

THE MINING ACT

(No. 12 of 2016)

THE MINING (NATIONAL MINING CORPORATION)  
REGULATIONS, 2017

ARRANGEMENT OF REGULATIONS

- 1—Citation.
- 2—Interpretation.
- 3—Appointment to the Board.
- 4—Qualifications of members of the Board.
- 5—Vacancy in the Board.
- 6—Meetings of the Board.
- 7—Disclosure of interest.
- 8—Establishment of Committees.
- 9—Allowances for members of the Board.
- 10—Vacancy of office of the Chief Executive.
- 11—Removal of the Chief executive Officer.
- 12—Appointment of other Staff.
- 13—Funds of the Corporation.
- 14—Books of accounts and audit.
- 15—Application of Regulations to Corporation.
- 16—Reporting requirements.
- 17—The Common Seal of the Corporation.

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MINING ACT (No.

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IN EXERCISE of the powers conferred by sections 25 (2) and 27 of the Mining Act, 2016, the Cabinet Secretary makes the following Regulations—

1. These Regulations may be cited as the Mining (National Mining Corporation) Regulations, 2017. Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“Act” mean the Mining Act, 2016;

No. 12 of 2016.

“Board” means the Board of Directors of the National Mining Corporation;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to mining;

“Corporation” means the National Mining Corporation established under section 22(1) of the Act;

“financial year” means the period of twelve months ending on the thirtieth day of June in each year or as may be prescribed by legislation from time to time; and

“Ministry” means the Ministry for the time being responsible for matters relating to mining.

3. (1) Subject to the Act, the President shall appoint the chairman of the Board and the Cabinet Secretary, shall appoint the members under section 25(1)(e) of the Act.

Appointment to the Board.

(2) Any appointment under sub regulation (1) shall –

(a) have regard to the person’s integrity, knowledge and expertise in matters relevant to the functions of the Corporation; and

(b) be in accordance with the provisions of the Constitution.

4. (1) A person shall be qualified for appointment as a chairman or a member of the Board if that person—

(a) is a citizen of Kenya;

(b) holds a minimum of a bachelors degree from a university recognised in Kenya;

(c) has knowledge and experience of at least ten years in the case of the chairman or seven years in the case of a member appointed under regulation 3(1), in matters relating to any of the following –

(i) economics;

(ii) engineering;

(iii) law;

(iv) administration;

(v) finance;

(vi) commerce; and

(vii) earth sciences or geosciences;

- (d) meets the requirements of leadership and integrity as set out in Chapter Six of the Constitution;
- (2) A person shall not be appointed to the Board if the person –
  - (a) has been convicted of a criminal offence and imprisoned for a term exceeding six months;
  - (b) is a member of a governing body of a political party;
  - (c) has previously been removed from public office for contravention of the Constitution or any other written law;
  - (d) is an un-discharged bankrupt;
  - (e) violates the Constitution or any other written law.

Qualifications of members of the Board.

5. (1) Where the position of a chairman is vacant, the Cabinet Secretary shall notify the President, and the President shall take action to fill that vacancy.

Vacancy in the Board.

(2) Where the position of a member is vacant, the Chairman shall notify the Cabinet Secretary and the Cabinet Secretary shall take action to fill that vacancy.

6. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) A meeting of a Board shall be held on such date and at place as the Board shall decide.

(3) Unless three-quarters of the total membership of a Board otherwise agrees, at least fourteen days' written notice of every meeting of a Board shall be given to every member of the Board.

(4) The Chairman shall, at the request in writing of not less than one-third of the members, convene an extraordinary meeting within seven days of receipt of the request at a place and time to be determined by the Chairman.

(5) The quorum for the conduct of business at a meeting of the Board shall be a simple majority of the total number of members of the Board.

(6) The Chairman of the Board shall preside at all meetings of the Board but in the absence of the Chairman the members present shall appoint one of their members to preside at the meeting.

(7) Unless a unanimous decision is reached, a decision on any matter before a Board shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairman or the person presiding shall have a casting vote.

(8) The Board may co-opt a person to attend a meeting but that person shall not vote on any matter.

(9) Notwithstanding any provision in this regulation, the Board shall regulate its own procedures and the procedures of any Committee.

Meetings of the Board.

(10) The Secretary shall record the minutes of all meetings of the Board and the minutes of each meeting shall be confirmed by the Board and signed by the Chairman or the member presiding at the meeting.

(11) Any member of the Board present at a meeting of the Board or a Committee, shall have the right to require his or her opinion to be recorded in the minutes if the Board or Committee passes a resolution or takes any decision which in the opinion of that member is contrary to his or her opinion.

7. (1) A member of the Board who has an interest in a matter for consideration by the Board shall —

Disclosure of interest.

(a) disclose the nature of that interest and the disclosure shall form part of the record of the consideration of the matter, and

(b) not participate in the deliberations in respect of that matter.

(2) A member ceases to be a member of the Board if that member has an interest in a matter before the Board, and

(a) fails to disclose that interest; and

(b) participates in the deliberations of the Board in respect of the matter.

8. (1) The Board may establish Committees consisting of members of the Board or of members and non-members of the Board to perform a function or deal with such matters as the Board may direct.

Establishment of Committees.

(2) A Committee of the Board shall be chaired by a member of the Board.

9. Members of the Board and members of a Committee of the Board shall be paid allowances as approved by the Cabinet secretary on the advice of the Salaries and Remuneration Commission.

Allowances for members of the Board.

10. The office of the Chief Executive Officer shall become vacant if the holder—

Vacancy of office of the Chief Executive.

(a) dies; or

(b) become incapacitated on medical grounds; or

(c) resigns by a written notice of three months addressed to the Board; or

(d) upon expiry of his or her term; or

(e) ceases to hold office under regulation 11.

11. (1) The Board may terminate a person's appointment as the Chief Executive Officer if that person —

Removal of the Chief Executive Officer.

- (a) violates the Constitution or any other written legislation;
- (b) is incompetent;
- (c) is of unsound mind;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months;
- (e) contravenes the terms and conditions of service; or
- (f) is adjudged bankrupt.

(2) Where the question of the removal of the Chief Executive Officer under sub regulation (1) arises, the Board shall—

- (a) inform the Chief Executive Officer in writing of the reasons for the intended removal; and
- (b) provide the Chief Executive Officer with the opportunity to be heard in accordance with the principles of fair administrative action as set out in Article 47 of the Constitution.

12. (1) The Chief Executive Officer with the approval of the Board, shall recruit such employees as may be necessary for the proper and effective performance of the functions of the Corporation.

Appointment of other staff.

(2) The appointment of the employees of the Corporation shall be on such terms and conditions of service as the Board shall determine taking into account the need for ethnic, regional balance and gender parity.

(3) A public officer may be transferred or seconded to the Corporation or may otherwise give assistance to it.

(4) The Chief Executive Officer may, with the approval of the Board engage the services of advisers and consultants to assist the Corporation to discharge its functions.

13. (1) The funds of the Corporation may include—

Funds of the Corporation.

- (a) moneys as may, from time to time, be appropriated by Parliament for that purpose;
- (b) moneys that accrue to the Corporation in the performance of its functions; and
- (c) grants, donations or gifts to the Corporation for its activities under the Act or these Regulations;

(2) The expenses of the Corporation shall be paid from moneys provided for the Corporation under sub-regulation (1).

(3) The Corporation shall submit to the Cabinet Secretary, not later than the end of February in every year, estimates of the Corporation's revenue and expenditure for the following financial year.

(4) The annual estimate shall make provision for all the estimated expenditure of the Corporation for the next financial year including—

- (a) the payment of salaries, allowances and other charges in respect of the employees of the Corporation and the Board; and

(b) any other expenditures that may be necessary for the proper and effective performance of the functions of the Corporation.

(5) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval with the concurrence of the National Treasury.

(6) The financial year of the Authority shall be the period of twelve months ending on the 30th June in each year or any other day prescribed by national legislation.

14. (1) The Corporation shall keep or cause to be kept books of accounts and proper records in the form approved by the Auditor - General or as required under any written law in Kenya.

Books of account and audit.

(2) Without limiting the scope of sub-regulation (1), the Corporation shall ensure that all income and liabilities, expenditure, assets, undertakings, contracts, funds, activities, transactions and any other business of the Corporation are properly recorded and kept.

(3) The Corporation shall ensure that all moneys received are properly brought to account, all payments out of its funds are correctly made and properly authorized, and that adequate control is maintained over its assets and liabilities under these Regulations or as required by any other written law.

(4) The Corporation shall, within a period of three months after the end of each financial year, prepare annual financial statements in accordance with the provisions of the Public Finance Management Act, 2012 and submit them to the Controller of Budget and the Auditor - General or to an auditor appointed under sub-regulation (6) for audit.

No. 18 of 2012

(5) The Corporation shall also prepare the financial statements in a form that complies with the relevant accounting standards as prescribed and published by the Public Sector Accounting Standards Board from time to time.

(6) The auditor referred to in sub-regulation (4) shall be appointed by the Corporation with the written approval of the Auditor - General.

(7) The appointment of an Auditor shall not be terminated by the Corporation without the prior written approval of the Auditor - General.

(8) The fee for any auditor who is not a public officer shall be determined and paid by the Corporation.

(9) The Auditor - General may give general or special directions to an auditor appointed under sub-regulation (6), and the auditor shall comply with such directions.

(10) An auditor appointed under sub-regulation (6) shall report directly to the Auditor - General on any matter relating to the directions given under sub-regulation (9).

(11) Nothing in these Regulations shall be construed as prohibiting the Auditor - General from carrying out an inspection of the Corporation's accounts or records whenever it appears to him or her to be desirable and such inspections shall be carried out at least once every six months.

15. The Act, any Regulations and guidelines made under the Act shall apply to the National Mineral Corporation on the same basis as any other applicant or holder of a mineral right.

Application of Regulations to Corporation.

16. (1) Within a period of six months after the end of the financial year, the Auditor - General shall report on the audit of the accounts of the Corporation to the Cabinet Secretary and in the case of the auditor appointed under sub-regulation 14 (6), the auditor shall submit the report to the Auditor General.

Reporting requirements.

(2) The Cabinet Secretary within one month of receiving the report under sub-regulation (1), shall submit the report to the National Assembly.

(3) Notwithstanding anything in these Regulations, the Auditor - General may submit to the Cabinet Secretary a special report on any matter.

(4) The Corporation shall –

(a) within three months after end of the financial year, submit an annual report to the Cabinet Secretary covering all the activities and operations of the Corporation for the financial year to which the report relates; and

(b) submit to the Cabinet Secretary any other report which the Cabinet Secretary may from time to time request in writing.

(5) The annual report shall include the report of the Auditor General.

(6) The Cabinet Secretary shall, within one month after the receipt of the annual report, submit the report to the National Assembly together with any statement that the Cabinet Secretary may consider necessary.

17. (1) The common seal of the Corporation shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board or the Chief Executive Officer.

The Common Seal of the Corporation.

(2) The affixing of the common seal of the Corporation shall be authenticated by the signature of the Chairman and the Chief Executive Officer.

(3) Any document not required to be made under seal may be authenticated by the signature of the Chairman or the Chief Executive Officer provided that the Corporation in the absence of the Chairman or the Chief Executive nominates one member to authenticate the seal on behalf of the Chairman or the Chief Executive Officer.

Dated the 19th June, 2017.

DAN KAZUNGU,  
Cabinet Secretary, Ministry of Mining.

