

EXPLANATORY MEMORANDUM

Mining (Use of Local Goods and Services) Regulations, 2017, No.....

PART I

Name of the Statutory Instrument: Mining (Use of Local Goods and Services) Regulations, 2017.

Name of the Parent Act: Mining Act, 2016.

Name of the Ministry: Ministry of Mining

Enacted Pursuant to: section 223 (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) and section 50 of the Mining Act, 2016, which requires the Cabinet Secretary to make Regulations necessary and convenient for the proper administration and implementation of the Act. The regulation applies to all applicants and holders of any license for: a large scale mineral right; the large scale cutting, polishing, processing, refining and smelting of a mineral; and mine support services. It also applies to 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.

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. Article 69(1) (a), (h) of the Constitution requires that exploitation and utilization of environment and natural resources benefit the Kenyan people.

These Regulations are intended to operationalize the Mining Act, 2016 and to ensure that Kenyans benefit, to the maximum extent possible, when a holder is purchasing goods and procuring services required with respect to operations or any activity to be conducted under a licence.

3. Policy Background

The Mining and Mineral Policy as contained in Sessional Paper No. 07 of 2016 (unpublished) recognizes that the Mining sector has a potential of contributing significantly to the Country's economic development.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 contain issues of utilization of Kenyans goods and services in mining and mineral related projects.

- *What is being done and why*

The repealed law relating to Mineral and Mining did not address the requirements for use of local good and services in the Mining sector. The Mining Act 2016 provides in detail the requirements for the use of local goods and services in the Mining sector.

The use of local goods and services is to comply with the Constitutional provisions and to ensure that Kenyans benefit from the exploitation and utilization of natural resources.

4. Consultation outcome

The Ministry has conducted wide consultation and public participation on the regulations through publication by the Cabinet Secretary on the ministry website, the Ministry Notice Boards and several letters inviting the individual and institutions as indicated in the Matrix here under

The Ministry conducted stakeholder engagement forums (**see table below**) that were followed by various comments submitted through Memorandums most of which did not object to the provisions of the proposed regulations as relating to use of local goods and services

Notably, there were few major comments from the various stakeholders the Ministry engaged with regard to use of local goods and services. The stakeholders were of the opinion that clause 4 (2) was broadly worded and would capture one-off contracts and small and medium-sized enterprises that would not be able to comply with the administrative burden of providing all the information required under this Regulation. The Ministry removed the sub-contractors from the list of those who the regulation applies to.

Further the concern by the stakeholders on Clause 6; Industry proposed that the license or Mineral Agreement should include an agreed timeframe that procurement plans are valid for. The clause was redrafted to include that a timeframe should be part of the plan to be submitted by the company.

On clauses 9 (2) and 14, the stakeholders insisted that the regulation places onerous reporting on the licence holder. The Ministry changed the timeframes to half yearly and annually respectively to accommodate the stakeholders' opinion that such many reports would be burdensome to their operations.

List of stakeholders and dates consulted/engaged

	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

5. Guidance

The Ministry upon publishing the Regulations and in the course of preparation of the regulations has provided guidance and other forms of the publicity to users, operators and the clients by way of letters, positing the draft regulations onto its 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 freedom of the users.

6.2 The impact on the Private Sector

The regulation will increase capability and international competitiveness of the domestic businesses as well as creating a mining and mineral related supportive industry that will provide jobs and sustain economic development.

6.3 The impact on the public sector

The regulation aims at: promoting job creation through use of local expertise, goods and services; achieve and maintain a degree of participation for Kenyans or companies incorporated in Kenya for the local supply of goods and the provision of services

7. Monitoring and review

The Ministry will monitor and enforce the regulation once they come into force and shall from time to time necessary review the regulations and may make amendments as appropriate.

8. Contact

All queries on this statutory instrument may be referred to the Cabinet Secretary.

The Cabinet Secretary, Ministry of Mining, Tel: 020 272 7434

or email: cs@mining.go.ke