTING DOWNSTREAM
OF A PUBLISHED RISK

Every legal system carries some version of an old idea: that nobody can be blamed for a risk nobody could see coming...."

11

WHO COLLECTS, NOT WHO
PAYS: TANZANIA'S FINANCE
ACT, 2026 AND THE CHANGING
POINT OF CONTROL IN EAST
AFRICA'S DIGITAL ECONOMY

A Nairobi based streaming platform sells a subscription to a customer in Dar es Salaam. The customer pays through a mobile money wallet linked to a card processor in the United Kingdom. The platform has no office, no server and no employee in Tanzania. Who owes tax, to which government, and on what part of that transaction?..."

15

WHO ENFORCES, NOT
WHO REGULATES

Picture a dominant telecommunications operator that owns the patent on a piece of network technology every rival needs in order to connect its customers to the network. For years, its confidence rested on one simple fact: Tanzania's Fair Competition Commission, the country's antitrust regulator, had never once ruled on how intellectual property interacts with market power, because nobody had asked it to. We flagged that gap in our June 2025 analysis...."

EDITOR'S NOTE, AUGUST EDITION



DISCLAIMER

The information provided herein is for general informational purposes only and does not constitute legal, financial, or professional advice. While every effort has been made to ensure the accuracy and completeness of the content, the regulatory and legal landscape may change, and specific circumstances may require tailored guidance. We will not assume liability for actions taken or omitted based on this information. Should you require formal legal advice, please feel free to reach out to us so as we can address your specific needs.

Dear Esteemed Clients, Stakeholders and Readers,

Welcome to the August edition of our newsletter.

This month's three pieces have less in common on paper than they do in practice.

In our first article, we analyse the Tanzania Meteorological Authority forecasts of a very strong El Nino event, with rainfall in parts of the Lake Victoria basin and western Tanzania potentially exceeding 400 millimetres as the season peaks in November. For mining operators, that progression matters.

Once a risk is sufficiently identified and foreseeable, the issue is no longer only what the weather eventually does. It also becomes a question of what the operator knew, when it knew it, and what it did with that information. Section 140 of the Mining Act limits reliance on an act of God defence to events that could not reasonably have been foreseen or insured against. Section 60 of the Occupational Safety and Health Act requires an employer to respond where a new and credible risk to health and safety emerges. The Insurance Act adds another consideration: the duty of utmost good faith means that a material change in risk that is not properly disclosed may affect insurance cover independently of whether the eventual loss falls within the policy.

The practical response does not necessarily mean suspending operations because severe weather has been forecast. It means being able to demonstrate, before the rain arrives, that the forecast was received, assessed and translated into an appropriate response. That requires a clear record of who assessed the warning, what decisions were taken, who was responsible for those decisions and what action would follow if the risk escalated. This article looks at what the law requires once a foreseeable environmental risk has been identified and, more importantly, what a defensible response looks like in practice.

The issue extends beyond mining. Any business operating with a known and documented risk may eventually have to explain not only what happened, but what it knew before it happened and what it chose to do about it.

That same gap, between a risk becoming public and someone inside a business treating it as their own problem, runs through our second article as well. Tanzania, Kenya and Rwanda each rewrote how they tax digital sales this year, and each government landed on the same fix without consulting the other two: since a foreign seller with no office, no staff and no local bank account is effectively unreachable, tax the platform, the payment processor or the bank instead. A subscription sold from Nairobi to a customer in Dar es Salaam can now attract tax in three countries at once, with no mechanism to credit what was paid in one against what is owed in another. The law creating that exposure has been in force since July. Whether a business operating across all three markets has actually mapped it is a separate question, and for most, it has not yet been asked.

Our third article, on the Fair Competition Commission's new rules on abuse of dominance through intellectual property, completes the picture from an unexpected angle. The Commission has never brought a single case of this kind and has limited capacity to start now, which would normally suggest the rule can be safely set aside for a while. It is the opposite. A regulation nobody has tested does not sit quietly waiting for a regulator with a full caseload.

EDITOR'S NOTE, AUGUST EDITION



It sits on a negotiating table, where a distributor unhappy with a royalty increase, or a rival accused of infringement, now has a credible new argument to raise without ever filing a complaint. The company on the other side of that table finds out how the rule works the first time someone uses it against them commercially, and that is usually well before any regulator does.

None of the three developments in this edition requires a business to do anything wrong. In each case, the exposure exists the moment the document does, and the only thing separating a business that manages it well from one that gets caught out later is whether someone read the document and worked out what it meant, before a storm, a tax return or a competitor did the asking instead.

As always, we write not just to inform, but to challenge, provoke and invite dialogue. We hope this edition leaves you not only informed, but inspired to ask a few more difficult questions of your own, before someone else asks them for you.

We look forward to your thoughts and to shaping the legal landscape together.

Happy reading!
The Editorial Team
MWEBESA LAW GROUP

CONTENTS



THE COST OF A WARNING ALREADY RECEIVED: TANZANIA'S EL NIÑO FORECAST IS RESHAPING MINING LIABILITY, AND THE SAME DOCTRINE OF FORESEEABILITY NOW REACHES ANY BUSINESS SITTING DOWNSTREAM OF A PUBLISHED RISK

Every legal system carries some version of an old idea: that nobody can be blamed for a risk nobody could see coming. What is less often noticed is how quickly that protection disappears once someone puts the risk in writing, months before it materialises, and addresses it to an entire sector by name...

05



WHO COLLECTS, NOT WHO PAYS: TANZANIA'S FINANCE ACT, 2026 AND THE CHANGING POINT OF CONTROL IN EAST AFRICA'S DIGITAL ECONOMY

A Nairobi based streaming platform sells a subscription to a customer in Dar es Salaam. The customer pays through a mobile money wallet linked to a card processor in the United Kingdom. The platform has no office, no server and no employee in Tanzania. Who owes tax, to which government, and on what part of that transaction?

11



WHO ENFORCES, NOT WHO REGULATES

Picture a dominant telecommunications operator that owns the patent on a piece of network technology every rival needs in order to connect its customers to the network. For years, its confidence rested on one simple fact...

15



THE COST OF A WARNING ALREADY RECEIVED: TANZANIA'S EL NIÑO FORECAST IS RESHAPING MINING LIABILITY, AND THE SAME DOCTRINE OF FORESEEABILITY NOW REACHES ANY BUSINESS SITTING DOWN-STREAM OF A PUBLISHED RISK

Every legal system carries some version of an old idea: that nobody can be blamed for a risk nobody could see coming. What is less often noticed is how quickly that protection disappears once someone puts the risk in writing, months before it materialises, and addresses it to an entire sector by name.

Tanzania's mining sector has now received exactly that kind of notice, and it has arrived in stages rather than all at once. In May 2026, the Tanzania Meteorological Authority ("TMA") described a possible El Niño developing behind a prolonged cold season.

By August, the language had hardened considerably: TMA described a very strong El Niño likely to shape the short rains, with the IGAD Climate Prediction Centre projecting seasonal totals that could exceed 400 millimetres in parts of the Lake Victoria basin and western Tanzania, the same goldfields that host North Mara, Geita, Bulyanhulu and most of the country's other large-scale mines, with

the season expected to peak in November. From the date of that first advisory, and more so with each one that followed, what used to be an act of God looks, for any operator who reads it and changes nothing, considerably closer to an act of omission.

The consequences are familiar to anyone who has run a mine through a bad wet season: pits taking on water faster than they can be pumped, tailings facilities losing freeboard, haul roads failing, slopes destabilising, and discharge exceeding permit limits. Tanzania's most recent comparable episode, the 2023 to 2024 El Niño season, compounded by Cyclone Hidaya and a positive Indian Ocean Dipole, killed 155 people, affected more than 200,000, and displaced tens of thousands across fourteen regions.

What is at stake this time is not abstract. It is stopped production, remediation cost, a force majeure notice that may or may not hold up, an insurance claim that may or may not respond, and, where someone is hurt or a downstream community is affected, personal exposure for the people who ran the site.

This piece looks at what changes, legally, once that forecast exists: the standards of foreseeability and reasonableness that apply to a mineral right holder, the obligations running to contractors, employees and neighbours, and how an insurance claim plays out differently depending on what was done before the rain arrived. Mining carries the sharpest version of this problem, because its statutory liability regime is unusually exacting, but the underlying doctrine is not mining law. It is what any business owes the law once a risk in its own sector has been forecast in writing, a point this piece returns to once the mining analysis is complete. It does not deal with the meteorology itself or with the position of a specific policy or contract, and nothing in it should be read as advice on an actual claim.

FORESEEABLE IS NOT A HINDSIGHT WORD

In ordinary conversation, foreseeable often means predictable in hindsight, which is not much of a standard, since almost everything looks predictable after it happens. The legal test asks whether a reasonable and prudent operator, holding the same information, would have recognised the type of harm as a real risk worth acting on, not whether it could have predicted the exact mechanism of failure. That test has a specific pedigree. It comes from Lord Atkin's judgment in *Donoghue v Stevenson* [1932] AC 562, the House of Lords decision that first articulated the modern duty of care in negligence, and it remains part of Tanzania's own law through the reception of English common law. Lord Atkin framed the test as a question of who counts as a neighbour in law: *"You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour... persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."*

A mining operator's neighbours, in that sense, are not a figure of speech. They are the contractors on site, the employees underground when a wall gives way, and the communities downstream of a tailings facility. A forecast naming an operator's own region, issued months ahead and repeated with growing specificity as the season approaches, sits well inside that test. It is difficult to argue a risk was unforeseeable when a government authority foresaw it, said so in writing, and returned to say so again in stronger terms.

Reasonableness asks a narrower question: what a reasonable operator, with the resources available to it, would have done once the risk was known. Section 140 of the Mining Act, Cap. 123 R.E. 2023, illustrates the point precisely. It imposes strict liability for pollution damage without regard to fault, then allows a reduction where an inevitable event of nature contributed to the harm, but directs the decision maker to weigh whether the event could reasonably have been foreseen and insured against. A risk published months in advance, and updated as it sharpens, is difficult to call inevitable, and any reduction in liability is tied directly to the operator's opportunity to insure against it. An act of God argument under section 140 functions, in practice, as a plea in mitigation rather than a defence, and its value depends entirely on the record built before the loss occurred.

Section 60 of the Occupational Health and Safety Act, Cap. 297 R.E. 2023, applies the same logic to safety, requiring a risk assessment annually or whenever the need arises. A regional forecast is capable of being that trigger, and an operator that waits for its next scheduled review has created a written record that it identified a hazard and chose not to respond to it.

A COMPLIANCE REGIME ALREADY BUILT FOR THIS

None of this requires a new law. Environmental and safety compliance is a condition of holding a mineral right, not an addition to it. Every licence carries an approved environmental management plan and certificate under the Environmental Management Act, Cap. 191, and Part IX of the Mining Act, sections 138 to 144, writes the same logic into the Act itself. Section 138 binds the licence holder and any contractor to environmental principles and waste duties. Sections 139 to 141 establish pollution damage liability, extending to unlicensed operators. Sections 142 to 144 govern compensation claims, which is where exposure to downstream communities sits, and section 159 requires insurance customarily insured

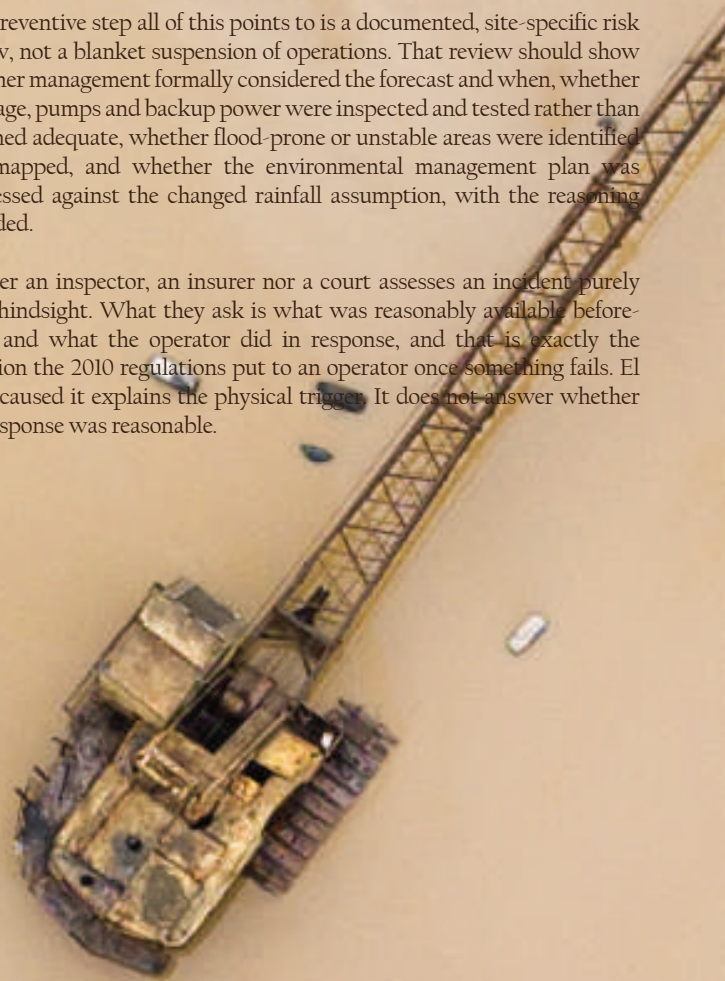
in the international mining industry, a point this piece returns to below.

Section 140(2)'s room to reduce liability for an inevitable event of nature sits inside a framework that assumes a licence holder knows its environmental and safety position at all times, rather than reconstructing it after a loss. The Mining (Safety, Occupational Health and Environment Protection) Regulations, 2010 (GN No. 408 of 2010) supply the operational layer beneath that assumption, and they are more specific than they are often given credit for. A supervisor who becomes aware of a dangerous condition must report it immediately. A mine manager who becomes aware of a breach of the regulations must report it to the Mining Commission's inspectorate as soon as is practicable, not at the next convenient opportunity. A fatal or serious accident must be investigated and a full written report submitted as soon as possible, and a formal inspection report must be completed within seven days. Emergency warning systems must be tested at least once every twelve months, and the mine's emergency and rescue plans must be filed with the Commission and kept current. A mine that receives a credible seasonal warning and does nothing with it will struggle to argue that its systems were reasonably maintained for conditions it knew were coming, because the regulations already assume the operator is watching for exactly this kind of change.

The Environmental Management Act adds a duty of its own, and a looser one. Section 6 requires any person to inform the relevant authority of any activity or phenomenon that may significantly affect the environment, without fixing a specific deadline the way the mining regulations do. That looseness is not a gap an operator should read as comfort. A vague statutory duty is still a duty, and in the absence of a fixed clock, a court or the National Environment Management Council is likely to ask the same reasonableness question the rest of this piece describes: given what was known and when, was the response timely.

The preventive step all of this points to is a documented, site-specific risk review, not a blanket suspension of operations. That review should show whether management formally considered the forecast and when, whether drainage, pumps and backup power were inspected and tested rather than assumed adequate, whether flood-prone or unstable areas were identified and mapped, and whether the environmental management plan was reassessed against the changed rainfall assumption, with the reasoning recorded.

Neither an inspector, an insurer nor a court assesses an incident purely with hindsight. What they ask is what was reasonably available beforehand and what the operator did in response, and that is exactly the question the 2010 regulations put to an operator once something fails. El Niño caused it explains the physical trigger. It does not answer whether the response was reasonable.





INSURANCE WAS NEVER A HEDGE AGAINST NOTICE

Insurance is built on fortuity. It responds to loss that is uncertain in its timing and outcome, and a published seasonal forecast pushes a weather event some distance from that principle before a single drop of rain falls. What decides a claim afterward is rarely the rainfall figures. It is the record of what the operator did once the forecast existed.

Consider two operators facing the same forecast season. The first commissions a geotechnical review of its most exposed pit and confirms with its broker that the insurer knows of the change in risk profile. The second makes no contact with its insurer at all. When both suffer a slope failure in the same storm, the first still has to prove the loss falls within its policy, but its file already shows precaution and a plausible argument that rainfall, not an unmanaged defect, caused the loss. The second is not automatically uninsured, but non-disclosure, breach of a reasonable-precautions condition, or an allegation that poor drainage caused the loss are all live once the file shows nothing done between forecast and rain.

The reasonable-precautions standard is usually the operator's best argument once a claim is disputed. An operator who took some steps, even imperfect ones, is materially better placed than one who took none. This is not optional cover. Section 159 requires holders of mineral rights, and their contractors, to maintain insurance customarily insured in the international mining industry, extending to installations, property damage and bodily injury. The Insurance Act, Cap. 394 R.E. 2023, entrenches the duty of utmost good faith: the insured must disclose all circumstances material to the risk, at inception and as they change. Read alongside section 140(2), the message is consistent. Whether cover was reasonably available goes directly to how liability is assessed, and an operator that does not review its cover, or notify its insurer where required, risks discovering the gap only when it tries to claim.

A FORECAST, IGNORED ELSEWHERE

Ensham Resources operated an open-cut coal mine on the floodplain of the Nogoa River in Queensland's Bowen Basin. In January 2008, heavy rainfall breached levees and flooded several of the mine's pits, stopping production and causing substantial property damage. Ensham held an industrial special risk policy with AIOI Insurance Compa-

ny Ltd and notified it within days of the flood. AIOI moved just as fast in the other direction, with a loss adjuster on file within days and solicitors within two weeks. Ensham's claim was declined in September 2010 for material non-disclosure, and Ensham sued for indemnity.

The dispute turned on two questions any Tanzanian operator will recognise: what had been disclosed when the policy was placed, and whether the damaged property fell within what the policy covered at all, a fight reported as *Ensham Resources Pty Ltd v AIOI Insurance Co Ltd* [2012] FCA 710. Nobody argued that the flood itself was unforeseeable. The argument was fought entirely on disclosure and scope, the same ground Tanzania's Insurance Act and section 159 put an operator on once a specific advisory exists.

DECIDING BEFORE THE STORM DECIDES FOR YOU

The hardest call in this entire piece, whether and when to slow down or suspend part of an operation, is also the one most often made badly, not because operators lack judgment but because it gets made for the first time in the middle of a storm, under pressure, by whoever is on shift. The fix is not a rule that removes judgment. It is deciding, while the risk is still only a forecast, what level of change in conditions moves the decision from one person's discretion to a predefined response with a named owner.

A workable structure has a small number of escalation levels, each tied to something the site can actually observe or measure, each with a defined response, and each with a named decision authority, so that the real-time call is executed rather than improvised.

The specific numeric thresholds, how many millimetres of rainfall, how much freeboard, what dewatering headroom, have to be set by the operator's own geotechnical and hydrological engineers against that site's actual design capacity. What follows is the shape of the framework, not the numbers, since the numbers are the one part of this that a firm cannot safely standardise across sites.



Level	Indictive trigger	Response	Decision authority
Monitor	TMA advisory received or updated	Log receipt, brief the risk owner, no operational change	Risk or compliance officer
Elevated	Rainfall or pit inflow approaching site design capacity, dewatering headroom narrowing	Re-run the risk assessment, notify insurer and broker in writing, inspect flood-prone and unstable areas	Site general manager, insurance and legal notified
Critical	Design capacity exceeded, or a specific slope, wall or facility shows instability	Suspend the affected area, stand down or relocate at-risk personnel, notify the Mining Commission's inspectorate	Site general manager, escalating to the board risk committee
Emergency	Imminent failure or a life safety risk	Full evacuation, activate the emergency plan, notify OSHA, the Mining Commission and NEMC as applicable	Any manager on site holds standing authority to act, ratified by the board afterward

Set this way, the Company's real decision happens weeks before the rain, when it approves the framework and names who holds each authority. Everything after that is the organisation following its own prior decision, which is precisely the kind of documented, reasoned response that section 140(2) and a reasonable-precautions clause reward.

BUILDING THE RECORD BEFORE THE RAIN

Once a TMA seasonal advisory is in hand, the response has three dimensions: legal and regulatory compliance, workforce and operational continuity, and insurance. An operator needs a file that answers all three, because each is judged later by a different reader, a regulator, an employee's lawyer, a loss adjuster, asking the same question in different words: what did you do once you knew. None of the three dimensions runs itself. Each needs an owner named in advance, compliance typically sitting with the general counsel or head of risk, workforce continuity with operations, and insurance with whoever holds the broker relationship, and the board or a designated risk committee should expect a short-written update each time the advisory is escalated, not only after something goes wrong.

On compliance, the advisory should be logged as received on a dated basis and noted in board or management minutes as considered, treated as the section 60 trigger it is by re-running the risk assessment rather than waiting for the next scheduled review, checked against headroom on dewatering capacity and discharge permits before the season peaks, and matched against the reporting obligations in the 2010 regulations, immediate reporting of dangerous conditions to a supervisor, breaches reported to the Mining Commission's inspectorate as soon as practicable, and a formal inspection report within seven days, so that whoever is on shift knows those timelines rather than improvising them.

On workforce and continuity, the emergency response plan should be rehearsed with employees and contractors together, with clear written trigger levels for suspending work or evacuating personnel agreed in advance rather than decided in the middle of a storm. Employees retain their statutory rights, including the right to refuse unsafe work, and any stand-down should follow advice on pay, notice and consultation obligations under the Employment and Labour Relations Act and any applicable collective agreement, rather than being communicated first and reconciled with those obligations afterward. Stand-down and demobilisation criteria should be agreed with contractors in writing, and if operations are suspended, the decision, the reasoning and the date should all be recorded, along with the remobilisation steps and any

regulator sign-off required before restart. The surrounding community and local authorities are better briefed on what the site will do if conditions deteriorate before that becomes necessary than after it.

On insurance, the broker and insurer should be notified of the advisory in writing as a possible material change in risk, the policy checked for notification conditions, precaution warranties and what is actually covered for flood, landslide and business interruption, and section 159 cover confirmed current. That correspondence with the broker and insurer is itself the disclosure record a reasonable-precautions or non-disclosure argument will turn on later, which is why it needs to be dated and kept rather than conducted by phone call. If a loss does occur, notification should happen within the policy's own deadlines, with evidence preserved before it is disturbed.

None of this is an instruction to suspend operations at the first sign of a forecast. It is a record-building exercise, and the record it builds is what matters under section 140(2), under a reasonable-precautions clause, and to a regulator or employee later asking what was known and when.

WHERE THE FORECAST BECOMES A DISCLOSURE QUESTION

Everything above is written from the perspective of the operator managing risk on the ground. For a company listed on the Dar es Salaam Stock Exchange, or financed by international lenders, the same forecast raises a separate question that belongs in front of the same board, not left to whoever happens to read the TMA bulletin first.

For the growing number of Tanzanian mining operations carrying international project finance, the same forecast is also likely to intersect with the facility documents in a different way again, typically a material adverse change clause, an insurance maintenance covenant, or a notification obligation triggered by anything that could affect the borrower's ability to service its debt. None of these obligations are new or unusual. What changes once the forecast exists is that a company sitting on all of them without a documented response is quietly building a file for its auditor and its lender at the same time it is building one for the regulator and the insurer, whether or not anyone has connected those files to each other yet.

THE FORECAST IS NOT ONLY A MINING PROBLEM

The doctrine behind all of this has nothing to do with rainfall. Foreseeability turns on whatever a business's own regulator, sector body or counterpart has already put in writing, and Tanzanian businesses outside mining are accumulating that kind of notice as fast as any mine.



A commercial farm or agribusiness in a flood-prone region reads exactly the same TMA advisory as a mining licence holder, and a lender that has taken that farm's crop or land as security is reading it too, since a secured loan against flood-exposed collateral raises the same reasonable-precautions question for a bank as a pollution loss raises for a miner. A property developer or contractor building on reclaimed or low-lying land, a logistics operator whose only route to port runs through a road the same forecast threatens to close, and a telecommunications or utility operator whose exposed infrastructure sits in the same regions, are each one dated advisory away from the argument mining operators now face, that the choice to proceed, or the choice not to adapt operations, was made with the risk already known.

The same logic runs well beyond weather. A tax authority's public notice of a change in obligations, a central bank's warning of currency or liquidity stress, a data protection regulator's advisory about a known vulnerability, each convert an eventual loss from a surprise into a tested response the moment a business with reason to read them chooses not to.

For a board or general counsel outside the mining sector, the discipline transfers directly. Insurance in Tanzania runs on the same duty of utmost good faith under the Insurance Act for a manufacturer as for a mine, so a material change in risk profile in any industry, once it is public, is arguably something the policyholder already knows and has a duty to disclose, whether or not a specific policy condition names it. And any business holding a statutory duty to assess or manage risk, whether that duty arises from occupational health law, environmental law, financial sector regulation or data protection law, faces the same shift the moment a regulator, forecaster or counterpart puts a specific warning in writing. The standard of care is no longer measured from an ordinary bad day. It is measured from a day that was announced in advance.

What separates businesses that navigate that shift well from those that do not is rarely legal sophistication. It is whether someone inside the organisation is actually tasked with treating a sector-specific public notice as an event requiring a dated, written response, in the way mining operators are now required to treat a TMA advisory. Most businesses have no such function. They have compliance officers who track statutory deadlines and insurance managers who renew policies annually, but rarely anyone whose job is to notice that an external warning has just changed what reasonable looks like for their sector, months before the loss that warning predicted actually occurs.

THE QUESTION THE FILE WILL EVENTUALLY ANSWER

Foreseeability is not a test of whether an operator could forecast the weather. It is a test of what the operator did with a forecast already received, from the country's own meteorological authority, a question far harder to answer well after the event than before it. The TMA advisory is a dated document. It will be produced and read back to whoever received it, in a claim file, at a regulator's desk or in a courtroom, with one question attached: what did you do between the day this arrived and the day it rained. Every business holding a comparable notice, about weather or anything else, is accumulating the same file, whether or not anyone inside the organisation has yet noticed that the clock has already started.



STATUTORY REFERENCE TABLE

This table is a working reference for the operational and legal teams responsible for the record described above. It is not exhaustive and does not replace legal advice on a specific site or policy.

Obligation	Source	Authority	Timing
Report a dangerous condition observed on site	GN No. 408 of 2010, regulation 21(1)	Site supervisor	Immediately
Report a breach of the mining safety regulations	GN No. 408 of 2010, regulation 11(1)(d)	Mining Commission inspectorate	As soon as practicable
Investigate and report a fatal or serious accident	GN No. 408 of 2010, regulation 37(4)	Mining Commission inspectorate, copied to police	As soon as possible after investigation
Complete a formal inspection report	GN No. 408 of 2010, regulation 36(4)	Mining Commission inspectorate	Within seven days
Test emergency warning systems	GN No. 408 of 2010, regulation 57(3)	Internal, subject to Commission oversight	At least every twelve months
Re-run the occupational risk assessment when a new hazard is identified	Occupational Safety and Health Act, Cap. 297, section 60	Occupational Safety and Health Authority	Immediately on trigger, or annually absent one
Inform the relevant authority of a phenomenon that may significantly affect the environment	Environmental Management Act, Cap. 191, section 6	National Environment Management Council	No fixed deadline stated, treat as immediate
Disclose a material change in risk to the insurer	Insurance Act, Cap. 394, duty of utmost good faith	Insurer and broker	At inception and as circumstances change

Disclaimer: This article is intended for informational purposes only and should not be construed as legal advice. Clients are encouraged to engage us directly for professional legal consultation.



WHO COLLECTS, NOT WHO PAYS: TANZANIA'S FINANCE ACT, 2026 AND THE CHANGING POINT OF CONTROL IN EAST AFRICA'S DIGITAL ECONOMY

A Nairobi based streaming platform sells a subscription to a customer in Dar es Salaam. The customer pays through a mobile money wallet linked to a card processor in the United Kingdom. The platform has no office, no server and no employee in Tanzania. Who owes tax, to which government, and on what part of that transaction?

The question sounds like a problem for a tax lawyer. Increasingly, it is a problem for the business itself. Tanzania's Finance Act, 2026 has changed the way digital transactions are brought within the tax system, at almost exactly the time Kenya and Rwanda have been tightening their own rules. The individual measures are different, but they respond to the same difficulty. The business earning the money may be somewhere the tax authority cannot readily reach.

That is why the most interesting feature of the Tanzanian amendments is not the increase in a rate or the addition of another tax. It is the choice of who carries the obligation. Tanzania is moving closer to the part of the transaction it can actually see. Kenya and Rwanda are doing much the same, although each has chosen a different point in the chain. For a business operating across East Africa, that creates a problem which the individual laws do not answer: more than one country may be looking at the same transaction, and there is no regional rule telling them whose claim should come first.

THE SUPPLIER WAS ALWAYS THE DIFFICULT PART

The Finance Act, 2026 makes three changes that are best understood

together. First, Section 24 of the Finance Act amends section 116(1) of the Income Tax Act, Cap. 332 increasing the withholding tax payable by a non-resident receiving payments from individuals in Tanzania for electronic services from 2% to 3% of gross payments received. The obligation however remains with the non-resident supplier, whether it sells directly to consumers or through a marketplace.

Second, excise duty has been extended to specified digital services supplied by non-residents. Section 8 of the Finance Act inserts new provisions into section 126 of the Excise (Management and Tariff) Act, Cap. 147. In practical terms, this means that platforms like Amazon, Netflix, or Uber, though headquartered abroad cannot escape Tanzanian tax obligations when they earn revenue from Tanzanian users.

The law goes further by requiring these non-resident providers to register with the Tanzania Revenue Authority (TRA), file returns, and remit excise duty electronically. Both measures broaden the tax net, but neither, on its own, addresses the underlying enforcement challenge. A foreign supplier with no office, bank account or other meaningful presence in Tanzania may still be difficult for the tax authorities to identify, reach and compel to comply.

The legislation can impose the tax obligation, but its effectiveness ultimately depends on whether there is a sufficient connection to Tanzania to make compliance enforceable rather than dependent on the supplier's voluntary cooperation.

The third amendment takes a different approach. Section 94 of the Finance Act amends section 51 of the Value Added Tax Act, Cap. 148, so that where an electronic service is supplied to an unregistered person in Mainland Tanzania through a digital intermediary, the intermediary may be deemed to be the supplier for VAT purposes. The definition is broad enough to cover a website, application, online store or marketplace that connects a supplier to a customer and enables the sale. In practice, this means that if a Tanzanian consumer buys an e-book through Amazon Kindle, Amazon is deemed to be the supplier for VAT purposes. Amazon must therefore charge VAT on the transaction, collect it, and remit it to TRA, even though the actual author or service provider is abroad.

That is the provision that changes the position most materially. Instead of asking the state to pursue the foreign merchant that sits outside its practical reach, the law places the obligation on a participant that the state can identify and, where applicable, regulate. The platform becomes the point at which the tax system can gain a foothold in a transaction that would otherwise leave very little for the revenue authority to see.

EAST AFRICA IS REACHING FOR THE SAME CHAIN

Tanzania is not alone in confronting the difficulty of taxing economic activity carried on within its market by businesses that may have little physical presence there. Kenya and Rwanda have been addressing the same problem, although each has chosen a different point in the transaction through which to do it.

Kenya for instance replaced its Digital Service Tax with a Significant Economic Presence Tax in December 2024. Under section 12E of the Income Tax Act, a non-resident deriving income from services provided through the internet or an electronic network, including through a digital marketplace, may be subject to tax where the user of the service is located in Kenya. For purposes of calculating the tax, 10% of the non-resident's gross turnover is deemed to be taxable profit, which is then subject to the applicable 30% rate. The result is an effective tax of approximately 3% of gross turnover.

Kenya subsequently widened the provision. The 2025 amendments removed the previous turnover exemption and broadened the scope from services provided through a digital marketplace to business carried on over the internet or an electronic network, including through a digital marketplace. The tax is therefore no longer tied as narrowly to the marketplace model. It reaches more broadly into the business activity of a non resident that derives income from Kenya through digital means. The 2026 reforms move into another part of the transaction. Kenya has brought fees charged by payment service providers for digital payment services, including payment processing, settlement, merchant acquiring, gateway and aggregation services, outside the VAT exemption that applies to specified financial services. The effect is to bring another layer of the infrastructure supporting digital commerce within the tax system. Rwanda has taken a different route. Its Ministerial Order No. 004/26/10/TC of 29 April 2026 establishes VAT rules for goods and services supplied online, requiring foreign suppliers of taxable online services to register and account for VAT on supplies to customers in Rwanda. The regime covers a wide range of digital services, including software, streaming, online advertising, cloud services and digital marketplace services.

Rwanda has also legislated for a separate 1.5% tax on the gross Rwanda sourced revenue of companies supplying digital services with a substantial national presence. The 2025 legislation, however, leaves the definition of substantial national presence, the scope of taxable digital services and the mechanics of registration, declaration and payment to a Ministerial Order. We would therefore treat the 1.5% provision as part of Rwanda's emerging digital tax regime.

The legal mechanics are different, but the enforcement problem is familiar. Tanzania is moving towards the digital intermediary for VAT purposes. Kenya has built a tax around the economic presence of the foreign digital business and is also taxing parts of the payment infrastructure through which digital transactions are processed.



Rwanda has imposed VAT obligations on foreign online suppliers and incorporated financial institutions into the collection architecture. The common thread is therefore not that Tanzania, Kenya and Rwanda have adopted the same digital tax. They have not. It is that the tax system is moving closer to the part of the transaction that remains visible and reachable when the foreign supplier itself is difficult to reach.

That is the point worth carrying forward in this article. The interesting change is not simply that digital businesses are being taxed more heavily. It is that the place at which the state enforces the tax is beginning to move away from the business that earns the revenue and towards the infrastructure through which the revenue is generated, processed or collected.

THE SAME TRANSACTION CAN NOW HAVE SEVERAL TAX ADDRESSES

Take a simple transaction on a digital marketplace. A customer in Dar es Salaam purchases a product from a seller using a platform whose regional business is operated from Kenya. The customer pays through a digital payment service, and the payment is routed through a financial institution in Rwanda before reaching the platform or seller.

For the customer, there is one transaction. The customer places the order, pays the amount shown on the screen and receives the product. There is no obvious reason to think of that payment as three separate events. The tax authorities have a different view available to them.

Tanzania can point to the customer and the supply made into Tanzania. Under the Finance Act, 2026, where an electronic service is supplied to an unregistered person in Mainland Tanzania through a digital intermediary, the platform can be deemed to be the supplier for VAT purposes. The fact that the underlying supplier may be outside Tanzania does not therefore prevent the transaction from entering the Tanzanian VAT system.

Kenya may have a different connection. If the platform's relevant business activity or economic presence is in Kenya, its income may fall within Kenya's Significant Economic Presence regime. Kenya has also separately brought certain digital payment services provided by payment service providers within VAT and has subjected interchange and merchant service fees from card transactions to withholding tax. The Kenyan claim can therefore attach to a different part of the same commercial chain.



Rwanda can add another point of connection. Its 2026 online VAT rules apply where a non resident supplies taxable online goods or services to customers in Rwanda, and the rules use several indicators to establish where the customer is located. Where the relevant payment infrastructure is also within Rwanda, the transaction may create a further point at which the Rwandan tax system can operate.

The important point is not that every transaction of this kind will actually be taxed in all three countries. That would depend on the precise parties, the nature of the supply, the location of the relevant entities, the applicable tax and the reliefs available. The problem is that the same transaction can now create several separate taxable connections before anyone has asked whether the resulting claims should be reconciled.

That is the difficulty for a regional digital business. The customer sees one sale. Tanzania may see a supply to a Tanzanian customer. Kenya may see income generated through economic activity carried on through a Kenyan platform. Rwanda may see a payment or online supply connected to its territory. Each claim can arise from a different part of the transaction without any of the three governments needing to regard the others' claim as a reason to step aside. The result is a transaction with several tax addresses.

And that is where the question of double taxation, or potentially more than one layer of tax on the same underlying revenue, becomes difficult. The issue is not simply whether each country has a legal basis for imposing its own tax. It is whether the rules provide a mechanism for deciding what happens when those bases overlap.

THE COST IS MORE THAN ANOTHER TAX RETURN

The immediate response may be to treat the issue as a compliance exercise. That understates the commercial effect. A business operating across the three markets may need separate registrations, separate filing calendars and separate processes for identifying the transactions that fall within each regime. It may also face different documentary requirements and different consequences for getting the classification wrong.

The Tanzanian deemed supplier rule creates a further issue for platforms. A marketplace that merely facilitates transactions between third party sellers and customers may find itself carrying VAT obligations that its existing contracts never contemplated. The question then moves into the commercial relationship: who bears the tax, who collects it, who funds the cost and what happens where the platform has limited visibility over the underlying seller?

The cost will eventually appear somewhere. It may be passed to consumers through country specific pricing. It may be absorbed through lower margins. It may lead to changes in the way a business structures its regional operations. For a platform that earns only a modest share of its global revenue from East Africa, the cumulative cost of registrations, filings, tax collection and contractual changes may also affect the decision to serve a particular market at all.

That is an uncomfortable possibility for governments trying to widen the tax base. A platform can decide that a market is too expensive to serve. If it raises the price beyond what customers will bear or stops offering the service altogether, the transaction disappears. The state then collects nothing from an activity that existed before the additional compliance burden was imposed.

THE TAX DEPARTMENT IS NO LONGER THE ONLY PART OF THE BUSINESS THAT NEEDS TO SEE THE TRANSACTION

For boards and finance teams, the practical response begins with understanding the transaction as a chain rather than as an entry in the company's accounts. For each material digital revenue stream, the business needs to know where the customer is, where the platform or merchant is established, where the payment is processed, who is legally making the supply and which entity is contractually responsible for collecting or remitting the relevant tax.

That exercise should be carried out separately for each jurisdiction. Similar looking rules do not necessarily produce similar liabilities. Kenya's Significant Economic Presence regime, Tanzania's electronic services and deemed supplier VAT provisions, and Rwanda's registration and withholding arrangements each use different triggers. A regional business cannot safely assume that the treatment developed for one market can simply be carried across the border.

Contracts should be reviewed on the same basis. Where a marketplace or platform may become responsible for VAT on a transaction carried out by a third party, the agreement should address that liability expressly. It should identify who bears the cost, who is responsible for registration and collection, what information the platform is entitled to receive, and how the parties will respond to a tax authority's assessment.

The issue should also sit above the tax function. A business cannot identify its tax exposure if its finance, technology, commercial and legal teams each see only one part of the transaction. The tax authority is increasingly looking at the connections between those parts. Businesses operating at scale need to do the same.



WHO COLLECTS, NOT WHO PAYS

Step back from the rates and section numbers and the reforms reveal a broader change in the way governments are dealing with economic activity that does not present itself in a conventional form.

Traditional tax enforcement depends on being able to identify the taxpayer, locate the taxpayer and, if necessary, compel compliance. Cross border digital commerce weakens each of those steps. A foreign merchant can sell into a market without an office, a local bank account or employees. The economic activity is local to the consumer, while the business conducting it may be somewhere else entirely.

The response emerging across East Africa is to move the obligation towards the participant that remains visible. Tanzania reaches the platform. Kenya has reached both the digital business and the payment processor. Rwanda has placed part of the collection burden on financial institutions. The state has not necessarily become better at finding the foreign merchant. It has become better at finding someone else in the transaction who cannot easily disappear.

That matters beyond tax. Once a platform becomes a reliable point through which a government can enforce a revenue obligation, it becomes an attractive point of control for other regulatory objectives.

The same infrastructure can provide visibility into transactions, users and commercial relationships relevant to consumer protection, competition, data and content. Tax is simply where the logic is becoming most visible first.

For East Africa, however, there is a second lesson. The question of who can collect may be getting clearer within each country, while the question of who should collect remains unresolved between them. A regional digital economy cannot be governed efficiently if one transaction is treated as three separate taxable events without a mechanism for reconciling the claims.

The finance acts will continue to change. Rates will move, thresholds will be revised and new categories of digital activity will be brought into the tax net. The more durable issue is the one underneath those changes: when the business that owes the tax has no address a government can readily reach, who does the government reach instead, and what happens when its neighbours make the same decision about the same transaction?

For businesses operating across East Africa, that is no longer a theoretical question. It is becoming part of the cost of doing business.



WHO ENFORCES, NOT WHO REGULATES

Picture a dominant telecommunications operator that owns the patent on a piece of network technology every rival needs in order to connect its customers to the network. For years, its confidence rested on one simple fact: Tanzania's Fair Competition Commission, the country's antitrust regulator, had never once ruled on how intellectual property interacts with market power, because nobody had asked it to. We flagged that gap in our June 2025 analysis, when the question of whether competition law could reach conduct built on intellectual property rights remained genuinely open. On 14 August 2026, the Commission closed it. The Fair Competition (Abuse of Dominant Position) Regulations, 2026, published as Government Notice No. 244, make clear that owning a patent, trademark or exclusive licence no longer puts a business beyond the reach of antitrust law. If anything, it puts that business closer to the centre of it than most Tanzanian companies have prepared for.

THE NEW RULES OF DOMINANCE

The regulations catch a business once it holds more than 40 percent of a relevant market, whether it reaches that share alone or together with others. The Commission will not stop at the number. It will also ask whether customers have any real alternative to the firm, whether the firm can set its own prices without losing business to competi-

tors, how hard it is for a new entrant to break in, and whether the firm controls an input or facility that its rivals cannot do without.

Once a firm is found dominant, Regulation 15 sets out, in unusually specific terms for Tanzanian law, what it may not do with the intellectual property that dominance rests on. It may not refuse, without good reason, to license that property if the refusal shuts a competitor out of a related market, and it may not charge royalties so far above the property's real value that the price itself becomes the barrier. It may not offer better terms to some licensees than others without a legitimate commercial reason, and it may not force a licensee to accept extra rights or conditions it neither asked for nor needs. Nor may it build up large, overlapping patent portfolios mainly to keep rivals out rather than to protect anything it actually invented, or use litigation, or the threat of it, mainly to wear down or delay a competitor rather than to defend a genuine legal right.

Behind all of this sits one further requirement, and it matters more than any single prohibition. The Commission must still show that the conduct actually harmed competition, or was likely to. A dominant firm that can explain its pricing, its licensing terms and its patent filings in plain commercial language, and back that explanation with a paper trail showing why it did what it did, has a defence. One that cannot will not.



A LAW WITH NO CASES BEHIND IT YET

Here is the detail that will decide how this regulation actually plays out in practice. The Commission has never brought a single enforcement case involving intellectual property. It has no track record of applying these ideas, no precedent of its own to draw on, and realistically, limited capacity to open broad investigations into the patent holdings of every dominant firm in the country. That absence does not mean Regulation 15 will sit unused. It means the people who put it to work first will not be regulators. They will be competitors.

Picture a distributor locked into unfavourable supply terms by a dominant supplier that also owns the underlying technology. Before these regulations existed, the distributor's only real lever was to negotiate harder or walk away. Now it has a second option: raise the possibility of a complaint to the Commission under Regulation 15, and use that possibility as pressure in the same negotiation. It does not need to actually file the complaint, and the Commission does not need to open an investigation, for the threat alone to change what the dominant firm is willing to concede. The same logic applies to a licensee resisting a royalty increase, a rival challenging a refusal to license, or a competitor accused of infringement who responds by arguing that the patent portfolio behind the claim is itself an abuse of dominance. Regulation 15 will be raised far more often across a negotiating table than inside a Commission hearing room.

THE NEW PRICE OF OWNING A PATENT

That shift changes what intellectual property actually is for a dominant firm, from a straightforward asset into a source of legal risk that has to be managed like any other liability. It shows up first in mergers and acquisitions. A due diligence team can no longer treat a target's patent count as a simple measure of strength. If that portfolio is dense with overlapping, defensively filed patents that nobody can explain in engineering terms, terms a court or the Commission would actually accept, the buyer may be acquiring a live antitrust problem along with the patents, one that could later force it into a licence it never agreed to.

It shows up next in how licensing contracts get written. Standard royalty rates, tiered pricing and exclusive supply terms now need a business rationale that can be written down and defended, not simply a rate the firm has always charged. And it shows up in how a dominant firm chooses to enforce its own rights. A patent infringement claim or an administrative complaint filed mainly to slow down a new entrant, rather than to stop a genuine infringement, is no longer a purely defensive move. Under Regulation 15, it is also an invitation for the Commission, or the rival being sued, to argue that the lawsuit itself is the abuse.

BUILDING THE RECORD BEFORE ANYONE ASKS FOR IT

None of this is complicated to get ahead of, but it does mean treating competition compliance as part of how a business manages its intellectual property, not as a separate legal question to deal with later. Boards should ask now, in plain terms, whether the business crosses 40 percent of any market it operates in, and whether its existing licensing terms could be read as excessive or discriminatory if a competitor decided to test them. Research and development teams should get into the habit of recording, at the time each patent is filed, what problem it solves and why. If a portfolio is ever challenged as an attempt to block rivals rather than protect real innovation, the explanation will already exist rather than having to be reconstructed under pressure, months or years later, once memories and documents have both gone stale.

Legal teams should build a simple check into how they decide whether to sue a competitor: is the claim strong enough to stand on its own, independent of any effect it has on that competitor's ability to compete. Deal teams, for their part, should fold a competition review into how they value intellectual property in any acquisition, rather than treating it as a line item to revisit once the deal is already substantially agreed.

WHAT OWNERSHIP MEANS NOW

Tanzania's regulations do not sit in isolation. Across East Africa, the same pattern is emerging: regulators are writing increasingly precise rules for how dominant firms may use the intellectual property that got them there, even before those regulators have built up the institutional experience to enforce those rules directly. The result is an unusual kind of regulation, detailed on paper and largely untested in practice, that nonetheless changes behaviour immediately, because the businesses it targets have to assume it will eventually be tested and act as though that day has already arrived.

That is worth sitting with, because it inverts something most companies assume about regulatory risk. The usual expectation is that a new rule starts to matter once a regulator begins enforcing it. Here, the rule matters before that, precisely because the regulator has not enforced it yet. Every rival, every licensee and every distributor now has a reason to understand Regulation 15 better than the Commission itself does, because they, not the Commission, are the ones who will use it first. A dominant company's real audience for this regulation was never really the Fair Competition Commission. It is everyone that company already does business with.





MWEBESA LAW GROUP

DAR ES SALAAM (HQ)

House No. 113, Plot No. 948,
Chole Road, Masaki
P. O. Box 23077
Dar es salaam, Tanzania

ZANZIBAR BRANCH

Block 024, Plot No 55
Mbweni Road, Mazizini, Unguja
Zanzibar, Tanzania

For more information:

Phone: +255 767 348 716 / +255 742 812 125
+255 716 955 304

Email: info@mwebesalaw.co.tz

www.mwebesalaw.co.tz



MWEBESA LAW GROUP