

EXPLANATORY MEMORANDUM
EXPLANATORY MEMORANDUM TO THE
Mining (Use of Assets) Regulations, 2017, No.....



PART I

Name of the Statutory Instrument: Mining (Use of Assets) Regulations, 2017

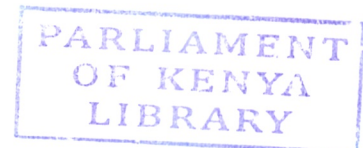
Name of the Parent Act: Mining Act, 2016.

Name of the Ministry: Ministry of Mining

Enacted Pursuant to: Section 149(6)

Gazetted on

Tabled on



PART II

1. Purpose of the Statutory Instrument

The main purpose of this Regulation is to give effect to section 149(6) of the Mining Act, 2016 which requires the Cabinet Secretary to make Regulations to provide the framework for the use of mining assets after the termination of a mining licence. Most of these assets in the form of plant, equipment and machinery and buildings are treated as capital expenditures and their cost are deducted from the revenues derived from the sale of minerals. Therefore, these assets after having been fully depreciated must be returned to the State.

2. Legislative Context

To ensure that the development of minerals benefit the State as provided for in Article 69(2)(h) of the Constitution, the Mining Act, 2016 provides that assets used for mining operations should be handed over to the State after the termination or cessation of mining. It also gives meaning to Article 66(2) of the Constitution which provides that investments in property benefits local communities and their economies. Therefore, this Regulation is intended to operationalize the provision for the use of mining assets in the Mining Act.

3. Policy Background

The Mining and Mineral Policy is contained in Sessional Paper No. 07 of 2016 (unpublished) and recognizes that the mining sector has a potential of contributing significantly to the country's economic development. The use of assets after mining provides an opportunity for the State to maximize the benefits from mining. It also ensures that Counties and communities where mining operations have taken place benefit from these assets.

4. Consultation outcome

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

Letters were sent directly to various stakeholders; Industry Players, Civil Society Organizations, County Governments, Community based organizations and other government agencies to provide input and feedback on the regulations. During the period between August, 2016 and March, 2017, the Ministry conducted stakeholder sensitization forums in different regions in the country that were well attended by stakeholders who provided critical feedback that was used to revise the regulations.

5. Guidance

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

6. Impact

6.1 The impact on Fundamental Rights and Freedoms

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

6.2 The impact on the Private Sector

This regulation does not impact negatively on the operations of the holders of mining licences.

6.3 The impact on the public sector

Apart from royalties and other taxes that the State shall receive from mining activities, the mining assets after being fully depreciated are to be handed over to the State when the mines are decommissioned provides a sense of ownership rights to the people as the ultimate owners of the minerals.

No impact assessment was conducted.

7. Monitoring and review

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

8. Contact

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