

EXPLANATORY MEMORANDUM
EXPLANATORY MEMORANDUM TO THE
Mining (**State Participation**) Regulations, 2017, No.



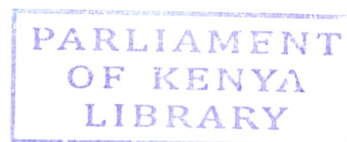
PART I

Name of the Statutory Instrument: Mining (State Participation) Regulations, 2017

Name of the Parent Act: Mining Act, 2016.

Name of the Ministry: Ministry of Mining

Enacted Pursuant to: Section 48(4)



Gazetted on

Tabled on

PART II

1. Purpose of the Statutory Instrument

The main purpose of this Regulation is to give effect to section 48(4) of the Mining Act, 2016 which requires the Cabinet Secretary to make Regulations to provide the framework for large scale mining operations for the purposes of this Act.

2. Legislative Context

To ensure that the development of minerals benefit the State as provided for in Article 69(2)(h) of the Constitution, the Mining Act, 2016 has provide for the State to participate in mining. Therefore, this Regulation is intended to operationalize the provision for State participation in the Mining Act, 2016 and to ensure that the State also participates in mineral resource development alongside the private sector.

3. Policy Background

The Mining and Mineral Policy is contained in Sessional Paper No. 07 of 2016 (unpublished) and recognizes that the mining sector has a potential of contributing significantly to the country's economic development. State participation provides an opportunity for the State to maximize the benefits from mining. It also gives the control of strategic minerals to the State.

4. Consultation outcome

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

Letters were sent directly to various stakeholders; Industry Players, Civil Society Organizations, County Governments, Community based organizations and other government agencies to provide input and feedback on the regulations. The Ministry conducted stakeholder sensitization forums in different regions in the country that were well attended by stakeholders who provided critical feedback that was used to revise the regulations.

The stakeholders through the memorandums submitted did not raise any concerns with this Regulations on award of minerals by tender.

5. Guidance

The Ministry upon publishing the Regulations and in the course of preparation of the regulations has provided guidance and information to the users, operators and the clients by way of: letters, posting the draft regulations onto its website and stakeholder sensitization workshops.

6. Impact

6.1 The impact on Fundamental Rights and Freedoms

This regulation does not impact negatively on fundamental rights and freedom of the users.

6.2 The impact on the Private Sector

The State as a holder of a 10 percent free carried interest, shall receive dividends from the private sector for which no investment is made as a shareholder.

6.3 The impact on the public sector

Apart from royalties and other taxes that the State shall receive from mining activities, State participation provides a sense of ownership rights to the people as the ultimate owners of the minerals.

No impact assessment was conducted.

7. Monitoring and review

The Ministry intends to monitor the impacts and effects of the regulation once they come into force and shall periodically review the regulations and may make amendments as appropriate.

8. Contact

The Cabinet Secretary, Ministry of Mining

Tel: 0202723101

Email: cs@mining.go.ke.