

(Legislative Supplement No. 58)

LEGAL NOTICE NO. 148

THE MINING ACT

(No. 12 of 2016)

THE MINING (COMMUNITY DEVELOPMENT AGREEMENT)
REGULATIONS, 2017

ARRANGEMENT OF REGULATIONS

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SCHEDULES

THE MINING ACT

(No. 12 of 2016)

THE MINING (COMMUNITY DEVELOPMENT AGREEMENT)
REGULATIONS, 2017

IN EXERCISE of the powers conferred by section 109 (i) of the Mining Act, 2016, the Cabinet Secretary for Mining makes the following Regulations:—

1. These Regulations may be cited as the Mining (Community Development Agreement) Regulations, 2017.

Citation.

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

Interpretation.

“Act” means the Mining Act, 2016;

No. 12 of 2016

“Agreement” means the Community Development Agreement that is signed pursuant to the Act and these Regulations;

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

“Committee” means the Community Development Agreement Committee established under these Regulations;

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

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

“holder” means the holder of a mining licence granted under the Act or the holder of a mining lease or a special mining lease which was granted prior to the coming into force of the Act;

“mine development” means construction and other infrastructural development work carried out on a mining licence area prior to production;

“party” means the holder or community which is a party to a Community Development Agreement; and

“mining operations” has the meaning assigned to it in the Act.

3. The purpose of these Regulations is to ensure that—

Purpose.

(a) benefits of mining are shared between the holder and the community;

(b) mining is consistent with the continuing economic, social and cultural viability of the community;

(c) mining significantly contributes to the improved economic, social and cultural wellbeing of the community; and

(d) there is accountability and transparency in mining related community development.

4. These Regulations apply to a holder of a—

Application of the Regulations.

- (a) mining licence; or
- (b) lease or a special mining lease which is valid after coming into force of these Regulations.

5. (1) As part of the environmental social impact assessment carried out in accordance with the Environmental Management and Coordination Act, the holder shall identify one or more communities with which it proposes to enter into an Agreement.

Identification of a community.

(2) The holder shall, within thirty days of the grant of a mining licence, notify the community in writing of its intention to enter into an agreement and send a copy to the Cabinet Secretary.

(3) A community that has not been identified by the holder may give notice to the holder that it should be identified as a party to the Agreement.

(4) Where a community gives notice to a holder that it should be identified as a party to the Agreement and the holder is not in agreement, that community may submit a petition to the Cabinet Secretary.

(5) The Cabinet Secretary in consultation with the County Government and the National Environmental Management Authority shall notify the holder within ninety days from the receipt of the petition, whether the community should be identified as a party to the Agreement.

(6) A party that is aggrieved by the decision of the Cabinet Secretary may appeal to the Environment and Land Court within thirty days from the date of notification.

6. (1) Where a holder is required to enter into an agreement with more than one community, it shall enter into one Agreement that includes multiple communities.

Multiple communities and multiple community agreements.

(2) Notwithstanding sub regulation (1), where several communities are located in more than one county, the holder may have a separate Agreement with a community that is located in a different county.

(3) A community may enter into multiple Agreements where it is impacted by more than one mining operation under different holders or may enter into one Agreement that includes multiple holders operating in the community.

7. (1) There shall be established a Committee comprising of —
- (a) the Governor or a representative appointed by the Governor;
 - (b) the National Government representative in charge of administration at the County;
 - (c) the County Assembly representative of the electoral area within which the community is located;
 - (d) one representative of women elected by the community;

Community Development Agreement Committee.

- (e) one representative elected from among the village elders of the community;
 - (f) two representatives of the youth of either gender from the community;
 - (g) one representative elected by civil society organisations working in the area of extractives in the County;
 - (h) one representative of marginalised groups, ethnic and other minorities;
 - (i) one representative of persons with disability from the community;
 - (j) the Member of Parliament of the constituency of the community and
 - (k) three representatives of the holder.
- (2) The Committee members shall elect the Chairperson and Secretary from among the members.
- (3) The members under sub regulations (1)(d)(e)(f)(g)(h) and (i) shall serve for a period of three years and the term may be renewed once.
- (4) The Committee shall—
- (a) monitor and evaluate compliance with the terms of the Agreement;
 - (b) provide a platform for the community to debate whether the use of revenues provided by the holder to fund programmes under the Agreement conform to the development priorities of the community;
 - (c) facilitate continuous engagement and serve as the link between the community and the holder;
 - (d) settle all disputes that may arise between parties to the Agreement in respect of any matter in connection with or under the Agreement; and
 - (e) settle any other issue, matter, grievance or complaint that is not related to the Agreement that may be made by raised by the holder or the community.
- (5) Whenever it becomes necessary to resolve a dispute or complaint relating to the Agreement, the Committee shall meet at such times and place as the Chairperson may decide.
- (6) The quorum for a meeting shall be two-thirds majority of the members.
- (7) The Committee shall determine its own procedures for every meeting.
8. (1) The Agreement shall be prepared by the holder and the representatives of the community in accordance with these Regulations.

- (2) The Agreement shall—
- (a) be prepared in Kiswahili and English and where possible in the local language of the community; and
 - (b) have charts and schedules to reflect activities, timelines and other information.
- (3) The issues to be addressed in the Agreement may include—
- (a) the role of the County Government;
 - (b) educational scholarship, apprenticeship, technical training and employment opportunities for the people of the community;
 - (c) employment for members from the communities;
 - (d) financial or other forms of support for infrastructural development and maintenance including education, health, roads, water and power;
 - (e) assistance with the setting up of and support to small-scale and micro enterprises;
 - (f) special programmes that benefit women, youth and persons with disabilities;
 - (g) agricultural product marketing;
 - (h) protection of the environment and natural resources;
 - (i) support for cultural heritage and sports;
 - (j) protection of ecological systems;
 - (k) funding and control mechanisms to ensure funds are utilised as intended and accounting processes are transparent and audited; dispute resolution; and
 - (l) any other areas as may be agreed between the parties.
- (4) Any project that is executed under the Agreement shall complement but shall not replace or displace national or county government development plans, projects and services that have been provided or are to be provided.

9. The Agreement shall not include the following —

- (a) the imposition of any additional rent, fee, or tax for the benefit of the community that is not set out by law;
- (b) the provision of any vehicle to any individual or single family unit of the community other than a specialized purpose vehicle such as an ambulance, fire engine, water truck, or bus for the benefit of the entire community;
- (c) the provision of any monetary amount, service, good, or facility for the sole benefit of any group, an individual, clan or single family unit in the community, political party or other person; and

Content that shall not be included in the Agreement.

(d) any matter that is illegal under any written law.

10. (1) The holder and the community shall agree on the manner in which consultations under these Regulations shall be held. Consultations.

(2) The agreed consultations shall be in accordance with an agreed schedule which shall be published in a manner that is acceptable to the community or any other mode of publication mutually agreed upon by the parties.

(3) All consultations shall be conducted by the holder and the community with mutual respect and in good faith including but not limited to—

- (a) timely performance of consultations and other efforts to conclude the Agreement;
- (b) timely performance of obligations under the Agreement;
- (c) ongoing monitoring and evaluation of obligations under the Agreement and, where required, amending and updating the provisions in the best interests of the parties; and
- (d) assurance that the community is adequately consulted and represented in all deliberations without isolating any particular individuals, groups or persons.

(4) The holder shall provide the community with at least five written copies of the Agreement within a timeframe that may be agreed with the Committee.

(5) The community shall conduct consultations on the draft Agreement and provide comments to the holder within a timeframe that may be agreed with the holder.

(6) For the purposes of these Regulations, consultation –

- (a) means a process of discussion or dialogue involving the community and other interested parties at the village level and conducted in a location that is reasonably accessible to all members of the community and other parties for the purposes of coming to an understanding; and
- (b) may not necessarily require unanimity but shall be insufficient if held only with a few people or elders of the community.

(7) Where a community determines that it lacks the capacity to negotiate an Agreement, the holder shall assist the community to build that capacity including the provision of funds to the community to hire experts or consultants as are reasonable in the circumstances.

(8) Any fee or payment to the experts or consultants that may be recruited by the community to assist the community in the negotiation of the Agreement shall be agreed with the holder and shall be treated as deductions that the holder may be entitled to under the Income Tax Act.

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11. (1) Negotiation of the Agreement shall be conducted by the Committee. Negotiation of agreement.

- (2) The Committee—
- (a) shall, at all times act in trust on behalf of the community;
 - (b) shall develop an agreement negotiation schedule that will include the date, time and issues for each negotiation meeting; and
 - (c) may consult experts to assist in the negotiations.
- (3) The Secretary of the Committee shall take minutes of each meeting of the Committee.
- (4) If negotiations fail, the Committee may petition the Cabinet Secretary for resolution.
- (5) The Cabinet Secretary shall, within ninety days of receipt of the petition, determine the matter.
- (6) Any party that is aggrieved with the determination of the Cabinet Secretary may apply to the Environment and Land Court within thirty days of the decision of the Cabinet Secretary.
- (7) The Cabinet Secretary shall within thirty days from the date the Agreement is approved by the holder and the community, publish the Agreement at the website of the Ministry.
12. (1) The holder shall spend a minimum of at least one per cent of the gross revenue from the sale of minerals in every calendar year to finance the projects under the Agreement. Minimum expenditure commitments.
- (2) Any payment or money that is required to finance any activity or meet any expenditure requirements under the agreement shall be disbursed by the holder and shall be used solely for the activities or projects that have been agreed to by the parties to the Agreement.
- (3) The holder shall not make any direct payment to the Committee or any member of the community for any expenditures or expenses required under the Agreement.
13. Where any contribution or payments in kind are made by the holder as part of its obligations under the Agreement, the holder shall state the nature and value of such contributions or payments and provide supporting notes to explain how the value has been determined. Valuation of contributions in kind.
14. The Agreement shall be in force for the productive life of the mine and may be modified or amended by the parties from time to time. Duration of agreement.
15. The Agreement shall be reviewed at least every five years from the date of signing. Review of agreement.
16. (1) A holder shall, not later than sixty days at the end of the year, submit an annual report to the Cabinet Secretary and the County Government in accordance with the check list set out in the Schedule. Reporting requirements
- (2) The annual report shall include the expenditure of all projects carried out under the Agreement.

17. All reports relating to the Agreement and community development annual expenditure reports including all required attachments submitted as required by these Regulations shall also be made available to the public on the website of the Ministry and the County Government.

Transparency.

18. Where a mining licence is transferred to another holder in accordance with the Act, the transferee shall, in writing, to the Cabinet Secretary assume all rights and obligations of the transferor under any agreement relating to the mining licence or transitional mining right.

Transfer of rights and obligations.

19. The holder of a mining lease or special mining lease granted prior to the coming into force of these Regulations shall comply with these Regulations no later than eighteen months from the coming into force of these Regulations.

Compliance by holders of pre-existing mineral rights.

20. Where a holder of a mining lease or special mining lease has entered into or started some community development initiative, scheme or social development programme prior to the coming into force of these Regulations, the holder shall ensure that such a scheme, initiative, programme or agreement shall comply with the requirements of these Regulations within eighteen months after coming into force of these Regulations.

Pre-existing agreements.

21. (1) A Community Development Agreement shall come into force after the Agreement has been signed by both parties.

Effectiveness of Community Development Agreement.

(2) The Cabinet Secretary shall ensure that the Agreement in sub regulation (1) meets the requirements of the Act and these Regulations.

SCHEDULE

FORM CD1

(r16(1))

[Community Development Agreement Annual Report]

Regulation 17 of the Community Development Agreement Regulations, 2017

Name of the holder of the mining licence: _____

Date: _____

Period being reported:

Check list

Name or description of the community
Year that the Community Development Agreement with the community was originally approved
Year that the Community Development Agreement was last amended and such amendment was approved if any.
Description of the goals of the Community Development Agreement
Description of the community development objectives and how they are to be met;

Community Development Agreement activities, milestones and results for the period being reported;
Development programme plan activities, milestones including timelines for performance, expenditures and results for the period being reported;
Description of community related challenges encountered, how these challenges are or may affect the project, and how the challenges are or will be addressed;
Description of environmental and social impacts of Community Development Agreement activities;
Special programmes that benefit youth, women, marginalised groups and persons with disabilities

(Note: when any attestation provided in this form is found to be false, the person whose signature appears below shall be guilty of an offence and subject to penalty.)

I hereby attest that the Community Development Agreement Annual Report attached to this form was prepared under my supervision. The information as provided above and in the attached report is truthful and substantially accurate in all its details.

Date: _____

Name: _____

Position: _____

Signature: _____

Email: _____

Telephone: _____

Address: _____

Attestation

I hereby attest that the Community Development Annual Expenditure Report attached to this form was prepared under my supervision. The information as provided above and in the attached report is truthful and substantially accurate in all its details.

Signature: _____

Date: _____

Name: _____

Position: _____

Email: _____

Telephone: _____

Address: _____

Dated the 19th June, 2017.

DAN KAZUNGU,
Cabinet Secretary, Ministry of Mining.

LEGAL NOTICE NO. 149

THE MINING ACT

(No. 12 of 2016)

THE MINING (STRATEGIC MINERALS) REGULATIONS, 2017

ARRANGEMENT OF REGULATIONS

- 1—Citation.
- 2—Interpretation.
- 3—Purpose of the Regulations.
- 4—Application of the Regulations.
- 5—Discovery under a pre-existing mineral right.
- 6—Approvals and regulatory oversight.
- 7—Power of the Cabinet Secretary to publish guidelines.
- 8—Role of the National Mining Corporation.
- 9—Submission of request to declare a mineral or mineral deposit as strategic.
- 10—Procedure to declare a mineral or mineral deposit as strategic.

THE MINING ACT

(No. 12 of 2016)

THE MINING (STRATEGIC MINERALS) REGULATIONS, 2017

IN EXERCISE of the powers conferred by sections 8 (2) and 16 (3) of the Mining Act, 2016, the Cabinet Secretary for Mining makes the following Regulations:—

1. These Regulations may be cited as the Mining (Strategic Minerals) Regulations, 2017. Citation.
2. In these Regulations, unless the context otherwise requires— Interpretation.

“Act” means the Mining Act, 2016;

“agency” means a Ministry, Department or any public institution of the Government or any authority or body established by the State under the Constitution; No. 12 of 2016.

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

“holder” has the meaning assigned to in the Act;

“strategic mineral” has the meaning assigned to it in the Act; and

“strategic mineral deposit” means a mineral deposit declared to be strategic under these Regulations.
3. The purpose of these Regulations is to— Purpose of the Regulations.
 - (a) provide a framework for declaring minerals and mineral deposits as strategic;

- (b) regulate the manner in which strategic minerals may be explored, mined, processed, marketed, exported and imported; and
- (c) ensure that the exploration and mining of strategic minerals is carried out in a manner that benefits the country and protects the environment.

4. These Regulations shall—

Application of the Regulations.

- (a) apply to all minerals and mineral deposits declared as strategic by the Cabinet Secretary;
- (b) apply to the export and import of a strategic mineral for purposes of controlling its sale, marketing or use;
- (c) apply to all radioactive minerals;
- (d) not apply to a holder of a licence or permit for a mineral which is declared as strategic during the term of the licence or permit; and
- (e) not apply to a reconnaissance or prospecting permit or licence that is to be converted to a mining permit or licence at the time the mineral is declared strategic.

5. (1) In the event that a holder of an existing mineral right discovers within its licence or permit area a mineral with potential economic value that has been declared strategic but not included in the holder's licence or permit, the holder shall immediately report the discovery to the Cabinet Secretary.

Discovery under a pre-existing mineral right.

(2) The holder shall have the right to continue with all activities or operations within the licence or permit area in accordance with the approved work programme or programme of mining operations.

(3) The Cabinet Secretary shall within thirty days of receipt of the report under sub regulation (1), send a team to assess and submit a report on the discovery.

(4) The Cabinet Secretary shall, based on the report submitted under sub regulation (3), determine whether the mineral or the deposit may be explored or mined.

(5) Any decision to explore or mine the mineral shall take into consideration the rights of the holder.

(6) Under no circumstances shall the discovery or declaration of strategic minerals be treated as a nationalisation or expropriation of the mineral right of the holder.

6. (1) Subject to the Act, the Cabinet Secretary may, on the advice of the Mineral Rights Board and with the approval of the Cabinet, declare—

Approvals and regulatory oversight.

- (a) a mineral or mineral deposit to be strategic; or
- (b) areas to be restricted or excluded from operations under a mineral right.

(2) The Cabinet Secretary shall, in consultation with National Environment Management Authority or other relevant agency, determine whether the exploration or mining of a strategic mineral would significantly affect the natural environment or human health as provided under the relevant laws.

(3) A regulatory authority that is tasked with regulating the use of specific strategic minerals, shall serve as the lead institution in the regulation of the mineral for any use that is included under the mandate of that regulatory authority.

(4) All mining regulations and guidelines shall apply to strategic minerals and strategic mineral deposits.

7. (1) Subject to section 221 of the Act, the Cabinet Secretary may, from time to time publish and disseminate guidelines for –

Power of the Cabinet Secretary to publish guidelines.

- (a) the exploration for and reporting of exploration results for strategic minerals;
- (b) mining, processing and beneficiation of strategic minerals;
- (c) the import, export and marketing of strategic minerals;
- (d) the exploitation of a strategic mineral found during the exploitation of a mineral which has not been declared as strategic;
- (e) a strategic mineral which is recovered as a by-product of a mineral which has not been declared as strategic; and
- (f) any other matter that the Cabinet Secretary may consider necessary.

(2) The guidelines under sub regulation (1) shall be published in the Gazette.

8. (1) The Corporation, either on its own or in association with any other person or company, shall be responsible for the exploration and mining of all strategic minerals or deposits.

Role of the National Mining Corporation.

(2) Without limiting the scope of sub regulation (1), the Corporation shall be responsible for –

- (a) engaging in the reconnaissance, prospecting and mining of a strategic mineral or strategic mineral deposit or any other related mineral activity;
- (b) the processing, refining or smelting of a strategic mineral;
- (c) the marketing or sale of a strategic mineral;
- (d) import and export of a strategic mineral; and
- (e) any other functions that the Cabinet Secretary with the approval of the Cabinet may assign to the Corporation in respect of strategic minerals.

(3) Where it is determined by the Cabinet Secretary that the Corporation does not have the necessary technical, financial or other capacity to effectively explore, mine, refine, smelt, process or market

the strategic mineral or mineral deposit, the Cabinet Secretary with the approval of the Cabinet may authorise the Corporation to seek private sector participation.

9. An agency may, submit a request to the Cabinet Secretary to declare a mineral or mineral deposit as strategic.

Submission of request to declare a mineral or mineral deposit as strategic.

10. (1) Where the Cabinet Secretary deems it necessary for a mineral or mineral deposit to be declared strategic, the Cabinet Secretary shall submit to the Cabinet a request together with a memorandum detailing –

Procedure to declare a mineral or mineral deposit as strategic.

- (a) the area in which the mineral or deposit is located;
- (b) the reasons why it is in Kenya's interests that the mineral or mineral deposit be declared as strategic;
- (c) information about the relevant market for the mineral including its uses;
- (d) the economic significance of the mineral to the country;
- (e) the safety or health dangers of the exploration and mining of the mineral;
- (f) estimated current market value of the mineral; and
- (g) any other reasons why the mineral or mineral deposit should be declared as strategic.

(2) Where the Cabinet approves the request, the Cabinet Secretary shall –

- (a) publish the declaration in the Kenya Gazette and the website of the Ministry; and
- (b) record in the mining cadastre, the location of any declared strategic mineral or declared strategic mineral deposits.

(3) Where the Cabinet rejects the request, the Secretary to the Cabinet shall furnish the Cabinet Secretary with the decision in writing within seven days thereof.

Dated the 19th June, 2017.

DAN KAZUNGU,
Cabinet Secretary, Ministry of Mining.

LEGAL NOTICE NO. 150

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.

THE MINING ACT

(No. 12 of 2016)

THE MINING (NATIONAL MINING CORPORATION)
REGULATIONS, 2017

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—
- “Act” mean the Mining Act, 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.
- (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;

Interpretation.
No. 12 of 2016.

Appointment to
the Board.

- (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.
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.
- (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.

Qualifications of members of the Board.

Vacancy in the Board.

- (9) Notwithstanding any provision in this regulation, the Board shall regulate its own procedures and the procedures of any Committee.
- (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 —
- (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.
- (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.
10. The office of the Chief Executive Officer shall become vacant if the holder—
- (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 —

Meetings of the Board.

Disclosure of interest.

Establishment of Committees.

Allowances for members of the Board.

Vacancy of office of the Chief Executive.

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.

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—
- (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.
- (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.
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.

Records and reports.

Contract for a mine support service.

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

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.

LEGAL NOTICE NO. 152

THE MINING ACT

(No. 12 of 2016)

ARRANGEMENT OF REGULATIONS

- 1—Citation.
- 2—Interpretation.
- 3—Application of Regulations.
- 4—Obligation to submit reports.
- 5—Obligation to prepare reports by the Cabinet Secretary.
- 6—Publication of reports.
- 7—Obligation to publish mineral agreements and mineral rights.

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.

LEGAL NOTICE NO. 153

THE MINING ACT

(No. 12 of 2016)

ARRANGEMENT OF REGULATIONS

- 1—Citation.
- 2—Interpretation.
- 3—Application of Regulations.
- 4—Designation of areas for tender.
- 5—Method of tender.
- 6—Procedures for competitive tender.
- 7—Bid selection and evaluation.
- 8—Direct negotiations.
- 9—Grant of a mineral right.

THE MINING ACT

(No. 12 of 2016)

THE MINING (AWARD OF MINERAL RIGHTS BY TENDER)
REGULATIONS, 2017

IN EXERCISE of the powers conferred by sections 14 (1) and 223 (2) (e) of the Mining Act, 2016, the Cabinet Secretary for Mining makes the following Regulations:—

THE MINING (AWARD OF MINERAL RIGHTS BY TENDER)
REGULATIONS, 2017

1. These Regulations may be cited as the Mining (Award of Mineral Rights by Tender) 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;
 - “Corporation” means the National Mining Corporation established under section 22 of the Act;
 - “Evaluation Committee” means the Committee established under Regulation 7;
 - “first-come, first-served” has the meaning assigned to it in the Act.
 - “large scale operation” has the meaning assigned to it in the Act;
 - “Mineral right” has the meaning assigned to it in the Act;
 - “Mineral Rights Board” means the Minerals Rights Board established under section 30 of the Act; and
 - “Principal Secretary” means the Principal Secretary for the time being responsible for matters relating to mining.
3. These Regulations shall apply to large scale mineral rights. Application of Regulations.
4. (1) The Cabinet Secretary shall, on the advice of the Mineral Rights Board designate an area to be reserved for an application by tender where – Designation of areas for tender.
 - (a) an area possesses high mineral prospectivity; or
 - (b) a mineral deposit is of significant economic or commercial value.

(2) The designation shall not affect the rights of holder –

 - (a) where such rights have been granted prior to the commencement of this Act or these Regulations; or
 - (b) where the designation is made after a mineral right has been granted.

(3) The Cabinet Secretary shall publish the designation in the Gazette and a newspaper of wide circulation.

(4) Where an area is designated under this Regulation, a mineral right shall be granted by competitive and transparent public tender or, in special circumstances, by direct negotiation.

5. The Cabinet Secretary, on the advice of the Mineral Rights Board, shall decide how the area shall be offered for tender.

Method of tender.

6. (1) The tender referred to in regulation 4 (4) shall –

Procedures for competitive tender.

(a) be advertised in the Gazette, a local newspaper of wide circulation and international newspapers; and

(b) invite qualified local and international companies to submit expressions of interest.

(2) The Corporation may express interest and may participate in a public tender on the same basis as any other interested party.

(3) The tender under sub regulation (1) shall include –

(a) the size of the area;

(b) geographic location of the area;

(c) the type of mineral right;

(d) the mineral or minerals;

(e) an indication of the extent of the geological information available, and where it can be accessed;

(f) the information to be included in the expression of interest, including the experience, financial capacity and technical capability of applicants;

(g) the date and time deadline for submission of expressions of interest; and

(h) the address for submission.

(4) The Director of Geological Survey shall compile detailed geological information and the terms of reference of the designated area which shall be published on website of the Ministry.

(5) The Evaluation Committee shall consider all expressions of interest and shortlist based on the experience, financial capacity and technical capability of the applicants within thirty days of the opening of the tender documents and shall submit the list to the Mineral Rights Board.

(6) The Mineral Rights Board shall within seven days of receipt of the list submitted under regulation (5), consider the list and submit the list and its recommendations to the Cabinet Secretary.

(7) The Cabinet Secretary shall in writing and with reasons, approve or reject the list submitted under sub regulation (6), within fourteen days of receipt from the Mineral Rights Board.

(8) The applicants who have been shortlisted shall be notified and be provided with a Request for Proposals, including the terms of reference and the deadline for submission, which shall be not later than three months of such notification.

(9) All shortlisted applicants shall confirm their intention to bid within seven days of notification or the invitation shall lapse.

(10) The applicants who have been shortlisted may be allowed to inspect the area and carry out non-invasive investigations including the taking of a limited number of samples.

7. (1) The Principal Secretary shall in consultation with the Cabinet Secretary set up an Evaluation Committee consisting of the –

Bid selection and evaluation.

- (a) Director of Mines who shall be the Chairperson;
- (b) Director of Geological Surveys;
- (c) Director responsible for Mineral Promotion and Value Addition;
- (d) Head of Procurement who shall be the Secretary; and
- (e) Chief Finance Officer.

(2) The role of the Evaluation Committee shall be to deal with the technical and financial aspects of any tender or direct negotiation under this regulation as well as the negotiation of the process including evaluation of bids, proposals for prequalification, expression of interest and any other roles assigned to it.

(3) The Committee may co-opt technical experts who are not employees of the Ministry to assist it in its functions.

(4) The evaluation and the selection of the preferred bidder shall be carried out subject to the law relating to public procurement.

(5) The Evaluation Committee shall submit recommendations of the evaluation to the Principal Secretary.

8. (1) Where no bids are received following the competitive public tender or where the bids received do not satisfy the minimum criteria, the tender shall be re-advertised.

Direct negotiations.

(2) Where no bids are received after the re-advertisement or where they do not meet the criteria specified in the re-advertisement, the Cabinet Secretary shall on advice of the Mineral Rights Board, enter into direct negotiations with any person.

(3) Where the Cabinet Secretary intends to conduct direct negotiations, the Cabinet Secretary shall issue a notice of thirty days in the Gazette, at the website of the Ministry and in at least two newspapers of wide circulation.

(4) The notice under sub regulation (3) shall give such details including but not limited to an indication of the scale of the expected investment and an invitation for expressions of interest.

(5) Any objections to direct negotiations shall be referred to the Mineral Rights Board for consideration and the Mineral Rights Board shall submit its recommendations to the Cabinet Secretary for determination.

(6) The Cabinet Secretary shall publish the decision made under sub regulation (5) on the website of the Ministry.

(7) Where the Cabinet Secretary receives more than one expression of interest for direct negotiation, the Mineral Rights Board shall develop the criteria for the evaluation of proposals.

(8) The Cabinet Secretary shall, on the advice of the Mineral Rights Board, commence direct negotiations with any qualified party that has declared an interest or with any other qualified party or parties by invitation.

(9) Direct negotiations under this regulation shall be conducted by a team comprising of –

- (a) the Principal Secretary who shall be the Chairperson;
- (b) the Director of Mines;
- (c) the Director of Geological Survey;
- (d) a representative of the Mineral Rights Board;
- (e) a representative of the Public Procurement Regulatory Authority;
- (f) a representative of the National Treasury;
- (g) a representative of the Attorney General;
- (h) a representative of the County Government of the area where the proposed mineral or mining activity shall be undertaken; and
- (i) a representative of the National Lands Commission.

(10) Where necessary or if required, local or international experts may be hired to provide assistance to the negotiation team.

9. Subject to the Act, the Cabinet Secretary on the advice of the Mineral Rights Board shall grant a mineral right to the person with the successful proposal.

Grant of a mineral right.

Dated the 19th June, 2017.

DAN KAZUNGU,
Cabinet Secretary for Mining.