

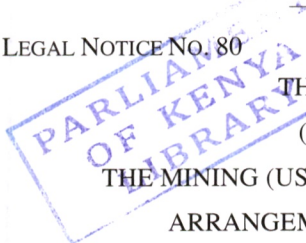
**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 78*



*(Legislative Supplement No. 38)*

LEGAL NOTICE No. 80



**THE MINING ACT**

*(No. 12 of 2016)*

**THE MINING (USE OF ASSETS) REGULATIONS**

**ARRANGEMENT OF REGULATIONS**

- 1—Citation.
- 2—Interpretation.
- 3—Application of Regulations.
- 4—Obligation to keep an asset register.
- 5—Delivery of documents of assets on termination.
- 6—Notification of ceasing to be the owner.
- 7—Vesting of assets.
- 8—Agreement with landowner.

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**THE MINING ACT**

*(No. 12 of 2016)*

IN EXERCISE of the powers conferred by Section 149 (6) of the Mining Act, 2016, the Cabinet Secretary for Mining makes the following Regulations:—

**THE MINING (USE OF ASSETS) REGULATIONS, 2017**

1. These Regulations may be cited as the Mining (Use of Assets) Regulations, 2017. Citation.
2. In these Regulations, unless the context otherwise requires—  

“Act” means the Mining Act, 2016; No. 12 of 2016

“asset audit” means the conduct of an annual physical count of all movable and immovable assets to verify actual assets in hand and value and ensure the accuracy of related financial records;

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

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

“immovable assets” means all tangible items that are securely affixed and attached to the land or to buildings or other structures on the land and include but are not limited to the following—

- (a) transportation facilities including roads, bridges, railways, airports, landing strips and landing pads for aircraft, hangers and other airport facilities, garages, channels, pipelines;
- (b) port facilities including docks, harbours, terminal facilities, warehouses and loading and unloading facilities;
- (c) power, water and sewerage facilities including electrical generating plants and transmission lines, and water supply systems;
- (d) welfare facilities including schools, hospitals or clinics or other facilities built for recreational purpose; and
- (e) other immovable facilities used primarily in connection with, or incidental to, operations such as offices, staff accommodation, machine and repair shops, foundries and warehouses; and

“movable assets” include plant, machinery, equipment and facilities which are not fixed and are used as an integral part of the immovable assets.

3. These Regulations shall apply to holders of mining licences.

Application of Regulations.

4. (1) The holder of a mining licence shall maintain a complete, up to date and accurate register of all its immovable and movable assets.

Obligation to keep an asset register.

(2) The holder of a mining licence shall record the following information in the register —

- (a) name, type, description and location of asset;
- (b) cost of asset;
- (c) year of purchase;
- (d) particulars of the supplier of the asset;
- (e) depreciation, start date and rate;
- (f) net book value; and
- (g) any other relevant information.

(3) The holder of a mining licence shall —

- (a) continuously update the register where any assets are acquired subsequent to any entry made in the register;
- (b) maintain a separate list for disposed assets;
- (c) submit to the Director of Mines a copy of the year’s asset audit not later than ninety days after the end of the year.

5. (1) The holder of a mining licence shall not later than sixty days after the termination of a licence, submit to the Cabinet Secretary a statement of —

Delivery of Documents of assets on termination

- (a) all its immovable and movable assets together with a statutory declaration of the correctness thereof;
- (b) the assets the holder intends to remove from the mineral right area and those that the holder intends to leave; and

- (c) any potentially hazardous substances, excavations and buildings in the mineral right area in accordance with the health and safety regulations made under the Act and the environmental laws of Kenya.

(4) On receiving the statement under sub regulation (1), the Cabinet Secretary may, by notice in writing, require the holder of the mining licence to provide additional information or documents.

6. (1) Pursuant to sections 149(3) and 149(4) of the Act, the Cabinet Secretary, upon the approval of the statement submitted under regulation 5, shall issue a written notice to the holder that the holder has ceased to be owner of the assets.

Notification of ceasing to be an owner.

(2) A notice issued under sub regulation (1) shall be published in the Kenya Gazette.

7. The Cabinet Secretary shall ensure that all assets that are vested in the National Government such as health facilities, schools, power and other public infrastructure or facilities are transferred to any state institution, department, agency, body or County government that is responsible for the management of such assets under the laws of Kenya.

Use of assets.

8. Where immovable assets on land which has not been compulsorily acquired by the National Government are vested in the National or County Government, the National or County Government shall enter into an agreement with the landowner.

Agreement with landowner.

Dated the 9th May, 2017.

DAN KAZUNGU,  
*Cabinet Secretary, Ministry of Mining.*

LEGAL NOTICE NO. 81

THE MINING ACT

(No. 12 of 2016)

THE MINING (USE OF LOCAL GOODS AND SERVICES)  
REGULATIONS, 2017

ARRANGEMENT OF REGULATIONS

- 1—Citation.
- 2—Interpretation.
- 3—Purpose of the Regulations.
- 4—Application of the Regulations.
- 5—Use of Kenyan goods and services.
- 6—Requirement of a procurement plan.
- 7—Procurement requirements for a holder of a pre-existing mineral right.
- 8—Call for tenders.

- 9—Register of local businesses.
- 10—International procurement.
- 11—Procurement report.
- 12—Power to publish Guidelines.
- 13—Professional services for engineering.
- 14—Professional services insurance and reinsurance.
- 15—Professional services for accounting and legal.
- 16—Reporting requirements.
- 17—Assessment of performance report.

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THE MINING ACT

(No. 12 of 2016)

IN EXERCISE of the powers conferred by section 223(1) of the Mining Act, 2016, the Cabinet Secretary for Mining makes the following Regulations:—

√ THE MINING (USE OF LOCAL GOODS AND SERVICES)  
REGULATIONS, 2017

1. These Regulations may be cited as the Mining (Use of Local Goods and Services) Regulations, 2017. Citation.
2. In these Regulations, unless the context otherwise requires— Interpretation.
  - “Act” means the Mining Act, 2016;
  - “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to mining; No. 12 of 2016
  - “holder” has the meaning assigned to it in the Act;
  - “Kenyan content” means the quantum of composite value added to or created in the Kenya economy by a systematic development of capacity and capabilities through the deliberate utilization of Kenyan human and material resources and services rendered in the mining industry value chain;
  - “Kenyan goods” means goods including but not limited to plant, machinery and equipment, manufactured, produced or assembled by Kenyans or companies incorporated in Kenya for such purpose;
  - “Kenyan services” means services offered by a Kenyan, Kenyan professionals, a company incorporated in Kenya or owned or controlled by Kenyans;
  - “mine support services” has the meaning assigned to it in the Act;
  - “mineral activities” means any activity or operations to be conducted under a licence to establish a refinery or a smelter or the reconnaissance, prospecting and mining of minerals;

“mining industry value chain” means the processes involved in the mining industry which include but are not limited to exploration, development, production, refining, smelting, polishing and marketing of minerals;

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

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

"procurement plan" means a procurement plan for goods and services submitted in compliance with any provisions of the Act and these Regulations.

3. The purpose of these Regulations is to—

Purpose of the Regulations.

- (a) promote job creation through the use of local expertise, goods and services, businesses and financing in the mining industry value chain and their retention in the country;
- (b) achieve the minimum local level and in-country spend for the provision of the goods and services in the mining industry value chain;
- (c) increase the capability and international competitiveness of domestic businesses;
- (d) create mining and mineral related support industries that will provide jobs and sustain economic development;
- (e) achieve and maintain a degree of participation for Kenyans or companies incorporated in Kenya for the supply of goods and the provision of services; and
- (f) provide for a robust, transparent monitoring and reporting system in relation to the use of goods and services.

4. These Regulations shall apply to—

Application of the Regulations.

- (a) all applicants and holders of any licence for –
  - (i) the reconnaissance, prospecting and mining of a mineral;
  - (ii) the cutting, polishing, processing, refining and smelting of a mineral; and
  - (iii) mine support services;
- (b) all operators, contractors and other entities involved in any project, operation or activity connected or related to mine support services, mineral activity or operation in Kenya.

5. The holder of a licence, its contractors and sub-contractors shall, to the maximum extent possible, when purchasing goods and procuring services required with respect to operations or any activity to be conducted under a licence, give first priority to—

Use of Kenyan goods and services.

- (a) materials and goods made in Kenya; and
- (b) services provided by citizens of Kenya or entities incorporated and operating in Kenya or owned and controlled by Kenyans:

Provided that such goods and services are equal in quality, quantity and price to, or better than, goods and services obtainable outside of Kenya.

6. (1) Except as otherwise provided in the Act or under these Regulations, an application for a licence shall not be granted unless the applicant has submitted a procurement plan for the purchase of goods and services in Kenya to the Cabinet Secretary.

Requirement of a procurement plan.

(2) Without limiting the scope of sub regulation (1), the plan shall ensure priority is given to citizens of Kenya or companies incorporated in Kenya and shall include—

- (a) the particulars of the goods and services the applicant intends to procure in Kenya to undertake its operations or activity;
- (b) the proposed expenditure that will be incurred under the plan;
- (c) particulars on gender; and
- (d) a timeframe for the plan.

(3) The plan if approved, shall form part of the conditions or obligations under the licence.

7. (1) Every holder of any mineral right which is valid after the coming into force of the Act shall, within ninety days of the coming into force of these Regulations, submit to the Cabinet Secretary a procurement plan for local goods and services.

Procurement requirements for a holder of a pre-existing mineral right.

(2) For the purposes of sub regulation (1), the procurement plan shall include—

- (a) targets for local procurement including at least the items specified in the procurement list as provided or made available by the Director of Mines; and
- (b) specific support to local providers or suppliers as well as other measures to develop the supply of local goods and services including broadening access to opportunities and technical support.

8. (1) When calling for tenders from contractors and suppliers, the holder of a mining licence or mine support services licence shall invite tenders from companies incorporated in Kenya, of majority ownership by Kenyans, where to the best of the holder's knowledge—

Call tenders. for

- (a) the company or contractors have proven ability and reputation in—

- (i) performing work of a similar nature and quality to that required by the holder;
  - (ii) completing such work within the specified time period; and
- (b) the suppliers are established, recognised and reputable suppliers of materials, equipment or services and have previously marketed or distributed such materials, equipment or services as applicable.

(2) Nothing contained in this regulation shall operate so as to require the holder of a mining licence, mining permit or mine support services in any way, to incur any greater cost, accept an inferior standard of work, accept a delay in supply or otherwise suffer any prejudice.

9. (1) The Director of Mines shall establish and maintain a register of local businesses and service providers for the mining industry.

Register of local business.

(2) The Director of Mines shall ensure the dissemination of the information on the register through the website of the Ministry, the local media and such other effective means as may be available from time to time.

(3) The holder of a mining licence shall encourage and support the establishment of businesses within Kenya with a particular emphasis on businesses directly owned by Kenyans or companies incorporated in Kenya to provide goods and services required for mineral activities and mining related activities or operations.

(4) The holder of a mining licence shall on an annual basis provide the Director of Mines with a list of companies incorporated in Kenya with majority ownership by citizens of Kenya that provide the holder with services, goods, materials and equipment for mineral activities and mining activities or operations, which the Director shall check against and add to the register.

10. The procurement of goods, materials, equipment and services by a holder of a mineral right or mine support services licence may be tendered for and procured internationally without restriction, provided that—

International procurement.

- (a) where such materials, equipment and services are procurable within Kenya, such businesses shall have the opportunity to tender and, if the initial tender submission from such businesses meets the specifications of the invitation to tender and such businesses are demonstrably capable of supplying the particular materials, equipment or services which are the subject of the tender, such businesses shall not be discriminated against in comparison with international suppliers;
- (b) in the event of parity between the initial tender submissions from businesses registered pursuant to regulation 8 (1) and

from international businesses, including consideration of the matters referred to in regulation 8 (1) (a), the holder shall be obliged to award the tender to the business registered pursuant to regulation 8 (1).

11. (1) The holder of a licence shall, within thirty days of the end of a half year, submit to the Director of Mines a listing of all contracts and purchase orders exceeding 100, 000, 000 Kenya Shillings or such other limit as the Director of Mines may determine, awarded in the previous half year.

Procurement report.

(2) This listing shall include—

- (a) list of all items and services;
- (b) value of contract or purchase order;
- (c) name of successful contractor or vendor;
- (d) a primary location of work;
- (e) estimates of Kenyan content;
- (f) commencement and completion date; and
- (g) any other information required by the Director of Mines for the purposes of implementing the provisions of these Regulations.

12. Subject to section 221 of the Act, the Cabinet Secretary may from time to time, publish and disseminate Guidelines in relation to the content level for all goods and services that shall be procured in Kenya.

Power to publish Guidelines.

13. (1) Subject to sub regulations (2) and (3), engineering services shall be rendered by Kenyan engineering companies registered with the relevant regulatory bodies.

Professional services for engineering.

(2) Foreign engineering consultants, firms or companies shall only be engaged when the required services are rendered in collaboration with firms or companies licensed to provide such engineering services in Kenya.

(3) Notwithstanding the provisions of sub regulation (2), where there is inadequacy or no capacity for any Kenyan consultant or company to undertake a particular engineering service, the Cabinet Secretary in consultation with the relevant professional body, may permit the holder to engage an expatriate or foreign company subject to such terms and conditions as the Cabinet Secretary may prescribe.



14. (1) A holder of a licence and its contractors, sub-contractors or any company engaged in any form of business, operations or contract in the mining industry shall insure all insurable risks related to its mining business or operations with companies licensed by the Insurance Regulatory Authority of Kenya for such purposes.

Professional services for insurance and reinsurance.

(2) Where there is a reasonable need for a holder to engage the services of an offshore insurance or Reinsurance company, prior consent of the Insurance Regulatory Authority shall be obtained which shall ensure that Kenyan local capacity has been fully exhausted.

(3) The holder shall, not later than thirty days after the end of the licence year, submit a report to the Director of Mines on all companies through which insurance or reinsurance coverage was obtained, the classes of cover obtained and the premiums paid for such coverage.

(4) No insurance in the mining industry shall be placed offshore without the written approval of the Insurance Regulatory Authority which shall ensure that Kenyan local capacity has been fully exhausted.

15. (1) An applicant for or holder of a licence shall only engage the services of lawyers, certified accountants or any such firm or company that are licensed to practice in Kenya.

Professional services for accounting and legal.

(2) Foreign firms, companies or consultants for legal or accounting services shall only be engaged when the required services are rendered in collaboration with individuals, firms or companies that are licenced or certified to practice or work in Kenya.

16. (1) A holder of a licence shall, not later than thirty days after the beginning of each licence year, submit to the Director of Mines an annual report on Kenyan content.

Reporting requirements.

(2) The report in sub regulation (1), shall include other reports required under regulations 9(4), 11 and 14.

(3) For all projects, contracts and purchase orders in excess of 10, 000,000 Kenya Shillings, the holder shall provide to the Director of Mines all advertisements, pre-qualification criteria, technical bid documents, technical evaluation criteria and the proposed bidders' lists.

(4) The holder shall include sufficient information with the notifications to enable the Director of Mines assess the subject matter and to be satisfied that the requirements for Kenya content regarding the use of local goods and services have been complied with by the holder and its contractors, sub-contractors or any other entity working for the holder.

(5) The Director of Mines shall review the amount stated in sub regulation (3) from time to time.

17. (1) The Director of Mines shall, within thirty days after receipt of the report on Kenyan content, assess and review the report to ensure compliance with the Mining Act and these Regulations.

Assessment of performance report.

(2) For the purposes of assessment and verification of the report, a holder of a licence shall allow the Director of Mines or any authorised officer access to their facilities, documents and information as the Director of Mines may request.

Dated the 9th May, 2017.

DAN KAZUNGU,  
*Cabinet Secretary for Mining.*

LEGAL NOTICE NO. 82

THE MINING ACT

(No. 12 of 2016)

✓ THE MINING (EMPLOYMENT AND TRAINING) REGULATIONS,  
2017

ARRANGEMENT OF REGULATIONS

- 1—Citation.
- 2—Interpretation.
- 3—Purpose of Regulations.
- 4—Application of Regulations.
- 5—Requirements for employment and training.
- 6—Submission of employment, training and succession plan.
- 7—Middle and junior level positions.
- 8—Obligation to establish a database of experts.
- 9—Promotion of research and development.
- 10—Reporting requirements.
- 11—Assessment of performance report.

SCHEDULE

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THE MINING ACT

(No. 12 of 2016)

IN EXERCISE of the powers conferred by sections 46 (3) and 223(1) of the Mining Act, 2016, the Cabinet Secretary for Mining makes the following Regulations—

THE MINING (EMPLOYMENT AND TRAINING) REGULATIONS,  
2017

1. These Regulations may be cited as the Mining (Employment and Training) Regulations, 2017. Citation.

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

Interpretation.

“Act” means the Mining Act, 2016;

No. 12 of 2016

“mining industry value chain” means the processes involved in the mining industry which include but are not limited to exploration, development, production, refining, smelting and marketing of minerals;

“technical” with respect to the recruitment of an employee includes engineers, technicians and geoscientists; and

“unskilled” means any labour that requires relatively little or no training or experience to perform a specific work or task.

3. The purpose of these Regulations is to—

Purpose of Regulations.

- (a) promote job creation through the use of local expertise in the mining industry, the entire mining value chain and to retain the requisite skills within the country;
- (b) develop local capacities in the mining industry value chain through education, skills and technology transfer, research and development; and
- (c) achieve the minimum local employment level and in-country spend across the entire mining industry value chain.

4. These Regulations shall apply to all applicants and holders, of any licence for—

Application of Regulations.

- (a) reconnaissance, prospecting and mining;
- (b) cutting, polishing, processing, refining and smelting of a mineral;
- (c) a large-scale mineral right which is valid after the coming into force of the Act and these Regulations; and
- (d) mine support services.

5. (1) An application for any licence shall not be granted by the Cabinet Secretary unless the applicant has submitted a plan outlining the proposals for the employment and training of Kenyans.

Requirements for employment and training.

(2) Where an experienced expatriate is needed, a plan for the progressive replacement of the expatriate by a Kenyan shall be required.

(3) Without limiting the scope of sub regulation (1), the plan shall contain the following—

- (a) the specification of the skills needed;

- (b) the number of Kenyans the applicant plans to employ;
- (c) the recruitment of any expatriate if required and the replacement of the person with a Kenyan;
- (d) particulars on the employment of marginalised groups including women, persons with disability, minorities and persons from the communities where mineral activities or mining operations are to be undertaken; and
- (e) the proposed expenditure that will be incurred under the plan.

(4) Where an applicant intends to recruit an expatriate for its proposed activities or operations, the particulars to be submitted shall include—

- (a) a detailed curriculum vitae of the person;
- (b) the position to be filled by the person and the job description;
- (c) a statement as to why the work cannot be done or the position occupied by a Kenyan;
- (d) the conditions of service of the expatriate including the term of the contract, remuneration, allowances and other benefits; and
- (e) a statement of how the applicant intends to train a Kenyan to replace the expatriate within a specified timeframe.

(5) The particulars required under sub regulation (4) shall be submitted to the Cabinet Secretary together with Form ET1 as set out in the Schedule.

(6) The approved plan shall form part of the conditions or obligations of the licence.

(7) The Cabinet Secretary shall not approve an application to recruit an expatriate unless he or she is satisfied that a Kenyan does not possess the requisite qualifications, skills and experience to occupy the position for which the expatriate is to be recruited.

(8) A holder of a mineral right shall not submit an application to the Department of Immigration Services for a work permit for an expatriate unless a recommendation has been obtained from the Cabinet Secretary or an authorised officer.

(9) A recommendation from the Cabinet Secretary shall not preclude compliance with the immigration laws of Kenya.

(10) For the purposes of making any decision under sub regulation (7), the Cabinet Secretary may, amongst other things, request a holder of a mineral right to—

- (a) advertise for a particular job which no Kenyan was deemed suitable or qualified to occupy; or
- (b) recruit from the pool of specialists or database that shall be established by the Director of Mines under regulation 8.

(11) An expatriate shall not be employed in an unskilled or clerical position.

6. (1) Every holder of a licence shall, within ninety days of the coming into force of these Regulations, submit to the Cabinet Secretary, an employment, training and succession plan which corresponds with the work programme or programme of mining operations that accompanied the application made by the holder for the grant of the licence.

Submission of employment, training and succession plan.

(2) The holder of any mineral right in respect of a large-scale operation which is valid after coming into force of the Act, shall be required, not later than eighteen months to update its employment and training plan in order to comply with these Regulations.

(3) For the purposes of sub regulation (1), an employment and training plan shall include the—

- (a) number of employees including expatriates;
- (b) number of employees that are Kenyans;
- (c) number of employees in the executive, managerial, technical, supervisory and unskilled categories and the number of employees in each category that are Kenyans; and
- (d) details of on-going and planned recruitment and training programmes for Kenyans.

(4) Where the holder of a licence has employed expatriates, the following particulars shall be provided to the Director of Mines —

- (a) the number of employees who are expatriates and their percentage relative to the total number of employees;
- (b) a detailed curriculum vitae of each expatriate;
- (c) the position held and the job description;
- (d) the conditions of service of the expatriate specifying the term of the contract, remuneration, allowances and other benefits;
- (e) copy of the work permit issued by the Department of Immigration Services;
- (f) a detailed training programme with specific training requirements, timelines and costs for the replacement of an expatriate by a Kenyan.

(5) A holder of a licence shall comply with the relevant labour, employment, social security laws and any regulations made under such laws of Kenya.

(6) A holder of a licence shall provide to the Director of Mines, a half yearly report on the employment and training activities not later than thirty days after the end of the reporting period.

(7) The report shall state the number of new employees who are Kenyans and were engaged during the respective period and their qualifications and job descriptions.

7. (1) A holder of a licence shall employ only Kenyans at junior and middle level positions.

Middle and junior level positions.

(2) Subject to sub regulation (1), a junior or middle level position includes the position of foreman, supervisor or any other corresponding position or grade.

(3) The Director of Mines may approve the recruitment of an expatriate upon justification by a holder of a licence that no Kenyan has the requisite qualifications, skills or experience to occupy a particular junior or middle level position.

8. (1) The Director of Mines shall establish and maintain a database of Kenyans with the relevant training, skills and experience including specialists or experts across the mining industry value chain.

Obligation to establish a database of experts.

(2) The Director of Mines shall ensure dissemination of the information on the database through the website of the Ministry, in the local media and such other effective means as may be available from time to time.

9. (1) The Director of Mines in consultation with the mining industry, universities, research and training institutions shall develop guidelines for applicable areas of training, research and development.

Promotion of research and development.

(2) A holder of a mining licence shall, within one year of the commencement of mining operations, submit a programme to the Director of Mines for the promotion of education, research and development based on the guidelines provided under sub regulation (1).

(3) A holder of a mining lease or special mining lease which is valid after coming into force of the Act shall comply with this regulation within eighteen months after coming into force of these Regulations.

10. (1) A holder of a licence shall, not later than thirty days after the end of the year, submit to the Director of Mines, an annual performance report covering all the activities related to employment, training, research and development.

Reporting requirements.

(2) The report shall be in such a format as the Director of Mines may direct.

11. (1) The Director of Mines shall, within thirty days of receipt of the report, assess and review the report to ensure compliance with the Mining Act and these Regulations.

Assessment of performance report.

(2) For the purposes of assessment and verification of the report, a holder of a licence shall allow the Director of Mines or any authorised officer access to their facilities, personnel, documents and any other information as the Director of Mines may request.

## SCHEDULE

FORM ET 1

(r.5(5))

### EXPATRIATE RECRUITMENT APPLICATION FORM

#### 1. PARTICULARS OF THE HOLDER OR APPLICANT FOR A LICENCE

Name of holder or applicant for a licence	
Type of licence held by the holder or applied for	
Licence/application number	
Date of issue and expiry of the licence in case of a holder	
Registered Address	
Telephone number land line	
Telephone number mobile	
Email	

#### 2. PERSONAL PARTICULARS OF EXPATRIATE

Full Name	
Position	
Duration of Employment	
Nationality	
Special Skills or Expertise	
Passport No.(Attach biodata page)	
Address	
Email	
Telephone Number	

#### 3. PERSONAL PARTICULARS OF KENYAN COUNTERPART

Full Name	
Qualification (Attach CV)	
Present Position	
Expected Takeover Date	

Address	
Email	
Telephone Number	

#### 4. PARTICULARS OF PLANNED PROGRAMME FOR KENYAN COUNTERPART

Planned Training Programme	Timelines	Training Cost

I certify that all of the statements made in this application are true, complete and are made in good faith. I understand that falsifying, misrepresenting or intentionally withholding information will be grounds for rejection of the application or cancellation if the application has been approved.

Name of applicant/holder: \_\_\_\_\_

Name of authorised person: \_\_\_\_\_

Title or Position: \_\_\_\_\_

Signature of authorised person: \_\_\_\_\_

Date: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Mobile Number : \_\_\_\_\_

Email: \_\_\_\_\_

#### DOCUMENTS SUBMITTED BY APPLICANT (check all boxes)

Application is complete (*all the following are attached*):

- Detailed curriculum vitae of the expatriate.
- Personal particulars of the expatriate including the attachment and full details of passport data
- Position to be filled and job description of the person
- The conditions of service of the expatriate including the term of the contract, remuneration, allowances and other benefits;
- Proof of payment of application fee.
- A statement of how the applicant intends to train a Kenyan to replace the person within a specified timeframe and training cost.
- Curriculum vitae and personal particulars of a Kenyan counterpart if he or she is already employed by the applicant/holder.

Dated the 9th May, 2017.

DAN KAZUNGU,  
Cabinet Secretary, Ministry of Mining.



LEGAL NOTICE NO. 83

## THE MINING ACT

*(No. 12 of 2016)*✓ THE MINING (USE OF LOCAL GOODS AND SERVICES)  
REGULATIONS, 2017

## ARRANGEMENT OF REGULATIONS

- 1—Citation.
- 2—Interpretation.
- 3—Purpose of the Regulations.
- 4—Application of the Regulations.
- 5—Use of Kenyan goods and services.
- 6—Requirement of a procurement plan.
- 7—Procurement requirements for a holder of a pre-existing mineral right.
- 8—Call for tenders.
- 9—Register of local businesses.
- 10—International procurement.
- 11—Procurement report.
- 12—Power to publish Guidelines.
- 13—Professional services for engineering.
- 14—Professional services insurance and reinsurance.
- 15—Professional services for accounting and legal.
- 16—Reporting requirements.
- 17—Assessment of performance report.

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THE MINING ACT*(No. 12 of 2016)*

IN EXERCISE of the powers conferred by section 223(1) of the Mining Act, 2016, the Cabinet Secretary for Mining makes the following Regulations—

THE MINING (USE OF LOCAL GOODS AND SERVICES)  
REGULATIONS, 2017

1. These Regulations may be cited as the Mining (Use of Local Goods and 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;

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

“Kenyan content” means the quantum of composite value added to or created in the Kenya economy by a systematic development of capacity and capabilities through the deliberate utilization of Kenyan human and material resources and services rendered in the mining industry value chain;

“Kenyan goods” means goods including but not limited to plant, machinery and equipment, manufactured, produced or assembled by Kenyans or companies incorporated in Kenya for such purpose;

“Kenyan services” means services offered by a Kenyan, Kenyan professionals, a company incorporated in Kenya or owned or controlled by Kenyans;

“mine support services” has the meaning assigned to it in the Act;

“mineral activities” means any activity or operations to be conducted under a licence to establish a refinery or a smelter or the reconnaissance, prospecting and mining of minerals;

“mining industry value chain” means the processes involved in the mining industry which include but are not limited to exploration, development, production, refining, smelting, polishing and marketing of minerals;

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

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

“procurement plan” means a procurement plan for goods and services submitted in compliance with any provisions of the Act and these Regulations.

3. The purpose of these Regulations is to—
  - (a) promote job creation through the use of local expertise, goods and services, businesses and financing in the mining industry value chain and their retention in the country;
  - (b) achieve the minimum local level and in-country spend for the provision of the goods and services in the mining industry value chain;
  - (c) increase the capability and international competitiveness of domestic businesses;
  - (d) create mining and mineral related support industries that will provide jobs and sustain economic development;
  - (e) achieve and maintain a degree of participation for Kenyans or companies incorporated in Kenya for the supply of goods and the provision of services; and
  - (f) provide for a robust, transparent monitoring and reporting system in relation to the use of goods and services.

Purpose of the  
Regulations.

4. These Regulations shall apply to—

- (a) all applicants and holders of any licence for –
  - (i) the reconnaissance, prospecting and mining of a mineral;
  - (ii) the cutting, polishing, processing, refining and smelting of a mineral; and
  - (iii) mine support services;
- (b) all operators, contractors and other entities involved in any project, operation or activity connected or related to mine support services, mineral activity or operation in Kenya.

Application of the Regulations.

5. The holder of a licence, its contractors and sub-contractors shall, to the maximum extent possible, when purchasing goods and procuring services required with respect to operations or any activity to be conducted under a licence, give first priority to—

- (a) materials and goods made in Kenya; and
- (b) services provided by citizens of Kenya or entities incorporated and operating in Kenya or owned and controlled by Kenyans:

Use of Kenyan goods and services.

Provided that such goods and services are equal in quality, quantity and price to, or better than, goods and services obtainable outside of Kenya.

6. (1) Except as otherwise provided in the Act or under these Regulations, an application for a licence shall not be granted unless the applicant has submitted a procurement plan for the purchase of goods and services in Kenya to the Cabinet Secretary.

Requirement of a procurement plan.

(3) Without limiting the scope of sub regulation (1), the plan shall ensure priority is given to citizens of Kenya or companies incorporated in Kenya and shall include—

- (a) the particulars of the goods and services the applicant intends to procure in Kenya to undertake its operations or activity;
- (b) the proposed expenditure that will be incurred under the plan;
- (c) particulars on gender; and
- (d) a timeframe for the plan.

(4) The plan if approved, shall form part of the conditions or obligations under the licence.

7. (1) Every holder of any mineral right which is valid after the coming into force of the Act shall, within ninety days of the coming into force of these Regulations, submit to the Cabinet Secretary a procurement plan for local goods and services.

Procurement requirements for a holder of a pre-existing mineral right.

- (2) For the purposes of sub regulation (1), the procurement plan shall include—
- (a) targets for local procurement including at least the items specified in the procurement list as provided or made available by the Director of Mines; and
  - (b) specific support to local providers or suppliers as well as other measures to develop the supply of local goods and services including broadening access to opportunities and technical support.

8. (1) When calling for tenders from contractors and suppliers, the holder of a mining licence or mine support services licence shall invite tenders from companies incorporated in Kenya, of majority ownership by Kenyans, where to the best of the holder's knowledge—

Call for tenders.

- (a) the company or contractors have proven ability and reputation in—
  - (i) performing work of a similar nature and quality to that required by the holder;
  - (ii) completing such work within the specified time period; and
- (b) the suppliers are established, recognised and reputable suppliers of materials, equipment or services and have previously marketed or distributed such materials, equipment or services as applicable.

(2) Nothing contained in this regulation shall operate so as to require the holder of a mining licence, mining permit or mine support services in any way, to incur any greater cost, accept an inferior standard of work, accept a delay in supply or otherwise suffer any prejudice.

9. (1) The Director of Mines shall establish and maintain a register of local businesses and service providers for the mining industry.

Register of local business.

(2) The Director of Mines shall ensure the dissemination of the information on the register through the website of the Ministry, the local media and such other effective means as may be available from time to time.

(3) The holder of a mining licence shall encourage and support the establishment of businesses within Kenya with a particular emphasis on businesses directly owned by Kenyans or companies incorporated in Kenya to provide goods and services required for mineral activities and mining related activities or operations.

(4) The holder of a mining licence shall on an annual basis provide the Director of Mines with a list of companies incorporated in Kenya with majority ownership by citizens of Kenya that provide the holder with services, goods, materials and equipment for mineral activities and mining activities or operations, which the Director shall check against and add to the register.

10. The procurement of goods, materials, equipment and services by a holder of a mineral right or mine support services licence may be tendered for and procured internationally without restriction, provided that—

International procurement.

- (a) where such materials, equipment and services are procurable within Kenya, such businesses shall have the opportunity to tender and, if the initial tender submission from such businesses meets the specifications of the invitation to tender and such businesses are demonstrably capable of supplying the particular materials, equipment or services which are the subject of the tender, such businesses shall not be discriminated against in comparison with international suppliers;
- (b) in the event of parity between the initial tender submissions from businesses registered pursuant to regulation 8 (1) and from international businesses, including consideration of the matters referred to in regulation 8 (1) (a), the holder shall be obliged to award the tender to the business registered pursuant to regulation 8 (1).

11. (1) The holder of a licence shall, within thirty days of the end of a half year, submit to the Director of Mines a listing of all contracts and purchase orders exceeding 100, 000, 000 Kenya Shillings or such other limit as the Director of Mines may determine, awarded in the previous half year.

Procurement report.

- (2) This listing shall include—
  - (a) list of all items and services;
  - (b) value of contract or purchase order;
  - (c) name of successful contractor or vendor;
  - (d) a primary location of work;
  - (e) estimates of Kenyan content;
  - (f) commencement and completion date; and
  - (g) any other information required by the Director of Mines for the purposes of implementing the provisions of these Regulations.

12. Subject to section 221 of the Act, the Cabinet Secretary may from time to time, publish and disseminate Guidelines in relation to the content level for all goods and services that shall be procured in Kenya.

Power to publish Guidelines.

13. (1) Subject to sub regulations (2) and (3), engineering services shall be rendered by Kenyan engineering companies registered with the relevant regulatory bodies.

Professional services for engineering.

(2) Foreign engineering consultants, firms or companies shall only be engaged when the required services are rendered in collaboration with firms or companies licensed to provide such engineering services in Kenya.

(3) Notwithstanding the provisions of sub regulation (2), where there is inadequacy or no capacity for any Kenyan consultant or

company to undertake a particular engineering service, the Cabinet Secretary in consultation with the relevant professional body, may permit the holder to engage an expatriate or foreign company subject to such terms and conditions as the Cabinet Secretary may prescribe.

14. (1) A holder of a licence and its contractors, sub-contractors or any company engaged in any form of business, operations or contract in the mining industry shall insure all insurable risks related to its mining business or operations with companies licensed by the Insurance Regulatory Authority of Kenya for such purposes.

(2) Where there is a reasonable need for a holder to engage the services of an offshore insurance or Reinsurance company, prior consent of the Insurance Regulatory Authority shall be obtained which shall ensure that Kenyan local capacity has been fully exhausted.

(3) The holder shall, not later than thirty days after the end of the licence year, submit a report to the Director of Mines on all companies through which insurance or reinsurance coverage was obtained, the classes of cover obtained and the premiums paid for such coverage.

(4) No insurance in the mining industry shall be placed offshore without the written approval of the Insurance Regulatory Authority which shall ensure that Kenyan local capacity has been fully exhausted.

15. (1) An applicant for or holder of a licence shall only engage the services of lawyers, certified accountants or any such firm or company that are licensed to practice in Kenya.

(2) Foreign firms, companies or consultants for legal or accounting services shall only be engaged when the required services are rendered in collaboration with individuals, firms or companies that are licenced or certified to practice or work in Kenya.

16. (1) A holder of a licence shall, not later than thirty days after the beginning of each licence year, submit to the Director of Mines an annual report on Kenyan content.

(2) The report in sub regulation (1), shall include other reports required under regulations 9(4), 11 and 14.

(3) For all projects, contracts and purchase orders in excess of 10,000,000 Kenya Shillings, the holder shall provide to the Director of Mines all advertisements, pre-qualification criteria, technical bid documents, technical evaluation criteria and the proposed bidders' lists.

(4) The holder shall include sufficient information with the notifications to enable the Director of Mines assess the subject matter and to be satisfied that the requirements for Kenya content regarding the use of local goods and services have been complied with by the holder and its contractors, sub-contractors or any other entity working for the holder.

(5) The Director of Mines shall review the amount stated in sub regulation (3) from time to time.

Professional services for insurance and reinsurance.

Professional services for accounting and legal.

Reporting requirements.

17. (1) The Director of Mines shall, within thirty days after receipt of the report on Kenyan content, assess and review the report to ensure compliance with the Mining Act and these Regulations.

Assessment of performance report.

(2) For the purposes of assessment and verification of the report, a holder of a licence shall allow the Director of Mines or any authorised officer access to their facilities, documents and information as the Director of Mines may request.

Dated the 9th May, 2017.

DAN KAZUNGU,  
Cabinet Secretary for Mining.

LEGAL NOTICE NO. 84

THE MINING ACT

(No. 12 of 2016)

X THE MINING (STATE PARTICIPATION) REGULATIONS, 2017

ARRANGEMENT OF REGULATIONS

- 1—Citation.
- 2—Interpretation.
- 3—Purpose of Regulations.
- 4—Application of Regulations.
- 5—Conduct of prospecting and mining operations on behalf of the State.
- 6—State right to free carried interest.
- 7—State right to paid equity participation.
- 8—State participation in prospecting operations.
- 9—Consent of Cabinet Secretary.

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THE MINING ACT

(No. 12 of 2016)

IN EXERCISE of the powers conferred by Section 48 (4) of the Mining Act, 2016, the Cabinet Secretary for Mining makes the following Regulations—

THE MINING (STATE PARTICIPATION) REGULATIONS, 2017

1. These Regulations may be cited as the Mining (State Participation) 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;

“farm-in agreement” means a written agreement under which a person or entity acquires an interest in, but not full ownership of, a prospecting licence by carrying out exploration work or prospecting operations, or contributing a proportionate part of the cost of the prospecting operations or exploration work to be carried out, in the area covered by the prospecting licence;

“free carried interest” means the grant of an equity interest by the holder to the State without any financial obligation, compensation or contribution to the holder of a mining licence by the State;

“paid equity participation” means the payment by government of its stake or equity in cash which entitles the State to share in revenue and pay for the costs of operations or mineral activities to be undertaken based on the percentage or proportionate of interest owned; and

“National Mining Corporation” means the National Mining Company established under section 22(1) of the Act.

3. The purpose of these Regulations is to provide for State participation in prospecting or mining operations carried out by a holder of a mineral right.

Purpose of Regulations.

4. These Regulations shall apply to all applicants and holders of any mineral right—

Application of Regulations.

- (a) which entitles the State to a ten percent free carried interest;
- (b) where the State acquires any additional interest that may be agreed with the holder of a mining licence; and
- (c) where the State enters into an agreement to participate in prospecting operations or activities under a prospecting licence held by a holder other than the National Mining Corporation.

5. (1) The National Mining Corporation shall on behalf of the State, be the investment arm of the National Government in respect of all prospecting or mining operations.

Conduct of prospecting and mining operations on behalf of the State.

(2) Without limiting the scope of sub regulation (1), the National Mining Corporation –

- (a) shall hold the State’s ten percent free equity participation or free carried interest in all mining operations;
- (b) shall be responsible for engaging in any operations relating to any additional interest that the State may acquire and which may be agreed with the holder of a mining licence at a fair market value; and
- (c) may acquire any interest in or enter into a joint venture, farm-in agreement or any other arrangement with a holder of a prospecting licence for the purpose of conducting prospecting operations.



State right to free carried interest.

6. (1) Where a mining licence is granted in accordance with the Act, the State shall be entitled to a ten percent free equity participation or free carried interest in the mining operations to which the licence relates.

(2) The State shall not make or pay any financial contribution to the holder of a mining licence in respect of the interest acquired under sub regulation (1).

(3) Any free carried interest acquired by the State shall not be diluted unless the State transfers, assigns or sells part or all of interest to the holder or any other party.

(4) The State's right to a free carried interest shall not apply to any right that has been granted to a holder of a mining licence, to mine a mineral before the coming into force of the Act.

(5) The Cabinet Secretary shall by notice in writing to the holder of a mining licence, require the mining company to issue to the State a ten percent interest in the company for no consideration.

(6) The Cabinet Secretary and the holder of a mining licence shall agree on the timeframe for the issuance of shares and in any case shall not be more than one year after the grant of the mining licence.

(7) For the purpose of giving effect to sub-regulation (3), the holder of a mining licence shall undertake the necessary actions towards the issuance of the shares and enter the name of the State in the appropriate register and issue a share certificate to the State in accordance with the laws of Kenya.

(8) The State as a shareholder shall have the right to vote and is entitled to receive notice of, and to attend and speak at, a general meeting of the members of the holder of a mining licence or company.

(9) The Cabinet Secretary on behalf of the State may appoint any person or statutory body to act as its agent for the exercise of any of the rights of the state as a shareholder.

(10) The State as a shareholder shall have the right to transfer, assign or sell all or part of its shares to the holder of a mining licence or a third party for a consideration to be agreed with the holder or third party.

(11) The State shall afford the holder of a mining licence the right of first refusal in any transfer, assignment or sale of part or all of its shares.

(12) The State shall be entitled to receive a percentage of any dividends that are declared by the holder of a mining licence equal to the percentage of its equity share at the time the dividend is declared.

(13) The State shall be entitled to appoint a director or the number of directors proportionate to its shareholding to the Board of the locally incorporated company of the holder of the mining licence.

(14) The free carried interest shall not give the State the right to manage or participate in the day to day management of the operations of the holder of the mining licence.

7. (1) In addition to the free carried interest or equity that the State is entitled to under the Act and regulation 6(1), the State may purchase an additional interest or share capital of the holder of the mining licence in respect of the mining operations.

State right to paid equity participation.

(2) Nothing contained in this Regulation shall be construed as giving the State the right of compulsory acquisition or purchase of additional interest or share capital.

Any additional interest that the State may acquire shall be agreed with the holder of the mining licence and the purchase shall be at a fair market value.

(3) Where the State intends to transfer, assign or sell part or all of its additional interest, it shall by notice, offer the holder of the mining licence the right of first refusal.

(4) Subject to sub regulation (4), the holder of the mining licence shall within ninety days from the date of receipt of the notice, be required to notify the State whether it intends to acquire the additional interest.

8. (1) Where the holder of a prospecting licence exercises the discretion to invite other interested persons to participate in prospecting operations, the National Mining Corporation may on behalf of the State enter into an agreement with the holder for that purpose according to mutually agreed commercial terms.

State participation in prospecting operations.

(2) Without limiting the scope of sub regulation (1), the agreements that the National Mining Corporation may sign with a holder of a prospecting licence may include but shall not be limited to joint ventures and farm-ins.

9. Any agreement that is entered into or interest acquired pursuant to section 48 of the Act and Regulation 5 shall require the consent of the Cabinet Secretary.

Consent of the Cabinet Secretary.

Dated the 9th May, 2017.

DAN KAZUNGU,  
*Cabinet Secretary, Ministry of Mining.*

LEGAL NOTICE NO. 85

## THE MINING ACT

(No. 12 of 2016)

## THE MINING (WORK PROGRAMMES AND EXPLORATION REPORTS) GUIDELINES, 2017.

## ARRANGEMENT OF GUIDELINES

## PART I—PRELIMINARY

- 1—Citation.
- 2—Interpretation.
- 3—Purpose of Guidelines.

## PART II—PROVISIONS ON REPORTING

- 4—Work programmes.
- 5—Exploration reports.
- 6—Confidentiality.
- 7—Expenditure statements.

## SCHEDULES

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THE MINING ACT

(No. 12 of 2016)

IN EXERCISE of the powers conferred by section 221 (1) of the Mining Act, 2016, the Cabinet Secretary makes the following Guidelines:—

## THE MINING (WORK PROGRAMMES AND EXPLORATION REPORTS) GUIDELINES, 2017.

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|--|--|
| <p>1. These Guidelines may be cited as the Mining (Work Programmes and Exploration Reports) Guidelines, 2017.</p>  | Citation.                                  |
| <p>2. In these Guidelines, unless the context otherwise requires—<br/>“Act” means the Mining Act, 2016;<br/>“applicant” means a person who applies for a reconnaissance licence, prospecting permit, prospecting licence or retention licence; and<br/>“holder” means a person who has been granted a reconnaissance licence prospecting permit, prospecting licence or retention licence.</p>   | <p>Interpretation.<br/>No. 12 of 2016.</p> |
| <p>3. These Guidelines –</p> <p>(a) provide guidance to applicants for, and holders of, reconnaissance licences, prospecting licences, prospecting permits and retention licences on how to prepare work programmes and exploration reports; and</p> <p>(b) are to assist the Director of Geological Surveys to review work programmes and exploration reports that shall be submitted by applicants for or holders of mineral rights.</p> | Purpose of Guidelines.                     |

4. (1) An applicant or holder shall submit online, a work programme that describes the activities that the applicant or holder proposes to carry out in the licence or permit area.

Work programmes.

(2) The work programme is required —

(a) to accompany a new application for a reconnaissance licence, prospecting permit, prospecting licence or retention licence ; or

(b) when a renewal is sought.

(3) A work programme shall provide a detailed plan for the duration for which the licence or permit is sought and outline the details of the activities and expenditure commitments for each year of the term of the licence or permit.

(4) The work programme shall contain information commensurate with the type of licence or permit and the stage of exploration reached to enable the Director of Geological Surveys to decide whether the proposed work is appropriate and adequate.

(5) A work programme submitted in support of a new application will be assessed in relation to the known geology and mineralisation in the area.

(6) The proposed work programme shall take into account all available geological maps and reports including geological surveys and previous company exploration reports, where these are available.

(7) The proposed expenditure set out in the work programme is required to be commensurate with what at the time is known of the geology and mineralisation of the area.

(8) A check list for preparing a work programme is set out in the First Schedule.

(9) Notwithstanding subparagraph (3), the holder of a permit or licence shall submit an updated work programme and expenditure commitment for the following year at the end of each year of the term.

(10) The updated programme shall summarise the results of the work done and describe how the proposed work builds upon this knowledge.

(11) The expenditure commitments for the subsequent years are subject to the minimum incremental requirements.

(12) The updated work programme shall accompany the annual report.

(13) The process of submitting a work programme for an application for a renewal of a permit or licence shall be similar to that provided for new applications.

5. (1) The holder shall submit to the Director of Geological Surveys an exploration report —

Exploration reports.

(a) on all activities being carried out under a permit or licence on a quarterly, bi-annual and annual basis;

(b) in support of an application for a renewal and when an area is surrendered.

(2) Every exploration report shall be made and signed by a qualified geologist recognised by the Geologists Registration Board of Kenya who is actively involved in carrying out the work programme.

(3) The lead geologist shall ensure that the exploration report complies with the relevant professional and international standards expected of a scientific or engineering report.

(4) The checklist for exploration reports are as prescribed in the Second, Third, Fourth and Fifth Schedules.

(5) Notwithstanding sub paragraph (4), an exploration report may include any other relevant information.

(6) The Sixth and Seventh Schedules provide for airborne surveys and a list of allowable expenses respectively.

(7) An exploration report shall relate to an individual licence, even where a holder has carried out parallel or associated programmes in two or more licence or permit areas.

6. (1) Exploration reports shall remain confidential during the term of the permit or licence. Confidentiality.

(2) Upon termination of the permit or licence, exploration reports become the property of the State and shall form part of the geological database of Kenya.

(3) Subject to sub paragraph (1), the public may access any information contained in an exploration report upon the payment of a prescribed fee.

7. (1) A statement of expenditure incurred in carrying out the approved work programme shall accompany each annual report. Expenditure statements.

(2) A statement of expenditure shall be submitted separately and not bound into the exploration report.

(3) A separate expenditure statement is required for each and every permit or licence.

(4) Only the expenses set out in the Seventh Schedule are allowable.

FIRST SCHEDULE

Checklist for preparing Work Program

par 4(9)

1. Company Name
2. Permit or Licence Number
3. Licence Type
4. Area
5. Locality (County)
6. Report Type
7. Author

8. Position of Author
9. Period of Report
10. Number of employees –
  - (a) Expatriates;
  - (b) Kenyans.
11. Description of work done e.g. area covered by geological mapping, area covered by geochemical sampling (total samples), number of drill holes, total depth in meters
12. Additional supporting documents
13. If annual report, upload the report
14. Expenditure for the quarter

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SECOND SCHEDULE

Checklist for Annual Report

(par 5(4))

1. Overview

Title, date and authors: The report cover and/or inner page should include a suitable title and other information including: area name; county in which licence or permit is located; licence or permit number; name of licence or permit holder; name of operator (if different to holder); report type (e.g. Annual, Final);author(s);reporting period; and date of report. It may be helpful to add a company report reference number.

Position, name and signature of author.

2. Contents

A contents page giving a breakdown, section by section, including appendices, together with page numbers. It should list tables, figures and maps including any loose maps contained in a sleeve at the back of the report or in a separate volume. Where a report comprises more than a single volume, each volume should be numbered and sub-titled. Each should have its own contents page which should additionally refer to the other volumes.

3. Executive summary

The report should contain a summary (abstract) of the work carried out and the results obtained aimed at the competent, non-specialist. The executive summary would not normally exceed three pages. Where there is more than one volume, the executive summary to the main volume should cover all reports.

4. Introduction

General background to project.

5. Geological setting

This section should provide an overview of the geology based on previous work by the Geological Survey, the licence or permit holder or others. It would normally include an outline of the stratigraphy, structure, known mineralisation, and prospectivity of the area. The topography and physiography should be briefly described. (Note: It is not

necessary to repeat all of this information in the second and subsequent years of the licence or permit, although a short summary might be helpful).

#### 6. Previous exploration

Where previous prospecting has been carried out over all or part of the area (or in areas of comparable geology nearby), the report should summarise this work (and quote references). In the second and subsequent years, only the previous work done by the current holder is necessary. Where this is a final report, that is the licence or permit is being surrendered, this section must provide a summary of the work carried out since the licence or permit was first granted.

#### 7. Strategy

Briefly describe the target mineralisation and the exploration strategy.

Logistics: Equipment employed, staff involved (expatriate and local), access and dealings with land owners or lawful occupiers should be summarised.

*The following is a checklist of possible items to be included: the list is neither prescriptive nor exhaustive. In general, an annual reports should mirror the contents of the approved work programme.*

#### A. Regional Exploration:

Remote sensing (interpretation of aerial photographs, satellite imagery and other imagery) and airborne geophysics such as aeromagnetic or radiometric survey). Whereas airborne surveys require a separate report, the main results and conclusions should be summarised here.

Geochemical sampling including geochemical analyses, subdivided into:

- rock samples
- streams sediments (including panned concentrates)
- soils
- laboratory used, analytical techniques, standards, quality control

(NB: The geochemical results and their interpretation should be summarised in the main text together with maps or plots, but full analytical data might be better placed in appendices. A copy of the original analysis sheet from the laboratory should be included).

Geological mapping (include a copy of each resulting map at the original scale)

Summary and conclusions; implications for further work

#### B. Preliminary follow-up work.

Stream sediment sampling (including panned concentrates)

Soil sampling

Surface rock (and mineral) sampling

Pitting and trenching

Note: Each of the above should include a summary of the results of mineralogical testing and geochemical analysis. The full analytical data with locational information and maps should be provided in appendices)

Shallow drilling or augering or diamond drilling, plus analytical results

- Ground geophysical surveys (e.g. IP; resistivity; EM) – full data and interpretation
- Semi-detailed geological mapping (maps at original scale to be provided)
- Geochemical sampling including geochemical analyses (refer to A. above for details)
- Summary and conclusions; implications for further work

C. Detailed follow-up work. (If more than one prospect has been investigated, each should be described in a separate section)

- Systematic, close-spaced geochemical (sub)soil sampling
- Pitting and trenching
- Shallow drilling or augering
- Diamond drilling
- Petrographic studies and ore mineralogy

(NB: Each of the above should include a summary of mineralogical testing and geochemical analysis (refer to First Schedule for details). The full data with locational information should be provided in appendices)

- Down-hole geophysical logs
- Surface and subsurface geological mapping (maps at original scale to be included)
- Geological modelling
- Preliminary economic evaluation
- Synopsis and conclusions, and outline of next stages

D. Summary and conclusions. This should include conclusions regarding the potential of economic mineralisation and a forward look covering the remaining term of the licence.

#### *Appendices*

A separate appendix should be provided for each dataset acquired and referred to in the main text. The data may include (but is not limited to): geochemical stream sediment, soil and rock samples; drilling logs (qualitative, mineralogical, grade, geophysical); and geophysical datasets. The data should be tabulated form.

For ground geochemical surveys: a description of the methods used; material sampled (drainage, soil, trench, float, drill hole); collection or screening techniques; sample preparation methodology; mesh size-fraction used for analysis; 'orientation' survey results; analysis technique(s); analytical equipment used; name of accredited laboratory; sample control procedures (e.g. randomisation, international standards); and statistical treatment of data. Printouts of the original analysis sheets from the laboratory should be included. Sample locations and traverses must be identified by coordinates and illustrated on appropriate scale maps. The analytical data should be presented as maps or cross sections in raw or processed (e.g. contoured) form.

For geophysical surveys: a description of the methodology including make, model and specification of each instrument used, components measured and units of measurement, units in which results presented, array arrangement, correction (e.g. diurnal variations). Locations, traverses and arrays must be identified by coordinates and illustrated on appropriate scale maps.



For drilling: grid coordinates; dip and azimuth; type of drill, core diameter (or hole diameter in case of chippings); collar elevation ASL; results of dip test and down hole surveys; name of drilling company; printouts of the results of *in situ* geophysical or geochemical downhole logs; interpretation logs; legible copies of physical core logs including petrographic or mineralogical tests signed by logger; core storage locations;

For petrological, petro-graphical, mineralogical and metallurgical studies: sample preparation methods; descriptions and results of tests and assays; sample location coordinates and plots.

For airborne surveys a *separate* report is required – refer to Annex F for further details of what must be submitted.

All maps, plans, figures, sections, logs, diagrams, graphs, photographs must be clearly labelled and consecutively numbered. A4 size illustrations should be bound with the text. Maps and plans should be drafted to standard scales (e.g. 1:500, 1:1,000, 1:25,000; 1: 50,000) with a scale bar in metric units, a north reference (grid, true or magnetic), date and author. Maps should include coordinates referenced to the official map of Kenya.

A copy of the approved work programme for the reported period should be included as reference.

List of all digital data provided including details of data formats.

References

Attach work programme for next year

### THIRD SCHEDULE

(par 5(4))

#### Checklist for Retention Report

##### 1. Overview

Title, date and authors: The report cover and inner page shall include a suitable title and other information including: area name; county in which licence or permit located; prospecting licence number; name of holder; name of operator (if different to holder); report type (Retention); author; reporting period; and date of report. It may be also helpful to add a company report reference number.

Position, name and signature of author.

##### 2. Contents

A contents page giving a breakdown section by section, including appendices, together with page numbers. It should list tables, figures and maps including any loose maps contained in a sleeve at the back of the report or in a separate volume. Where a report comprises more than a single volume, each volume should be numbered, and subtitled. Each should have its own contents page which should additionally refer to the other volumes.

##### 3. Executive summary

The report should contain a summary (abstract) of the work carried out and the results obtained aimed at the competent, non-specialist. The executive summary would not normally exceed one to two pages. Where there is more than one volume, the executive summary to the main volume should cover all reports.

Main text (the content will relate directly to the agreed work programme focusing on the specific activities that prevent the holder from immediately applying for a mining licence).

4. Introduction

General background to project.

5. Previous exploration

The report should summarise the previous exploration or feasibility work and describe the specific issues preventing the deposit being developed at the present time.

6. Strategy

Describe the activities aimed at alleviating the identified issues.

7. Logistics

Equipment employed, staff involved (foreign and local), access and dealings with land owners or lawful occupiers should be summarised.

*The following are examples of possible work areas (Note: the list is indicative, not exhaustive)*

A. Geological. (If more than one prospect has been investigated, each should be described in a separate section).

Pitting and trenching

Diamond drilling

Underground development

Ore mineralogy, metallurgical testing and smelting

Geophysical and geochemical surveys

Orebody modelling

B. Engineering or technical

Transport or access

Power or water

Infrastructure

Communications

C. Economic

Market prices

Finance

Business development model

D. Summary and conclusions.

This must include a clear statement as to when the licence holder will be in a position to apply for a mining licence, or what needs to change in order for this to happen.

*Appendices*

A separate appendix should be provided for each dataset acquired and described in the main text.

All maps, plans, sections, logs, and locational information not previously submitted.

A copy of the approved work programme for the reported period should be included as reference.

List of all new digital data separately provided including details of data formats.

## References

Attach work programme for the next year of current term or for any renewal applied for

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## FOURTH SCHEDULE

(par 5(4))

## Checklist for Surrender Report

## 1. Overview

Title, date and authors: The report cover or inner page should include a suitable title and other information including: licence or permit area name; county in which licence or permit located; licence or permit number; name of licence or permit holder; name of operator (if different to holder); report type (e.g. annual, final, surrender); author; reporting period; and date of report. It may be also helpful to add a company report reference number.

Position, name and signature of author.

## 2. Contents

A contents page giving a breakdown section by section, including appendices, together with page numbers. It should list tables, figures and maps including any loose maps contained in a sleeve at the back of the report or in a separate volume. Where a report comprises more than a single volume, each volume should be numbered, and sub-titled. Each should have its own contents page which should additionally refer to the other volumes.

## 3. Executive summary

The report should include a summary (abstract) of the work done and the results obtained aimed at the competent, non-specialist.

Main text (the content will depend on the stage of exploration reached in the area being surrendered)

## 4. Introduction

General background to project.

Geological setting: Overview of the geology, including an outline of the stratigraphy, structure, and potential for mineralisation. The topography and physiology should be briefly described.

### Exploration strategy

Briefly describe the target mineralisation and the exploration strategy.

#### A. Regional Exploration:

Remote sensing (interpretation of aerial photographs, satellite imagery and other imagery) and airborne geophysics such as aeromagnetic or radiometric survey.

Geochemical sampling including geochemical analyses subdivided into:

- rock samples
- streams sediments (including panned concentrates)
- soils

(Note: The geochemical results and their interpretation should be summarised in the main text together with maps or plots, but full analytical data may be better provided in appendices)

Geological mapping (include a copy of each resulting map at the original scale)

Summary and conclusions; implications for further work.

#### B. Preliminary follow-up work.

Stream sediment sampling (including panned concentrates)

Soil sampling

Surface rock (and mineral) sampling

Pitting and trenching

(NB: Each of the above should include a summary of the results of mineralogical testing and geochemical analysis. The full analytical data with locational information and maps should be provided in appendices)

Shallow drilling or augering or diamond drilling plus analytical results

Ground geophysical surveys – full data and interpretation

Semi-detailed geological mapping (maps at original scale to be provided)

Summary and conclusions; implications for further work.

#### C. Detailed follow-up work. (If more than one prospect has been investigated, each should be described in a separate section)

Systematic, close-spaced geochemical (sub) soil sampling

Pitting and trenching

Shallow drilling or augering

Diamond drilling

Petrographic studies and ore mineralogy

(NB: Each of the above should include a summary of mineralogical testing and geochemical analysis. The full data with locational information should be provided in appendices)

Down-hole geophysical logs

Surface and subsurface geological mapping (maps at original scale to be included)

Geological modelling

Preliminary economic evaluation

Synopsis and conclusions, and outline of next stages

5. Summary and conclusions.

Appendices(Also refer to information provided for Annual reports)

Appendices should reproduce original information and data for the surrendered ground, extracted from past annual reports: e.g. geochemical stream sediment, soil and rock samples; drilling logs (qualitative, mineralogical, grade, geophysical); and geophysical datasets. The information would normally be presented in tabular form as printouts of the data to be supplied in digital format.

Copies of earlier-submitted (or extracts thereof) maps, plans, sections, logs, and locational information at original scales.

- . List of all digital data provided including details of data formats.

### *References*

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FIFTH SCHEDULE

(par 5(4))

### Checklist for Feasibility Study

NOTE: It is likely that the feasibility study will comprise a number of separate reports. In this case, the holder should provide a Summary Report drawing together the results and listing the separate volumes.

Title, date and authors: The report cover or inner page should include a suitable title and other information including: area name; county in which licence or permit located; licence number; name of licence holder; name of operator(s) (if different to holder); report type; author and contributors; and date of report. It may be also helpful to add a company report reference number.

Position, name and signature of lead author

Contents

Executive summary

Background

Mining history of area; land surface holding; access; stakeholders

### *Geology*

Geological occurrence of mineral deposit; economic mineral(s), ore grade and reserves (proven, estimated and inferred) supported by detailed calculations and assumptions

### *Mining operations*

Mining methods; mine plan; production planning; mining rate; processing plant and strategy; equipment; water and water management; stockpiling

*Mine development*

Mine development plans and timetable; construction and earth moving; tailings and tailings storage construction

*Ore processing and concentration*

Size; throughput or capacity; plant design; raw materials consumption (e.g. chemicals); refining; power requirements

*Washing plant*

Capacity; water supply and usage; tailings disposal

*Infrastructure*

Power or electricity usage and supply; administration and staff accommodation; community development; hospital; laboratories; workshops; transport (roads, railways, ports); mine support services

Power generation

Instrumentation and communications

*Capital programme*

General requirements; mine development costs and financing; capital; contingency and escalation; pre-production costs; cash flows;

*Operating costs and economic model*

Workforce (expert and unskilled); operating cost structure and breakdown; labour; materials; fuel; contracted services; consumables; administration; mining lease fees; surface rents; capital replacement and amortisation; contributions to development funds; royalty; tax; insurance; external costs;

*Marketing*

Mineral product(s); sales volumes; prices and market trends

*Business model*

Assumptions; demand and historical trends; price forecasts and volatility; economic model; net present value; cash-flow analysis; sensitivity analysis; economic benefits to Kenya; risk assessment.

*Mine closure plan*

Financial plan; timetable and implementation; restoration or rehabilitation of land; alternative uses of mined out ground; safety considerations; social impacts; plan to progressively introduce alternative livelihoods; removal of plant and machinery; alternative uses (conversion) of infrastructure; post-mining environmental monitoring of mine area (including tailings); contingencies.

*Environment and social impact assessment*

Full, expert assessment and modelling of effects of mining on the environment and social structures; hazard analysis; mitigation plan; monitoring programme

## SIXTH SCHEDULE

(par 5(6))

## Special Provisions for Airborne Surveys

- (a) Progress Reports: The holder of a mineral right who undertakes an airborne geophysical survey must submit a progress report not later than seven days after the end of each four week period. The report shall include:
- A narrative description of the progress achieved during the previous month and since the campaign commenced;
  - an index map (may be at small scale) showing flight lines and indicating line-kilometres flown; and
  - hardcopy plots of any processed or interpreted data, including cumulative plots of data collected since commencement.
- (b) Final Report: The report should follow the presentational format outlined for other types of technical report and provide full details of the survey including: type of survey; instrumentation; aircraft type; flight line intervals; ground speed; nominal flight height and ground clearance; dates of survey; weather conditions; and name of company. Flight index maps must show flight lines and tie lines. The report must list and describe the digital data and provide information regarding formats sufficient to enable the data to be read and processed using industry-standard software. The digital data (raw, processed and interpreted) must be provided separately in an industry-standard format together with full metadata. New aerial photography (acquired under special permission) must record full details of the survey including: aircraft; camera used; flight height; notional scale; overlap or sidelap; name of company; and flight index plan. A copy of the digital imagery must similarly be provided.

The following must be submitted upon completion of any airborne survey (remote sensing, geophysical or geochemical).

- A digital, read-only PDF copy of the report.
- A copy of all original or raw, processed and interpreted data (including maps or plot files), plus metadata, in an industry standard digital format (submitted online cadastre or delivered to the Director of Geological Surveys).
- Two bound copies of the report, delivered to the Mining Cadastre Office. This must include full-size hardcopy plots of each processed and interpreted dataset, together with flight plans.

## SEVENTH SCHEDULE

(par 5(6))

## Allowable Exploration Expenses

An itemised statement of expenditure necessarily incurred in carrying out the approved exploration work programme must accompany (but must be physically separate from) each exploration report. A detailed list of allowable expenses is provided in the Licensing Regulations. The following is a summary of the main categories of allowable expenditure incurred by the licence holder including any subcontractor or service provider, *which are directly related to the programme*:

- Field and laboratory exploration activities — all field costs incurred in carrying out the mineral exploration program relating to: literature research;

geological mapping; geochemical surveys; geophysical surveys; remote sensing or photo geology; sample collection; sample transport costs; laboratory analysis; petrological, petrographical and mineralogical studies; boundary, control and gridding surveys; data processing; boundary, control and gridding surveys; office costs related to laboratory analysis; data processing; document production, interpretation; assessment; and presentation of results.

- Drilling, excavation and pre-production costs — includes site preparation (construction and maintenance of access roads, drill sites, camp sites and water supply) and rehabilitation; drilling and completion costs (rigging-up, drilling, coring, fishing, casing, logging and other associated surveys, core analyses, rigging-down, consumable goods, hire of plant and equipment, repair and maintenance); trenching, stripping and pitting; shaft sinking and other underground excavations; bulk sampling; pilot and beneficiation studies; pre-feasibility and feasibility works including economic or marketing studies.
- Environmental activities – includes baseline studies; environmental and social or cultural impact assessments; rehabilitation and mine closure or rehabilitation studies; environmental management and rehabilitation; community consultation and outreach.
- Logistics — camp construction and operating costs (office and accommodation, .); transport or shipping (personnel, plant, equipment, samples for analysis, materials); salaries and wages (supervisory, technical and non-technical); insurance (equipment, personnel pertaining to operations on the licence); and report production costs (data processing, reproduction and presentation of results); sub-contractor costs; equipment hire charges.
- Depreciation or amortisation of all owned equipment used in the exploration: vehicles, machinery, equipment, drill, if not already included in the costs above. The full price of equipment intended to remain on site for future production work. Shared-use equipment shall only include apportioned costs according to actual usage.
- Administration – includes only the direct costs of running local office and local agent's charges. (Note: any in-country office and agent's expenses must be apportioned between concurrent projects); travel to or from Kenya by expatriate staff *directly involved* in programme; and other direct and *unavoidable costs* associated with the work programme.
- Compensation or payments – to land owners or lawful occupiers and communities.
- Training of Kenyan citizens including travel or accommodation.
- Miscellaneous – any other essential costs necessarily and unavoidably incurred in the course of the work programme.
- Excluded are overseas headquarters costs, overseas staff-related costs, financing costs, and any non-project-related travels.

Dated the 9th May, 2017.

DAN KAZUNGU,  
*Cabinet Secretary, Ministry of Mining.*