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EXPLANATORY MEMORANDUM
EXPLANATORY MEMORANDUM TO THE
Mining (licensing and Permitting) Regulations, 2016, No.....

PART I

Name of the Statutory Instrument: Mining (Licensing and Permitting) Regulations, 2016.

Name of the Parent Act: Mining Act, 2016.

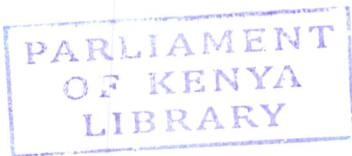
Name of the Ministry: Ministry of Mining

Enacted Pursuant to : section 223(1), and 223(2) 1

Ministry of Mining

Gazetted on

Tabled on



PART II

1. Purpose of the Statutory instrument

The main purpose of these Regulations is to give effect to section 223(1),(2) of the Mining Act, 2016 which requires the Cabinet Secretary to make Regulations to provide the form of licence ,permit, form ,return or other documents to be used for the purposes of this Act.

2. Legislative Context

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

Article 260 of the Constitution defines Minerals under Natural resources.

These Regulations are intend to operationalize the Mining Act, 2016 and to ensure transparency in issuance of mineral rights, permits in the Mining sector.

3. Policy Background

The Mining and Mineral Policy is enshrined in Sessional Paper No. 07 of 2016 (unpublished).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

The Policy led to the repeal of a series of mining related policies that did not take into account issues of specified and definite period of a licence, the size of an area to with regard to a particular licence which has been translated into the Mining Act, 2016 which requires at section 223(1),(21) for the regulations as to the term of the licence.

These regulations operationalizes provisions with regard to the once referred to as 'illegal miners' as they were previously miners as are granted licences under section 98 and 100.

3.1 What is being done and why

The repealed legislations did not comprehensively legalize the licensing process and did not provide for definite terms in various licences. The Mining Act, 2016 provides a definite period for a particular license and the size for a particular license for instance reconnaissance licence area is maximum 5000 cadastral blocks and a period of two years nonrenewable and Prospecting area is 1500cadastral block and issued for a maximum of three (3) years renewable for twice further term of 3 Years, thus maximum 9years.

The act introduces small scale and artisanal mining permits that are reserved only for Kenyan citizens as well as dealership permits reserved for Kenyans.

The rationale for a comprehensive licensing regulations is to remove the discretionary powers that existed in the Repealed Act and to ensure transparency in the mining sector by introducing the Online Mining Cadastre and Mineral Rights Board.

3.2 Consolidation

The Regulations seek to revoke the Regulations on licensing and permits under The Mining Act (Cap. 306), Trading in Unwrought Precious Metals Act (Cap 309) and the Diamond Industry Protection Act (Cap 310) (now repealed), and the provisions of which have now been consolidated into these Regulations.

4.0 Consultation outcome

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

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 (Coast, Western/Nyanza, Rift valley, Eastern and North Eastern as shown below.

| | DATES | VENUE | STAKEHOLDERS' |
|----|--|--------------|---|
| 1. | 22 nd and 23 rd March 2016 | Naivasha | Ministry Staff & other MDAs and constitutional bodies such as NLC, CRA, AG, KRA, DOSH, Ministry of Industry and Trade |
| 2. | 11 th and 13 th April 2016 | Naivasha | The Ministry staff and other Inter-government agencies DOSH, KRA, AG, NLC, CRA, NEMA |
| 3. | 10 th and 11 th August 2016 | Nairobi | The Ministry staff and other Inter-government agencies DOSH, NEMA, NLC, KRA, AG, CRA, KRA |
| 4. | 16 th and 17 th August 2016 | Voi | Holders of mineral rights and dealers' rights from the Coastal Region and the community based organizations |
| 5. | 29 th and 30 th August 2016 | Nairobi | Kenya Chamber of Mines |
| 6. | 31 st August and 1 st September 2016 | Nairobi | (a) Civil Society Organizations (b) Think Thanks |

| | | | |
|-----|--|---------|--|
| | | | (c)Academia |
| 7. | 20 th and 23 rd September 2016 | Kisumu | Industry players from Western, Nyanza, Rift Valley Regions and Community Based Organizations. |
| 8. | 26 th and 27 th October 2016 | Mombasa | County Executives; Chief Officers and Chairpersons of county assemblies on Natural Resources from the Coastal, North Eastern and Eastern Regions |
| 9. | 2 nd and 3 rd November 2016 | Nanyuki | Industry players from the Rift Valley, Central, Eastern and North Eastern regions |
| 10. | 9 th and 10 th November 2016 | Kisumu | County Executives; Chief Officers and Chairpersons of county assemblies on Natural Resources from the Western, Nyanza and Rift Valley Regions |
| 11. | 25 th November 2016 | Nairobi | Kenya Chamber of Mines/Industry |
| 12. | 27 th February, 2017 | Nairobi | Kenya Chamber of Mines/Industry |

The stakeholders from the various county governments provided critical feedback that was used to revise the regulation. One of the key concerns from the Public was with regard to the time frame for reporting Under regulation 4 (3) that was initially 30(thirty) days and was changed to sixty (60) days.

5. Guidance

The Ministry upon publishing the Regulations and in the course of preparation of the regulations has provided guidance and other forms of publicity to the users, operators and the clients by way of:

Mining Cadastre which is an online portal for mining rights applications, reporting and acts as the licensing register and a communication medium for applicants and licensee. The Ministry also provides guidance through letters, posting information on the ministry website and stakeholder sensitization.

6. Impact

6.1 The impact on Fundamental Rights and Freedoms

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

6.2 The impact on the Private Sector

Increased transparency in the licensing regime.

6.3 The impact on the public sector

Effective and efficient licensing procedures will result to increased number of investors in the mining sector.

6.4 An impact assessment

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

7. Monitoring and review

The Ministry intends to monitor the 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 or email: cs@mining.go.ke can answer any queries regarding the statutory instrument.