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29th July 2024

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Samuel Njoroge, CBS
Clerk of the National Assembly
Main Parliament Buildings
P.O Box 41842-00100
NAIROBI

PARLIAMENT
OF KENYA
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Dear *Samuel,*

SUBMISSION OF THE MINING (ROYALTY COLLECTION AND MANAGEMENT) REGULATIONS, 2024 FOR PUBLICATION SCRUTINY

The above subject matter refers;

In July 2023, the Ministry in collaboration with the Office of the Attorney General and legislative drafters from the Kenya Law Reform Commission embarked on developing the Mining (Royalty Collection and Management) Regulations, 2024. In September 2023, the regulations were taken through stakeholder engagements and through pre-publication scrutiny before the Committee on Delegated Legislation on 1st March 2024. The Ministry incorporated the Committee's comments and the regulations were subsequently published on **3rd July 2024** when this Committee was on recess.

The purpose of this letter is to present the aforementioned regulations together with the supporting documents as guided by the Statutory Instruments Act for publication scrutiny.

Your continued support is highly appreciated.

Yours sincerely,

Elijah Mwangi
Elijah Mwangi, CBS
PRINCIPAL SECRETARY

Encl.



Copy to: **Hon. Musalia Mudavadi, EGH**
Prime Cabinet Secretary
Office of the Prime & Cabinet Secretary
Ministry of Foreign and Diaspora Affairs
Ag. Cabinet Secretary
Ministry of Mining, Blue Economy and Maritime Affairs
NAIROBI

SPECIAL ISSUE

Kenya Gazette Supplement No. 128

1843

3rd July, 2024

(Legislative Supplement No. 49)

LEGAL NOTICE NO. 106

THE MINING ACT,

(Cap. 306)

THE MINING (ROYALTY COLLECTION AND MANAGEMENT)


REGULATIONS, 2024

ARRANGEMENT OF REGULATIONS

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 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	06 AUG 2024
DAY:	TUE 6/8/2024
TABLED BY:	Deputy Majority Whip
CLERK AT THE TABLE:	Benson Inzotu

THE MINING ACT

(Cap. 306)

IN EXERCISE of the power conferred by section 223 of the Mining Act, the Cabinet Secretary makes the following Regulations—

THE MINING (ROYALTY COLLECTION AND MANAGEMENT)
REGULATIONS, 2024

1. These Regulations may be cited as the Mining (Royalty Collection and Management) Regulations, 2024.

Citation.

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

Interpretation.

“acquire” means to acquire by sale, barter, import, holding on deposit as pledge or security, receipt as a gift, or receipt under any other supply or disposition, whether for consideration or otherwise;

“assurance of royalty reconciliation” means the system of reporting royalty liability and making reconciliation payments at reconciliation points”

“cost plus value” means the value of a mineral product that includes all the costs of producing it as a mineral product;

“dealing right” means a mineral dealer’s licence, a diamond dealer’s or a mineral dealer’s permit;

“deferred royalty” means a royalty amount put on hold, in part or whole, for periods and conditions as shall be agreed between the Cabinet Secretary and the holder when royalty suspension is granted;

“disposal” means sale, barter, export, deposit as pledge or security, donation as a gift, or other supply or disposition, whether with or without consideration and includes loss by theft or misappropriation, and “disposed” has the corresponding meaning;

“full market value”, in relation to a mineral product, means—

- (a) the reference price for a mineral product where a reference price has been assigned to the product;
- (b) where the reference price of the product has not been assigned to a mineral product, the full market value of the mineral product computed from “netback” and “cost plus” calculations; and
- (c) where the reference price of the product has not been assigned and the full market value of the mineral product cannot be computed, the full market value of the mineral product as determined by the Director of Mines;

“marketable form” means a state or condition in which a mineral or mineral product can be sold or traded in the market;

“netback value”, in relation to a mineral product, means the computation of the value of the product through the deduction the costs of producing the end product from the reference price of the mineral product;

“reconciliation point” means the specific time when a holder of a dealing right, mining permit, mining licence or artisanal mining permit, or a mineral right transferor is required to reconcile and pay any outstanding royalty amounts;

“reconciliation report” means a reconciliation analysis between minerals and mineral products and royalty paid, calculated at the time of the date of the report or, if earlier, the date the report was due showing—

- (a) royalty paid on reported minerals and their mineral products; and
- (b) unpaid royalty on minerals and their mineral products;

“reduction of royalty” means a reduction of royalty rate for a specified mineral for periods and conditions as shall be prescribed by the Cabinet Secretary;

“reference price” means the price of a mineral or mineral product—

- (a) in a market with significant number of sellers, a significant number of buyers, and an openly quoted price;
- (b) that, if it is adjusted, is adjusted according to objective criteria (such as grade or quality”;
- (c) that is applicable to the time or period in relation to which it is to be used; and
- (d) that is arrived at on arm’s length terms;

“royalty base” means the total to which the royalty rate for a mineral is applied in order to determine the amount of royalty due;

“royalty rate” means the percentage rate or unit-based rate applied to the royalty base of a mineral to determine the amount of royalty due; and

“unit-based royalty rate” means a flat rate charge on a unit weight or volume or on such other measure of a mineral.

3. The objective of these Regulations is to give effect to section 183 of the Act and to provide for royalty payments determination, reduction, suspension and payable royalty rates.

Objective.

4. These Regulations shall apply a—

Application.

- (a) holder of a mineral right;
- (b) holder of a mineral dealing right; and
- (c) mineral right transferor.

5. The payment of royalties shall be guided by the following principles—

Principles pertaining to royalty payment.

- (a) to provide monetary compensation to the people of Kenya for the extraction of mineral resources;

- (b) royalties shall be based on the full market value of the mineral in its most processed and marketable form while taking into account any enhancement made to increase the market value of the mineral;
- (c) the basic royalty rate to be shared shall be the full gross value of the minerals extracted;
- (d) deductions and offsets in the computation of the value to which each royalty rate applies shall be disallowed except for specific deductions and offsets specified in the Act and these Regulations; and
- (e) ensuring safeguards at appropriate and convenient points including periodic reconciliation from dealers, periodic reconciliation for export of any minerals or mineral products, and reconciliation on transfer of mineral rights to ensure recovery of all royalties that may be due.

6. (1) The royalty base shall be determined for each quantity of mineral that is extracted under a mineral right within a royalty period and—

Determination of royalty base.

- (a) that is transported from the licence or permit area during that royalty period if it was not previously accounted for in a royalty base calculation; or
- (b) that has not been previously moved but is subject to a mineral dealing right during that royalty period and was not previously included in a royalty base calculation.

(2) The value of the royalty base for a mineral shall be the full market value of all mineral products capable of being produced from the mineral and that are saleable.

(3) The value of the royalty base for a particular mineral shall be equal to the full market value of all products that can be sold and produced from that mineral.

(4) Where no reference price is available for a mineral product, the full market value shall be determined by—

- (a) subtracting the cost of producing end products from the mineral (netback value) from the reference price of commercially producible end products from the mineral; and
- (b) incorporating all costs associated with the mineral product (cost-plus value) into the value of the mineral product:

Provided that any cost requiring allocation is assigned in such a way that it is not claimed in both the netback value and cost-plus value calculations or when calculating the values of the different mineral products; and

- (c) if there is a difference between the netback value and cost-plus value, taking the average of the two.

(5) Where there is insufficient information to enable the Director of Mines to determine the royalty base for the holder of a mineral right

for a royalty period under subregulation (4), the Director of Mines shall determine the royalty base using the information available at the time of the determination.

7. The royalty base for minerals for export shall be the value of the mineral at the port of exit that shall consist of the free board value based on the full market price of the minerals.

Royalty base for export minerals.

8. Where the Director of Mines is satisfied that a mineral won under a particular mineral right is to be used or consumed exclusively within Kenya, the Director may permit the method for the calculation of the royalty base may be adjusted as follows—

Royalty base for minerals consumed in Kenya.

(a) for minerals transported from the area of the mineral right and sold directly at the extraction site (mine gate or ex-factory), the sale price may serve as the basis for the royalty calculation; and

(b) using the sale price at which the mineral is delivered, if it is sold at delivery after being moved away from the area of the mineral right, deductions or offsets shall not be allowed.

9. The specific royalty rates for various identified minerals shall be as set out in the Schedule.

Royalty rates.

10. The royalty due is calculated by applying the appropriate royalty rate to the appropriately determined royalty base.

Determining royalty payable.

11. (1) Royalty for locally sold or exported minerals shall be paid within one hundred and twenty days from the final day of the month in which the sale or export took place.

Due dates for payment of royalty.

(2) Despite subregulation (1), royalty payments can be made at any point before the specified due date.

(3) An administrative penalty equivalent to the prevailing Central Bank of Kenya interest rate shall be imposed on compounding basis to any royalty paid after the due date.

(4) If royalty has already been paid for the same minerals in a different royalty period, the amount paid shall be credited against the liability for royalty due for those minerals in any future royalty period.

(5) The credited royalty for a particular royalty period will only be acknowledged up to the amount that was actually paid for the minerals.

(6) In any case where more than one party is liable for royalty for the same minerals within a given period, any payment made by one party shall be credited in calculating the royalty due from the remaining parties.

(7) Subregulation (6) does not infringe upon any right of contribution that any party may have against another.

12. (1) The holder of a mineral right may apply to the Cabinet Secretary for a reduction of royalty rate or temporary suspension of royalty payment applicable to the minerals that are the subject of that mineral right.

Reduction or suspension of payment.

(2) An application for reduction of royalty rate or temporary suspension of royalty payment shall not exceed six months.

(3) Any approved reduction of royalty rate or suspension of royalty payment shall not apply retroactively to minerals won prior to the application.

(4) An application for a reduction of royalty rate or suspension of royalty payment may only be made if all reports and statements in relation to mining operations have been submitted as required under the Act.

(5) The Cabinet Secretary shall not reduce a royalty rate by more than fifty per cent of the specific rate set out in the First Schedule.

(6) The reduced royalty rate shall revert to the prescribed rate at the end of the six months after the date the Cabinet Secretary allowed the reduction or suspension.

(7) If a reduction of royalty is allowed, the holder of the mineral right shall not be liable to pay the difference between the reduced and standard royalty rates.

(8) Where suspension of royalty payment is granted, the holder of the mineral rate shall pay the deferred amount of the royalty at the end of the six months suspension period.

(9) The deferred amount shall not incur interest for the first six months following the suspension period's end but thereafter shall accrue interest at the prevailing Central Bank of Kenya rate.

(10) A mineral right holder who fails to comply with the provisions of the Act or these Regulations shall not be eligible for a reduction of royalty rate or temporary suspension of royalty payment.

(11) A mineral right holder seeking a suspension of royalty payment or reduction of royalty rate shall provide evidence including financial statements, audited accounts, and any other information requested by the Cabinet Secretary to demonstrate that the reduced rate or suspension is intended to alleviate a temporary but significant adverse impact on the mineral right holder.

(12) In addition to evidence in subregulation (11), a mineral right holder applying for suspension of payment of royalty shall provide a payment plan detailing how the deferred royalty amount shall be paid at the end of the suspension period.

(13) The Cabinet Secretary shall, on the advice of the Mineral Rights Board, approve or reject an application for a reduction of the rate or temporary suspension of royalty payment within the ninety days from the date of the submission of the application.

13. (1) Any sample of any mineral that is removed for testing shall be subject to royalty if the total value of the mineral exceeds the maximum permitted value for samples as set out in subregulation (4).

Royalty on samples.

(2) Any sample of a mineral won and removed for metallurgical testing shall be subject to royalty if the total value of the mineral

exceeds the maximum permitted value for samples as set out in subsection (5).

(3) The market value of the sample of the mineral shall be calculated based on quantity, composition and prevailing market price.

(4) In determining whether or not the value of a sample of a mineral exceeds the maximum permitted value, the average grade and quantity of valuable minerals in the sample extracted within a quarter shall be used.

(5) The maximum permitted value of any sample of a mineral accumulated per consignment is two hundred thousand shillings.

14. (1) Where the reference price used to decide the full market value of a mineral product results from an arrangement where parties are not dealing at arm's length and this leads to a lower price, the Director of Mines shall adjust the reference price to reflect what the price that would have been applicable to the mineral in an arm's length transaction.

Arm's length
consideration.

(2) If associated costs arising under an arrangement decreases the apparent market value of a mineral product, the Director of Mines shall adjust the costs to reflect what the costs would have been in an arm's length sale.

(3) Each party to an arrangement includes every person involved directly or indirectly in creating or affecting the arrangement.

(4) This regulation shall apply to reference price and costs including those that arise from financing arrangements.

(5) The Director of Mines may require any party to provide information to determine whether reference prices under an arrangement are consistent with arm's length transactions.

15. (1) The due date for royalty shall be the date that the reconciliation point and late payment accrue monthly penalties from the start of the month when the royalty reconciliation payment remains unpaid.

Royalty assurance
through
reconciliation.

(2) The reconciliation point for a mining permit or licence holder shall be ninety days after the last day of the month in which a mineral or mineral product was sold or exported.

(3) The reconciliation point for an artisanal mining permit holder shall be ninety days after the last day of the month in which a mineral or mineral product was sold or exported.

(4) The reconciliation point following a transfer of mineral rights shall be the date that the Cabinet Secretary approves the transfer.

(5) For holders of dealing rights, the reconciliation point shall be—

- (a) the date that an export is made where the holder has applied for a permit to export a mineral product; or
- (b) within fourteen days after aggregated domestic sales that had been made in the immediately preceding month.

16. (1) Where a reconciliation report identifies an outstanding royalty, a reconciliation payment equal to the amount of unpaid royalty shall be due from the holder of the mineral right.

Reconciliation
payment.

(2) Interest, at the current Central Bank of Kenya interest rate per month, shall accrue for each royalty period in which a reconciliation payment is unpaid or partly unpaid.

(3) Where a reconciliation payment has been made for minerals in respect of another reconciliation point, that payment will be credited against any reconciliation payment due at the subsequent reconciliation point.

(4) If a person is due to make a reconciliation payment for minerals or mineral products but has transferred the minerals or mineral products to another person who holds a dealer's right before the date of the reconciliation point, the reconciliation payment due from the first person shall be reduced by the amount due on those minerals or mineral products.

17. (1) When a dealing right reconciliation point arises, the holder of the dealing right shall make a reconciliation report in respect of the minerals and mineral products that the dealer holds or has held during the reconciliation period.

Dealer
reconciliation.

(2) The report shall—

(a) set out the amount of minerals and mineral products acquired by the holder during the period minus the amount for which royalties have already been paid or which were exported or sold to another dealer; and

(b) calculate the remaining unpaid royalty for minerals and their mineral products.

(3) The reconciliation payment shall be equal to the total unpaid royalty on those minerals and their mineral products.

(4) If a dealer makes a reconciliation payment, the dealer can recover that amount from the holder of the mineral rights who should have paid the royalty at the time the reconciliation payment was made.

18. (1) When a mining permit including an artisanal or a mining licence holder reconciliation point arises, the holder shall submit a reconciliation report.

Reconciliation by
a holder of a
mining permit or
licence holder.

(2) The report shall detail the minerals and mineral products exported or sold during the period offset against royalty payments made in respect of the minerals and mineral products by the mineral right holder and any other previous reconciliation payments made.

(3) The holder must make a reconciliation payment for all minerals and mineral products for which no royalty payments have been made and for which no previous reconciliation payment has been recorded.

(4) The amount of the reconciliation payment shall be equal to the outstanding royalty on those minerals and mineral products.

(5) If a holder makes a reconciliation payment, they can recover that amount from the original holder of the mineral right who should

have paid the royalty or from any dealer who should have paid a reconciliation payment for those minerals or mineral products.

19. (1) When a mineral right transfer reconciliation point arises, the transferor of the mineral right shall submit a reconciliation report in respect of the royalty due in relation to that mineral right as if the royalty period had ended at the time of the transfer.

Transferor's
reconciliation of
mineral rights.

(2) For all minerals for which a royalty or a reconciliation payment cannot be shown to have been made, the transferor shall make a reconciliation payment.

(3) The transfer shall not be registered until the payment is made.

(4) The reconciliation payment shall be equal to the royalty that would otherwise be payable for the minerals to the date of the transfer at the end of the royalty period.

20. The following Regulations are revoked—

Revocation.

- | | |
|--|-----------------|
| (a) the Mining (Prescription of Royalties on Minerals) Regulations, 2013; | L.N. 187/2013. |
| (b) the Mining (Prescription of Royalties for Fluorspar Products) Regulations, 2013; | L.N. 2020/2013. |
| (c) the Mining (Prescription of Royalties for Magadi Soda Products) Regulations, 2013; | L.N. 221/2013. |
| (d) the Mining (Prescription of Cement Minerals Levy) Regulations, 2013; and | L.N. 222/2013. |
| (e) the Mining (Prescription of Royalties for Diatomite) Regulations, 2015. | L.N. 40/2015. |

SCHEDULE

(Regulation 8)

ROYALTY RATES

The royalty rates chargeable in respect of gross value of the extracted minerals are as follows:

<i>S/No.</i>	<i>Gross value of extracted minerals</i>	<i>Royalty rate</i>
1.	Precious metals (gold and platinoid group metals)	3%
2.	Rare earth elements and radioactive minerals	8%
3.	(a) Metallic ores (copper, zinc, aluminium, vanadium, manganese)	5%
	(b) Other metallic ores	
	(c) Titanium mineral sand, titanium ores and zircon	
4.	Coal	7%
5.	Limestone, gypsum, dolomite, silica sand, talc	3%
6.	Dimension stones and other construction minerals, clays	3%
7.	Carbon dioxide	3%
8.	Diatomite, fluorspar	4%
9.	Soda ash	3%
10.	Clinker	2%
11.	Rough gemstones	6%
12.	Cut gemstones	1%
13.	Cement	1.6%
14.	Salt	1.6%
15.	All other minerals	4%

Made on the 29th May, 2024.

SALIM MVURYA,
*Cabinet Secretary for Mining,
 Blue Economy and Maritime Affairs.*

EXPLANATORY MEMORANDUM TO THE MINING (ROYALTY COLLECTION AND MANAGEMENT) REGULATIONS, 2024

PART I

Name of the statutory instrument	Mining (Royalty Collection and Management) Regulations, 2024
Name of the Parent Act	Mining Act, Cap. 306
Enacted pursuant to	Section 223 of the Mining Act, Cap. 306
Name of the Ministry/Department:	Ministry of Mining, Blue Economy and Maritime Affairs
Gazetted on Tabled on	3 rd July 2024

PART II

1. The Purpose of the Mining (Royalty Collection and Management) Regulations, 2024

The Mining (Royalty Collection and Management) Regulations, 2024 aim to:

- i. Establish a system for determining, collecting and managing royalty payments on minerals extracted in Kenya. (Regulation 3)
- ii. Provide a framework for calculating the royalty base, which is the value used to determine the amount of royalty owed. (Regulation 6)
- iii. Set specific royalty rates for different types of minerals. (Schedule)

