

THE MINING ACT

(No. 12 of 2016)

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THE MINING ACT

(No. 12 of 2016)

IN EXERCISE of the powers conferred by section 119(3) of the Mining Act, 2016, the Cabinet Secretary makes the following Regulations:—

THE MINING (REPORTING OF MINING AND MINERAL RELATED ACTIVITIES) REGULATIONS, 2017

1. These Regulations may be cited as the Mining (Reporting of Mineral Related Activities) Regulations, 2017. Citation.
2. In these Regulations, unless the context otherwise requires— Interpretation.
 - “Act” means the Mining Act, 2016; No. 12 of 2016.
 - “beneficial owner” means any person who, directly or indirectly, ultimately owns, exercises control over or has a substantial economic interest in an entity that holds a mining licence, or receives substantial economic benefit from such entity and includes a company or person that holds a mineral right or any operations associated with a mining licence;

“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 by the Ministry for the purposes of regulating the issuance of licences and permits of mineral rights and dealings in minerals;

“community” has the meaning as assigned to it in the Act;

“Corporation” means the National Mining Corporation established in section 22 of Act;

“County Government” means the County Government provided for under Article 176 of the Constitution of Kenya;

“dealer’s licence” means a mineral dealer’s licence or diamond dealer’s licence issued under the Act;

“dealer’s permit” means a mineral dealer’s permit issued under the Act;

“mineral related activities” means any activity involving the reconnaissance and prospecting of minerals or dealings in minerals under the Act or any regulations made thereunder;

“mining related activities” means any activity associated with mining operations;

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

“payment” means an amount paid, whether in money or in kind for any mining or mineral related activities, where the payment is of the following categories—

- (a) corporate tax or net profit tax of a holder, excluding taxes levied on consumption such as value added taxes and personal income taxes;
- (b) royalties;
- (c) dividends paid to the state as a shareholder or holder of a free-carried interest pursuant to the Act; or
- (d) application fees, licence fees, permit fees, ground rent, cess, levies, penalties or other charges as may be prescribed by the Cabinet Secretary or under any other written law.

3. These Regulations shall apply to holders of —

- (a) mineral rights;
- (b) mineral dealers’ licences; and
- (c) mineral dealer’s permits.

Application of
Regulations.

4. (1) Every holder, including the Corporation shall, not later than thirty days after the end of every quarter, submit to the Cabinet Secretary a report on —

Obligation to
submit reports.

- (a) payments disaggregated by mineral type made to the National Government, a county government or the community;
- (b) sales volumes disaggregated by the type of mineral; and
- (c) gross revenue from the sale of minerals.

(2) A report under sub regulation (1) shall be signed by the director or authorised officer of the holder.

(3) A holder including the Corporation shall submit to the Cabinet Secretary, not later than the first day of March every year, a report on—

- (a) payments disaggregated by mineral type, made to the National Government, a county government, the community or any government agency;
- (b) quantity of ore extracted and processed and the disaggregated production volumes of all minerals;
- (c) the sales volumes disaggregated for all dealings in minerals;
- (d) the gross revenue from the sale of minerals disaggregated by type of mineral;
- (e) the total number of persons directly employed by the holder including expatriates if any;
- (f) the identities of beneficial owners for privately owned companies or entities.

(4) A report under sub regulation (3) shall be signed by the director or authorised officer of the holder.

(5) The Cabinet Secretary may, in writing require a holder to provide within the period specified in the request, any information or order an audit of the records of payments of the holder for the year to which the report relates.

(6) The Cabinet Secretary may appoint an auditor to verify all disclosed company or individual payments and government revenues and to highlight any discrepancies in the information submitted by the holder under this regulation.

(7) Every report submitted by the auditor, shall within thirty days of receipt by the Cabinet Secretary, be published on the website of the Ministry.

(8) The Cabinet Secretary shall implement the recommendations made by the auditor.

5. (1) The Cabinet Secretary shall prepare an annual report on—

- (a) all payments made to the National Government or any of its agencies, a county government and community by every holder of—

Obligation to prepare reports by the Cabinet Secretary.

- (i) a mineral right; and
 - (ii) a mineral dealer's licence or mineral dealer's permit.
- (b) the quantity of ore extracted, processed and production volumes of all minerals;
 - (c) the sales volumes of all dealings in minerals; and
 - (d) the gross revenue from the sale of minerals.

(2) The report in sub regulation (1) shall include the following—

- (a) the total amount paid to the National Government, a county government and the community;
- (b) payment disaggregated by type of mineral right and all categories of payment;
- (c) production volumes including corresponding mineral concentrations and estimated market rates disaggregated by type of mineral right and mineral;
- (d) gross revenue from the sale of all minerals by holders of mining licences and mining permits disaggregated by type of mineral;
- (e) gross revenue and sales volume of dealings in minerals disaggregated by type of licence, permit and mineral;
- (f) number of each type of mineral right applied for during year, together with number granted and number rejected;
- (g) total land area or blocks for each type of mineral right held at the end of the reporting year;
- (h) total number of each type of mineral right in force at end of the year;
- (i) number of mineral agreements entered into during the year;
- (j) number of mines that commenced production during the year;
- (k) number of operating mines;
- (l) total number of community agreements in force at end of the year;
- (m) identities of beneficial owners of mineral rights; and
- (n) any other information that the Cabinet Secretary may deem necessary.

(3) Where payments in kind are made to the National Government, a county government or community, the report shall state the nature and value of such payments as well as supporting notes to explain how the value has been determined.

6. (1) The Cabinet Secretary shall, not later than ninety days after the end of the calendar year, publish the report required under regulation 5 on the website of the Ministry.

Publication of reports.

(2) A quarterly report, prepared under regulation 4(1), shall be published on the website of the Ministry not later than sixty days after the end of every quarter.

7. (1) All mineral agreements shall be published by the Cabinet Secretary on the website of the Ministry within thirty days after ratification by Parliament.

Obligation to publish mineral agreements and mineral rights.

(2) The Cabinet Secretary shall ensure that all mineral rights that are granted under the Act, are made available to the public on the Cadastre within thirty days from the date of grant.

(3) Without limiting the scope of sub- regulation (2), all mineral rights that were granted before the commencement of the Act, and are still valid after coming into force of the Act shall be made available to the public on the Cadastre within six months after the coming into force of these Regulations.

Dated the 19th June, 2017.

DAN KAZUNGU,
Cabinet Secretary, Ministry of Mining.