

EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM TO THE Mining (**work programmes and exploration reports**) Guidelines, 2017

PART I

Name of the Statutory Instrument: Mining (**work programmes and exploration reports**) Guidelines, 2017.

Name of the Parent Act: Mining Act, 2016.

Name of the Ministry: Ministry of Mining
Enacted Pursuant to: Sections 221(1)

Ministry of Mining
Gazetted on

Tabled on

PART II

Purpose of the Statutory Instrument

The main purposes of these Guidelines are to give effect to sections 221(1) of the Mining Act, 2016 which requires the Cabinet Secretary to make Guidelines for large scale operations.

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. These Guidelines are intended to operationalize the Mining Act, 2016 and to provide the necessary guidance to applicants for, and holders of, reconnaissance, prospecting and retention licences on how to prepare work programmes and exploration reports. This will ensure that consideration and review of new applications for reconnaissance and prospecting licences are based on sound work programmes and licences granted comply with conditions and commitments as may be approved by the Ministry.

3. Policy Background

The Mining and Minerals Policy as contained in Sessional Paper No. 07 of 2016 (unpublished) recognizes that the mining sector has a potential of contributing significantly to the Country's economic development. To be able to do this effectively, the policy requires

the Ministry to build a strong geological data base. This will be achieved among others, through the Guidelines for the review of work programmes and the submission of exploration reports.

• *What is being done and why*

The repealed legislation did not have any provision on the review of work programmes and the submission exploration reports for large scale holders of exploration licences. These Guidelines provide guidance to applicants for, and holders of, reconnaissance, prospecting and retention licences on how to prepare work programmes and exploration reports. They also give guidelines on timelines for submission of reports. Work programmes are used to evaluate new applications and to ensure year-on-year progression, whilst exploration reports document the work completed and provide the basis for assessing compliance with the licence/permit conditions and commitments. A work programme must be accompanied by a statement of proposed expenditure for the coming year. Non-compliant work programmes and technical reports may lead to rejection of an application or suspension or revocation of a mineral right. A successful mining operation depends on the quality of exploration reports and the feasibility study report.

Whereas these guidelines relate primarily to large-scale mineral rights (reconnaissance licences, prospecting licences, retention licences and mineral agreements), the criteria for prospecting and mining permits follow the same general principles: in this case, however, allowance is made for the small-scale nature of the operations.

The Guidelines will enhance transparency and accountability in mineral exploration activities in the country.

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 Naivasha, Voi, Kisumu, Nanyuki and Mombasa at various dates as indicated in the Matrix here under.

	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 forums were well attended by stakeholders who provided critical feedback that was used to revise the regulations. Most of stakeholders did not object to the provisions of the proposed regulations relating to guide lines for work programmes and exploration reports.

In their submission, Acacia Mining Kenya Ltd and May Fox Mining Company suggested that the audited statement of expenditure in clause 8 be changed to statement of expenditure. The rewording of clause 8 was done and the word audited excluded.

5. Guidance

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

the clients by way of letters, positing the draft regulations onto its website and stakeholder sensitization.

6. Impact

It is important to note that work programmes and technical reports are not simply essential documents used to ensure that exploration is conducted to the highest professionally standards and in the best interests of developing Kenya's mineral potential. Together with geologist's field inspection reports from the Ministry of Mining, they form the basis for regulating the exploration sector. In the case of the private sector, applicants for, and holders of, reconnaissance, prospecting and retention licences will have to prepare and submit compliant work programmes and exploration reports within given timelines. Non-compliant work programmes and technical reports may lead to the rejection of an application or suspension or revocation of a mineral right. For the public sector, the guidelines will prevent speculation by holders of exploration licences and therefore increase transparency and accountability in mineral exploration. This will lead to efficient evaluation and management of reconnaissance, prospecting and retention licences and ultimately assist the Ministry to build a strong geological data base.

7. Monitoring and review

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

8. Contact

The Cabinet Secretary
Ministry of Mining
Tel: 020 272 7434 or email: cs@mining.go.ke
All queries on this statutory instrument may be referred to the Cabinet Secretary.