

EXPLANATORY MEMORANDUM
EXPLANATORY MEMORANDUM TO THE
Mining (Dealings in Minerals) Regulations, 2017, No.....

PART I

Name of the Statutory Instrument: Mining (Dealings in Minerals) Regulations, 2017.

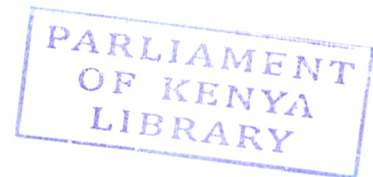
Name of the Parent Act: Mining Act, 2016.

Name of the Ministry: Ministry of Mining
Enacted Pursuant to: Sections 170(2), 223(1) and 223(2)(m) of the
Mining Act, 2016



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PART II

Purpose of the Statutory Instrument

The main purpose of these Regulations is to give effect to Sections 170(2), 223(1) and 223(2)(m) of the Mining Act, 2016, which requires the Cabinet Secretary to make regulations to provide for dealings in minerals for the purposes of this Act.

2. Legislative Context

Article 62(1) (f) of the Constitution classifies all minerals and mineral oils as defined by law under Public land. Article 62(3) implies that minerals among others shall vest in and be held by the National Government in trust for the people of Kenya.

Article 69(1)(a) and (h) of the Constitution states that the people must benefit from utilization of natural resources, of which Article 260 defines mineral resources as natural resources.

These Regulations are intended to operationalize the Mining Act, 2016 and to ensure that administration of dealings in minerals is done in a transparent, accountable and predictable manner.

3. Policy Background

The Mining and Mineral Policy is enshrined in Sessional Paper No. 07 of 2016 (unpublished). As provided in the Policy the Government recognizes the Mining sector has a potential of contributing significantly to the Country's economic development.

The Policy aimed ensuring that emerging issues in the sector are taken into account through appropriate legislation leading to the repeal of mineral dealings regulations under the now repealed Acts (306, 309 & 310).

The intent of the Policy is to promote Kenya as an emerging mining destination in the African continent and globally.

3.1 What is being done and why

The repealed Legislation did not comprehensively legislate dealings in minerals since minerals such as gold and diamond were under separate statutes making their administration rather cumbersome. The Mining Act 2016 has repealed these separate statutes and put all the dealings under the Act to ease licensing/permitting processes and regulation.

To facilitate monitoring of dealings and guide the licensing/permitting procedures, the Mining Act and these regulations have provided a categorization of licenses guided by grouping of related minerals.

The groups are Category one for precious and rare metals, Category two for base metals, Category three for gemstones except diamonds and category four for industrial and construction minerals. Dealings in diamonds will be taken care of in a separate regulation.

3.2 Consolidation

The Regulations seek to consolidate mineral dealings under The Mining Act (Cap. 306) and subsidiary legislation, the Trading in Unwrought Precious Metals Act, 309 Cap, the Diamond Industry Protection Act, Cap 310.

4.0 Consultation outcome

The Ministry of Mining conducted wide consultation and public participation on the regulations. The Cabinet Secretary published a notice on the 17th of July 2016 requesting all the stakeholders to provide their views and inputs on the regulations.

Various stakeholders from different regions were consulted as shown below

DATES		VENUE	STAKEHOLDERS'
1.	22 nd and 23 rd March 2016	Naivasha	Ministry Staff & other MDAs and constitutional bodies such as NLC, CRA, AG, KRA, DOSH, Ministry of Industry and Trade
2.	11 th and 13 th April 2016	Naivasha	The Ministry staff and other Inter-government agencies DOSH, KRA, AG, NLC, CRA, NEMA
3.	10 th and 11 th August 2016	Nairobi	The Ministry staff and other Inter-government agencies DOSH, NEMA, NLC, KRA, AG, CRA, KRA
4.	16 th and 17 th August 2016	Voi	Holders of mineral rights and dealers' rights from the Coastal Region and the community based organizations
5.	29 th and 30 th August 2016	Nairobi	Kenya Chamber of Mines
6.	31 st August and 1 st September 2016	Nairobi	(a) Civil Society Organizations (b) Think Thanks (c) Academia
7.	20 th and 23 rd September 2016	Kisumu	Industry players from Western, Nyanza, Rift Valley Regions and Community Based Organizations.
8.	26 th and 27 th October 2016	Mombasa	County Executives; Chief Officers and Chairpersons of county assemblies on Natural Resources from the Coastal, North Eastern and Eastern Regions
9.	2 nd and 3 rd November 2016	Nanyuki	Industry players from the Rift Valley, Central, Eastern and North Eastern regions

10.	9 th and 10 th November 2016	Kisumu	County Executives; Chief Officers and Chairpersons of county assemblies on Natural Resources from the Western, Nyanza and Rift Valley Regions
11.	25 th November 2016	Nairobi	Kenya Chamber of Mines/Industry
12.	27 th February, 2017	Nairobi	Kenya Chamber of Mines/Industry

The stakeholders gave their views on the regulation which have been consolidated into a matrix analyzing their issues and the actions that were taken by the Ministry to address their concerns.

5. Guidance

The Ministry upon publishing the Regulations and in the course of preparation of these regulations provided guidance and other forms of publicity to users, operators and all the ministry's clients by way of: letters, posting information on the ministry's website and through series of country-wide stakeholder sensitization forums.

6. Impact

6.1 The impact on Fundamental Rights and Freedoms

This regulation does not impact negatively on fundamental rights and freedoms of people in the minerals value chain.

6.2 The impact on the Private Sector

The Impact on private sector is as follows;

- 1) There is clarity in types of licenses/permits for various minerals.
- 2) Dealings in minerals has been expanded to include the previous grey area of mineral processing as a standalone operation.
- 3) Persons wishing to deal to deal in various categories of minerals will have to get multiple Licences entailing multiple obligations.

6.3 The impact on the public sector

- 1) The public sector will see increased collection of revenues from dealings licensing /permitting

- 2) The public sector will be able to tell that a dealer is appropriately licensed to deal in a particular group of mineral

6.4 An impact assessment

An impact assessment is not attached to this memorandum since no impact assessment has not been prepared for this statutory instrument

7. Monitoring and review

The ministry intends to monitor the effect of the operation of the regulation once it comes into force and shall from time to time as necessary review the regulation and propose and seek for amendments as appropriate.

8. Contact

The Cabinet Secretary, Ministry of Mining Tel: 0202723101 or email: cs@mining.go.ke can answer any queries regarding the statutory instrument.