

LEGAL NOTICE NO. 151

THE MINING ACT

(No. 12 of 2016)

THE MINING (MINE SUPPORT SERVICES) REGULATIONS, 2017

ARRANGEMENT OF REGULATIONS

- 1—Citation.
- 2—Interpretation.
- 3—Application of these Regulations.
- 4—Application for a licence.
- 5—Processing of an application.
- 6—Issue of licence.
- 7—Term of a licence.
- 8—Assignment or transfer of licence.
- 9—Application for renewal of a licence.
- 10—Suspension and revocation of a licence.
- 11—Records and reports.
- 12—Contract for a mine support service.
- 13—Environmental obligations of mine support service providers.
- 14—Offences and penalties.

SCHEDULE

----- THE
MINING ACT (No.
12 of 2016)

THE MINING (MINE SUPPORT SERVICES) REGULATIONS, 2017

IN EXERCISE of the powers conferred by section 170 (2) of the Mining Act, 2016, the Cabinet Secretary for Mining makes the following Regulations—

1. These Regulations may be cited as the Mining (Mine Support Services) Regulations, 2017. Citation.
2. In these Regulations, unless the context otherwise requires— Interpretation.
“Act” means the Mining Act, 2016; No. 12 of 2016
“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to mining;
“Cadastre” means an online repository and information management tool established for the purposes of regulating the issuance of licences and permits of mineral rights and dealings in minerals;

“licence” means a mine support services licence granted under these Regulations;

“licensee” means a holder of a mine support services licence; and

“mine support services contract” means a contract between a holder and a mine support services provider for the provision of a mine support service.

3. These Regulations shall apply to any person who intends to provide a mine support service for any period of more than six months and for a contract sum of a value of more than fifty million shillings in aggregate.

Application of these Regulations.

4. (1) A person may on application to the Cabinet Secretary be granted a licence to provide mine support services in accordance with these Regulations.

Application for a licence.

(2) An application shall be made online by completing Form MS1 in the Schedule.

(3) An application shall be registered by the Cadastre only when complete and upon payment of the prescribed fee.

5. (1) The Cabinet Secretary shall approve or reject an application for a licence within thirty days from the date of the submission of a complete application.

Processing of an application.

(2) Where the application is approved, the Cabinet Secretary shall serve a notice requiring the applicant to accept or reject the grant of the licence within fourteen days from the date of notification of the approval.

(3) Where the applicant fails to notify the Cabinet Secretary of the acceptance of the grant of the licence, the approval of the application shall lapse immediately after the period specified under sub-regulation (2).

6. (1) Where an applicant accepts the grant of licence under sub regulation (5), the Cabinet Secretary shall issue a licence using Form MS2 set out in the Schedule.

Issue of licence.

(2) The licence shall specify –

- (a) the name, nationality and address of the holder;
- (b) the mine support service which the holder intends to provide;
- (c) the term of the licence; and
- (d) plans for the procurement of local goods and services; and
- (e) the approved plan for the employment and training of Kenyans.

7. A licence shall be valid for a period not exceeding three years.

Term of a licence.

8. A licence may be assigned with the consent of the Cabinet Secretary.

Assignment or transfer of licence.

9. (1) A licensee may apply to the Cabinet Secretary for the renewal of the licence.

Application for renewal of licence.

(2) There shall be no limit to the number of renewals that may be granted except that any renewal is subject to compliance with the terms and conditions of the initial licence and these Regulations.

(3) The licensee shall make an application for renewal of a licence by –

- (a) completing Form MS3 set out in the Schedule not later than thirty days before the expiry of the licence;
- (b) submitting a report covering all services or activities carried out under the initial term of the licence; and
- (c) paying the prescribed fee.

(4) The Cabinet Secretary shall within thirty days from the date of receipt of a complete application, grant a renewal of the licence.

(5) Where the licensee has made an application for a renewal of the licence and the renewal is not granted by the time of the expiry of the licence, the licence shall continue in force until the application is determined.

(6) The term for renewal of a licence shall not exceed three years.

10. (1) The Cabinet Secretary may suspend or revoke a licence if the licensee—

Suspension and revocation of a licence.

- (a) fails to make any payment under the terms of the licence to the Ministry or any Government agency as required by law on the due date;
- (b) becomes insolvent or bankrupt;
- (c) makes a statement or submits any report to the Cabinet Secretary or to the Ministry in connection with the licence which the holder knows or ought to have known to be false; or
- (d) fails to comply with the terms and conditions of the licence.

(2) The Cabinet Secretary shall before suspending or revoking a licence, give notice to the licensee and shall in the notice, require the licensee to remedy a breach of the terms and conditions of the licence within thirty days, of the notice and where the breach cannot be remedied, to show cause to the reasonable satisfaction of the Cabinet Secretary why the licence should not be suspended or revoked.

(3) Upon suspension or revocation of a licence under this Regulation, the rights of the licensee shall cease but without prejudice to the liabilities or obligations already incurred by the licensee.

11. (1) A licensee shall—

Records and reports.

- (a) inform the Ministry of any changes of its registered address; and
- (b) submit to the Ministry a quarterly report on its activities or operations under the licence.

(2) The report under sub regulation (1)(b) shall be submitted not later than thirty days of the month following the end of each quarter in the format set out in Form MS4 in the Schedule.

(3) The report shall contain a signed declaration by the Chief Executive Officer or an authorised representative of the licensee that the particulars contained in the report are accurate and complete.

(4) The Cabinet Secretary may give notice to a licensee to provide further information on any matter related to an earlier report, or on any other matter which the Cabinet Secretary may consider necessary for the purpose of these Regulations.

12. (1) The licensee shall submit to the Cabinet Secretary a copy of any mine support services contract or agreement entered into with any holder of a mineral right.

Contract for a mine support service.

(2) Any agreement or contract that is submitted under sub regulation (1) shall contain the following –

- (a) the parties to the agreement or contract;
- (b) the type of mine support service that is the subject of the contract;
- (c) duration of the contract;
- (d) the value of the contract; and
- (e) number of employees including the number of expatriates, if any.

13. A licensee shall comply with the conditions and obligations of any licences or authorizations issued under the Environmental Coordination and Management Act that are issued to the holder of a mineral right where the licensee is operating.

Environmental obligations of mine support services providers. No. 8 of 1999 Offences and penalties.

14. Any person who engages in any mine support service without a licence or contravenes a provision of these Regulations, commits an offence and is liable on conviction to fine or imprisonment as provided in the Act.

SCHEDULE

Form MS1

r(4)(2)

[Application for a Mine Support Services Licence]

1. Applicant's identity and contact information

Full name: _____

Physical Address _____

Address: _____

Town/City: _____ County: _____

Postal Address

Address: _____

Town/City: _____ County: _____

Other required information:

Phone number: _____

Mobile: _____

Email address: _____

2. Type of Mine Support Service

Name the type of mine support services for which a licence is required (refer to the attached List):

| <i>Type of Service</i> | <i>Check box if applicable</i> |
|---|--------------------------------|
| Drilling and/or blasting | |
| Mineral exploration for holders of mineral rights | |
| Mineral Assaying | |
| Contract mining | |
| Others (specify) | |

Licence term applied for: *(Please indicate appropriate option)*

- 1 year
- 2 years
- 3 years
- Others (specify)

3. Attachments (tick each item attesting that the required document is attached to this application)

- duplicate copy of receipt of payment of application fee;
- a certified copy of the applicant company's certificate of incorporation and certified copy of its memorandum and articles of association;
- "Director Information", a list of the full names and nationalities of all the applicant company's directors;
- "Profile and History", in the case of an application for contract mining services, a description of the applicant's profile and history of contract mining services in Kenya or elsewhere [mandatory for applicants for contract mining services];
- "Technical and Financial Qualifications", a statement giving particulars of the technical and financial resources available to the applicant;
- Tax compliance certificate

Declaration

If any information provided in this form is found to be false, the application will be rejected or terminated and if discovered after the grant and the person whose signature appears below shall be guilty of an offence and subject to penalty as provided in the Act.

Form MS2

r(6)(1)

[Mine Service Support Licence]

Mine Support Service Licence Registration No. MSL _____

Term of Licence: _____ years (*not to exceed 3 years*)

Term commences on: day _____, month _____, year _____

Term ends on: day _____, month _____, year _____

Provided all conditions under the Act and these Regulations have been met, the term of this licence may be renewed.

1. Subject to the Act, and these Regulations,

Name : _____

(Hereinafter referred to as the "licensee") whose registered office in Kenya is at:

Address: _____

City : _____ Postal Address: _____

County : _____

is by this licence granted the right to carry out mine support services as specified in Annex 1 of this licence.

2. Commence activities within thirty (30) days from the date the licence is granted;

Annex 1: Approved programme

DATED THIS _____ DAY OF _____ 2 _____

Cabinet Secretary (*name*)

(*signature*)

In the presence of:

Director of Mines (*name*) (*signature*)

(dated seal here)

Form MS3

r(9(3)(a))

[Application for Renewal of a Mine Support Services Licence]

1. Applicant's identity and contact information

Full name: _____

Physical Address _____

Address: _____

City: _____ County: _____

Postal Address _____

Address: _____

City: _____ County: _____

Other required information:

Phone number: _____

Mobile: _____

Email address: _____

1. Number of years of the renewal being applied for (not to exceed three years each)
(Please indicate appropriate option):

- First renewal:
- 1 year
- 2 years
- 3 years
- Others (specify)

2. Declaration

If any information provided in this form is found to be false, the application will be rejected and the person whose signature appears below shall be guilty of an offence and subject to a penalty in accordance with the Act.

I am the holder of the mine support service licence (or in the case of a company the holder's authorised representative) and by this application request that a renewal be granted for the mine support service identified herein. By submitting this application, I declare that the following statements are true: --

1. All reports required to be submitted in accordance with the terms and conditions pertaining to the mine support licence during the initial term have been submitted and submission receipts have been obtained.
2. All fees, charges and taxes required under the licence have been paid.
3. All environmental obligations if required under any law applicable to the licence have been met.
4. All environmental authorisations, if required under any applicable law for the renewal have been obtained.
5. All activities or services during the initial term of the licence have been carried out in accordance with the approved proposals.
6. At the time of applying for this renewal, no law, regulations or guidelines pertaining to mine support services have been breached.

Form MS4

r(11(2))

[Mine Support Services Licence Quarterly Report]

Mine Support Service Licence Registration Code Number: MS_____

Year: _____

1. CONTACT INFORMATION OF THE LICENSEE

Name of licensee: _____

Address: _____

Town/City : _____ County: _____

Postal Code: _____

County : _____

Phone number: _____

Mobile: _____

Email address: _____

2. Declaration

If any information provided in this form is found to be false, the application shall be rejected and the person shall be guilty of an offence and subject to penalty in accordance with the Act.

I hereby declare that the Mine Support Service Licence Quarterly Report attached to this form was prepared under my supervision. The information as provided above and in the attached report is truthful and accurate in all its details.

Date: _____

Name: _____

Position: _____ Email: _____

Telephone: _____ Mobile Number: _____

Address: _____

Dated the 19th June, 2017.

DAN KAZUNGU,
Cabinet Secretary, Ministry of Mining
