



**MINISTRY OF MINING**

**THE GOVERNMENT OF THE REPUBLIC  
OF KENYA**

**MINISTRY OF MINING**

**THE MINING ACT**

**MINING (LICENSING AND**

**PERMITTING) REGULATIONS, 2016**

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IN EXERCISE of the powers conferred by sections 223(1) and pursuant to Sections 30 (1) of the Mining Act, 2016, the Cabinet Secretary for Mining makes the following regulations:—

## **Mining (Licensing and Permitting) Regulations, 2015**

### **PART I: PRELIMINARY**

#### **1. Citation**

These regulations may be cited as the Mining (Licensing and Permitting) Regulations, 2016.

#### **2. Commencement**

These regulations shall come into force on the date of its publication in the Kenya Gazette.

#### **3. Interpretation**

In these regulations words and phrases shall have the meanings given to them in the Act or as defined in these regulations;

“**Act**” means the Mining Act, 2015;

“**ancillary activities**” means actions taken in support of reconnaissance activities, mineral prospecting and exploration, mining, processing, transport or other activities necessary to ensure effective implementation of a licence or permit;

“**application area**” means the area identified by a licence or permit applicant during the process of the application;

“**application date**” means the date (day/month/year) and time (hour/minute/second) recorded respectively as (dd/mm/yyyy) and (hh:mm:ss) in Kenya time at which the licence or permit application registration receipt was issued by the OMC;

“**artisanal mining area**” means an area that is subject to an artisanal mining permit;

“**Artisanal Mining Committee**” means the committee appointed pursuant to Clause 94 of the Act that shall be established in every County having mining operations and charged to advise the representative of the Director of Mines in respect to the granting, renewal, or revocation of artisanal mining permits in that County;

“**artisanal mining programme**” means a simplified mining programme to be prepared in a manner appropriate to artisanal operations, commensurate to the artisanal mining operations for which it is planned;

“**associated mineral**” means a mineral which occurs with a mineral resource in such circumstances that it is physically impossible to mine the mineral resource without also mining the mineral found in association with the mineral resource;

“**block or cadastral unit**” has the meaning as defined in the Act;

“**cadastre**” shall be the same as “mining cadastre” which, for the purposes of these regulations, means a digital register of mining properties and applications

“**cadastral coordinates**” has the meaning assigned to it in the Fourth Schedule to these regulations;

“**cadastral map**” means the digital, topographical map indicating the limits of each mineral right perimeter in force or whose application is being processed, prepared for each County and zone by the Mining Cadastre Office established and maintained as prescribed in the Third Schedule of these regulations;

“**cadastral register**” means a digital as well as a paper-based, spatially integrated database and associated applications used to store and manage all mineral rights’ tenures within Kenya, that is to be used to record information for all mineral rights and related matters, as specified in regulation 9 of these regulations;

“**cadastral coordinates**” has the meaning assigned to it in the Fourth Schedule to these regulations;

“**cadastral map**” means the digital cadastral map established and maintained as prescribed in the Fourth Schedule of these regulations;

“**cancel**”, which shall include ‘cancelled’, means to terminate the processing of a licence or permit application prior to its granting;

“**commercial production start date**” means the date on which the mine, or where the mining operations consist solely of, or are inclusive of, mineral processing operations, is first expected to commence production of mineral products for sale;

“**community**” has the same meaning as in the Act;

“**Community Development Agreement**” means a legal commitment entered into by a mineral right holder and affected mine community to define their mutual relationships and obligations, , and which is agreed upon and signed by the parties pursuant to the Mining Act and any regulations made thereunder

“**complete**”, which shall include completed, the opposite of which shall be incomplete, means-

(a) in reference to a licence or permit application, having all necessary and appropriate and not obviously erroneous information to the extent required under the Online Mining Cadastre (OMC), including all required documents that are not obviously spurious submitted to the OMC; or

(b) in reference to a report that the contents of the report meet the criteria of the Act or relevant Act, its regulations or relevant regulations, or any published Ministry or applicable guidelines;

“**County Office of the Ministry**” means the office of the Ministry in a County as defined in the Act;

“**day**” means a calendar day beginning 00:00 midnight and ending on 23: 59:59 midnight the following day, in accordance with Kenyan time;

“**dealer’s rights**” means a mineral dealer’s licence or a mineral dealer’s permit under the Act.

“**Director**” means the Director of Mines or Geological Surveys as defined in Clause 20 of the Act ;

“**Email tracking**” means a method for monitoring the delivery of an email to an intended recipient; tracking technologies use a digitally time-stamped record that indicate the precise time and date that an email was received, opened and/or read as well the IP address of the recipient.

“**eligible person**” means:

- (1) in relation to large-scale operations, a person or a company that may be granted a mineral right pursuant to Clause 11 of the Act;
- (2) in relation to small-scale operations, a person or a company that may be granted a mineral right pursuant to Clause 124 of the Act;
- (3) in relation to artisanal mining operations, a person or a legally constituted group that may be granted a mineral right pursuant to Clause 124 of the Act;

“**expire**”, which shall include ‘expired’, means the natural end of the term of a licence or permit in respect of a mineral right, dealer’s right, export permit or import permit at midnight on the final day of validity;

“**exploration**” which shall include ‘explore’, ‘explored’, shall mean the search for, and evaluation of, minerals, mineral deposits or other naturally occurring substances of potential economic value by any and all methods, which shall include reconnaissance, prospecting and any other geological, geophysical, geochemical, remote sensing or other appropriate scientific methodology.

“**feasibility study**” means advanced exploration of a mineral deposit to determine its size, grade, mining options, environmental and community factors, mineral processing, infrastructure requirements and considerations, and economic modelling in order to establish commercial viability of exploiting that mineral deposit;

“**force majeure**” means any cause beyond the reasonable control of a holder that impedes or delays performance required under its licence or permit and shall include: fire, flood, earthquake, storm, hurricane, lightning, cyclone, tornado, explosion, epidemic, act of war or terrorism (whether declared or undeclared), riot, civil unrest, strikes, which a holder is unable to avoid despite effort and foresight;

“**grant**”, which shall include ‘granting’, ‘granted’, means final written approval after due process and issuance of a licence or permit by the Cabinet Secretary;

“**Health and Safety Plan**” means a plan prepared by the holder that includes a description of the potential health and safety hazards associated with any mine or mine-related project based upon the activities to be carried out, and the preventive and mitigation measures proposed to be implemented to safeguard workers and communities. The plan is designed and implemented through staff training, the use of technically appropriate equipment, enforcement of relevant measures, and adoption of accurate methods of monitoring. Specific requirements for the Health and Safety Plan shall be provided in Mining Health & Safety Regulations;

“**holder**” means a person or persons in whose name a mineral right, dealer’s right or import or export permit is registered in the online mining cadastre and to whom a licence or permit is issued;

“**invasive activities**” used in the context of prospecting or mining operations means activities that disturb the natural surface of and below the earth, including air and water, within the licence or permit area.

“**Liaison Officer**” means the public officer in the Community Liaison Unit of the Directorate of Mines, designated as “Liaison Officer”, whose role is coordinating mineral rights’ matters between County governments, communities, mine and mine-related companies and the Ministry;

“**licence year**” means each consecutive twelve (12) month period beginning 00:00 midnight on a specific date (i.e. the start date of the licence) and ending at 23: 59:59 midnight on the same date, twelve (12) months later;

“**materially complete**”, shall include materially completed, and means a licence or permit application that has met all the necessary application criteria, confirmed online by fully checked boxes thus allowing the uploading of supporting application information, but which is not yet verified and validated by the technical team;

“**mine development**” means the work undertaken to prepare a licence or permit area for mining operations or processing operations including the rehabilitation, construction or commissioning of necessary infrastructure and related facilities;

“**mine manager**” means the technically qualified person in charge of all mine operations and who has overall responsibility for the day-to-day management of the mine and whose appointment has been approved by the Director;

“**mineral agreement**” means a written agreement between the State and an eligible person for the exploitation of minerals in which the rights and obligations of each party are set out in accordance with the provisions of the Act and regulations;

“**mineral deposit**” means an accumulation of minerals in a potentially economical form and concentration;

“**mineral right**” means a property right through which the holder is granted permission to explore for and/or exploit minerals, which may be separate from property ownership, and which is evidenced in a written licence or a permit including, in accordance with the Act: a reconnaissance licence; prospecting licence; a retention licence; a mining licence; a prospecting permit; mining permit and artisanal mining permit;

“**mining licence**” has the meaning as defined in the Act and may be referred to as “**licence**”;

“**mining operations**” has the meaning as defined in the Act;

“**mining permit**” has the meaning as defined in the Act and may be referred to as “**permit**”;

“**mining permit programme**” means the programme that shall contain particulars of the proposed mining operations to be carried out under the permit;

“**Ministry**” means the government agency responsible for mining or any official successor government agency unless otherwise indicated;

“**Online Mining Cadastre**” (OMC) pursuant to Clauses 191 and 192(3) of the Act means the online interactive, digital system for administering the provisions of the Act and these regulations in relation to the rights and obligations of licence and permit holders, which is available for public inspection;

“**operator**” means a person, including a government corporation, who, as the owner or lessee of a mineral right or the holder of a mineral right or registration certificate, operates a mine, but does not include:

(1) a person who receives only a royalty or rent from the person who operates the mine;

- (2) an owner of a mine that is subject to a licence or grant in favour of the person who operates the mine, where the owner does not participate in the operations of the mine; and
- (3) an owner of land on which a mine is operated or an owner of the surface rights pertaining to such land, where the owner has no right or title to minerals situated in the land and does not participate in the operations of the mine;

“**ore**” means a natural aggregate of materials formed by geological process from which one (1) or more exploitable minerals, elements or compounds may be extracted;

“**permit year**” means each consecutive twelve (12) month period beginning 00:00 midnight on a specific date (i.e. first date of the permit year effectiveness) and ending at 23: 59:59 midnight on the same date, twelve (12) months later;

“**person**” means a natural or legal person as defined under the laws of the Republic of Kenya;

“**pollution**” means any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any part of the environment by discharging or depositing waste, emitting noise or substantial disturbance, so as to adversely affect any beneficial use, or to cause a condition that is hazardous or potentially hazardous, or which has a significantly negative impact on public health, safety or welfare, or to animals or plants;

“**processing**” means the artificial transforming of minerals so as to change their natural characteristics or to prepare a final or semi-final product for sale or for use and includes winning, extracting, concentrating, refining, classifying, crushing, screening, washing, reduction, smelting, polishing or gasification;

“**programme for mining operations**” has the meaning as defined in the Act and includes the final, fully-costed and approved series of time-based actions to be carried out under a mining licence, based on the feasibility study as submitted to the Mining Cadastre Office in support of the application for the mining licence, including all amendments thereto;

“**prospecting**” means a search for minerals by conducting geological, geophysical (including remote sensing) or geochemical surveys, by trenching, stripping, excavating or drilling or by any other reasonable method and shall include all mineral exploration activities including feasibility studies up to the point where a commercially viable mineral deposit can be demonstrated;

“**prospecting licence**” has the meaning as defined in the Act;

“**prospecting permit**” has the meaning as defined in the Act;

“**programme for prospecting operations**” means the final, fully-costed and approved series of time-based actions to be carried out under a prospecting licence, based on the proposal submitted in support of the application for the prospecting licence, including all amendments thereto;

“**reconnaissance**” as used herein means the preliminary search for minerals or the identification of areas of mineral potential over large areas using generally non-invasive techniques including, but not limited to, geological, geochemical and geophysical (including remote sensing) methods;

“**reconnaissance licence**” has the meaning as defined in the Act;

“**reconnaissance licence work programme**” means the final, fully-costed and approved series of time-based actions to be carried out under a reconnaissance licence, based on the proposal submitted to the



Mining Cadastre Office in support of the application for the reconnaissance licence, including all amendments thereto;

“**reconnaissance permit**” means the reconnaissance permit as granted under PartPART IX.I - of these regulations;

“**Registrar**” means the authorised officer of the Ministry, appointed as Registrar of mineral rights who also heads the Mining Cadastre Office;

“**regulations**” mean these Mining (Licensing and permitting) Regulations, 2015 unless otherwise indicated;

“**rehabilitation and mine closure plan**” means a series of active and time-based measures to be implemented by the holder as required by regulation98 of these regulations;

“**Representative of the Director of Mines**” means for purposes of an artisanal mining permit, the head(s) of every County office, appointed by the Cabinet Secretary under Clause 93 of the Act, authorised to grant, renew and revoke artisanal mining permits and to supervise and monitor artisanal mining operations;

“**retention licence**” has the meaning as defined in the Act;

“**revoke**”, which include ‘revoked’, ‘revocation’, has the meaning as defined in the Act and for reference herein means to repeal and to invalidate a licence or a permit;

“**royalty**” has the meaning as defined in the Act;

“**Schedule**” means those forms, tables and special descriptions attached and as prescribed under these regulations;

“**start date**” means that date on which a licence or a permit is issued by the Mining Cadastre Office; the start date shall be clearly indicated on the relevant licence or permit;

“**social heritage impact audit report**” means a report as required under Environmental Management and Coordination Act (EMCA);

“Technical Committee” is an ad hoc committee appointed by the Director of Mines comprising senior and experienced geologists and mining engineers, primarily from the Ministry’s own staff, whose role it is to provide feedback, advice and recommendations on the content of applications and technical reports submitted in relation to mineral rights.

#### **4. Purpose**

The purpose of these regulations is to regulate the licensing and permitting of mineral rights and dealing permits in accordance with the Act.

#### **5. Application**

- (1) These regulations shall apply to the processing of all applications for mineral rights as well as the dealer’s rights, import permits and export permits in the Republic of Kenya.
- (2) Notwithstanding sub regulation (1), mining and mine-related activities may also be subject to separate regulations as may be prescribed under the Act.

- (3) Notwithstanding sub regulation (1) and regulation 6, mining and mine-related activities may be subject to separate regulations as may be prescribed by other ministries or government agencies.

## **6. Administration**

- (1) The Cabinet Secretary responsible for mining shall exercise the powers, perform the functions specified under these regulations and shall be responsible for the day to day oversight and supervision required to ensure the proper and effective implementation of the provisions of these regulations.
- (2) The Director is authorised by these regulations to carry out those acts that are attributed to be conducted prior to the grant of mineral rights or dealer's rights and any modification of licence terms or conditions.
- (3) The Director may, in order to better implement the requirements under these regulations, establish a Technical Committee, membership of which shall be composed of staff from the Directorate of Mines and the Directorate of Geological Survey or such other Directorate in the Ministry whose input may be deemed useful to the Committee.

## **7. Mining Cadastre Office (MCO)**

- (1) The Mining Cadastre Office shall be established under the Ministry of Mining, Directorate of Mines and may be referred to as the "MCO."
- (a.) The Mining Cadastre Office shall be headed by the Registrar of mineral rights and dealer's Rights and is referred to as the "Registrar".
- (b.) The Registrar shall be the authorised officer, appointed by the Cabinet Secretary, responsible for administering mineral rights and dealer's rights in Kenya.
- (2) The Cabinet Secretary may establish County offices as are useful to implement the responsibilities of the MCO.
- (3) The Mining Cadastre Office responsibilities include:
- (a.) installation, operation and maintenance of the Online Mining Cadastre;
- (b.) developing, maintaining and updating the cadastral survey map;
- (c.) developing and maintaining registries to ensure up-to-date cataloguing of licence and permit applications and activities;
- (d.) managing licence and permit reporting requirements;
- (e.) harmonising, as required, with other cadastres including land, agriculture, social cadastres;
- (f.) participating, as required, in Ministry activities to ensure responsible implementation of licence and permit requirements; and
- (g.) any other functions or responsibilities that the Cabinet Secretary may reasonably assign to the MCO.
- (4) All official communications from the Mining Cadastre Office to registered users of the OMC shall, in the first instance, be by electronic mail (email) to the registered email address with tracking enabled.

- (5) For the purposes of this Act and these regulations, any communication sent by the Mining Cadastre Office to a registered OMC user shall be considered as having been received on the date of sending by the Mining Cadastre Office that is reflected in a tracking email.

## **8. Online Mining Cadastre**

- (1) An Online Mining Cadastre (OMC) shall be established at the Ministry of Mining as the online repository and information management tool for regulating the licensing and the permitting of mineral rights, dealer's rights, import permits and export permits and shall be implemented by the Registrar.

- (2) OMC as information management tool:

(a.) The OMC shall be the official and only means of submitting information relating to mineral rights and dealer's rights, import permits or export permits.

(b.) The OMC shall be used by the Mining Cadastre Office as the information management tool for regulating the application process for the development, mining and dealing of minerals in Kenya as well as the import and export of minerals.

- (3) OMC as facilitator:

The OMC shall be the official communication portal for mineral rights and dealer's rights and import and export permits between the Ministry, the applicants and the holders.

- (4) OMC upgrade:

The OMC may be upgraded from time to time as the Cabinet Secretary considers necessary to include modules and features to improve the administration of mineral rights and any or all obligations conferred on parties by the Mining Act.

- (5) Administration of the Online Mining Cadastre:

(a.) The OMC shall include an online help system for users which shall provide detailed directions and explanations in respect of each application, submission and related action including the submission of electronic documentation.

(b.) Information received and sent by the OMC shall be incorporated into the cadastral registers as prescribed herein.

(c.) Application information, requirements, forms and screens required under the Act and these regulations shall be accessible and available to all registered users for download from the OMC.

(d.) Any additionally required information, as prescribed by the Cabinet Secretary and not addressed in the prepared forms, shall be either directly entered during the application process or uploaded as supporting documents by the registered user.

(e.) In order to update and ensure efficient administration of the OMC, guidelines may be prepared and issued by the Mining Cadastre Office.

- (6) Public access to the Online Mining Cadastre:

(a.) Any person wishing to review any non-confidential information held in the cadastral registers shall be required to first register as an OMC user as prescribed later in these regulations.

(b.) The OMC shall be accessible every day of the year, twenty four (24) hours per day excepting periods when technical maintenance is required, during which time the OMC shall provide online notice.

- (c.) For members of the public requiring computer access, the Mining Cadastre Office shall during its regular business hours make computers available for use by the public; a nominal user fee may be charged for this service.
- (d.) Hard copies of any non-confidential information maintained by the OMC may be made available to any interested party on payment of any prescribed fee.

## **PART II: REGISTRATION, RECORDS AND MINING CADASTRE**

### **9. Cadastral registers**

- (1) Information submitted to or sent from the OMC shall be held in a cadastral register or registers, including the following:
  - (a.) Reconnaissance licences;
  - (b.) Prospecting licences;
  - (c.) Retention licences;
  - (d.) Mining licences;
  - (e.) mineral agreements;
  - (f.) reconnaissance permits;
  - (g.) prospecting permits;
  - (h.) mining permits;
  - (i.) Artisanal mining permits;
  - (j.) mineral dealer's licences;
  - (k.) mineral dealer's permits;
  - (l.) import permits;
  - (m.) export permits; and
  - (n.) any other information that the Mining Cadastre Office may require to reasonably conduct its business.
- (2) All licences, permits and mineral agreements issued under the Act shall be digitally maintained in the Online Mining Cadastre and in addition:
  - (a.) two (2) paper copies shall be prepared, as follows:
    - (i) one (1) copy to be issued to the holder (or to the non-Government party to a mineral agreement); and
    - (ii) the other copy to be retained by the Mining Cadastre Office in secure storage; and
    - (iii) the serial numbers for the digital and paper copies shall be the same.
  - (b.) Pursuant to Clause 191 of the Act, in case of any discrepancy between a digital file copy and a paper copy of any licence, permit or mineral agreement, the digital file copy shall prevail.

### **10. Registrar**

- (1) The Registrar shall establish and maintain an up-to-date cadastral register or registers within the OMC.
- (2) The register shall include for each application the following information, as required by the respective regulation:
  - (a.) the application number, which shall be a unique number sequentially incorporating the date and time on which the application was accepted as complete;

- (b.) the full name, nationality and address of the applicant;
  - (c.) the date (dd/mm/yyyy) and time (hh:mm:ss) that the application registration receipt was issued;
  - (d.) the date the application was rejected and the applicant so notified;
  - (e.) the date on which the Director received the report from the Technical Committee;
  - (f.) the date on which the Cabinet Secretary received the report from the Director;
  - (g.) the date on which the Mineral Rights Board received the report from the Cabinet Secretary;
  - (h.) the date on which the Cabinet Secretary received the recommendation of the Mineral Rights Board;
  - (i.) the date on which the Cabinet Secretary granted or denied the mineral right, dealer's right, import or export permit;
  - (j.) the date(s) on which the Registrar notified the applicant that the application was granted or denied;
  - (k.) the date on which the mineral right, dealer's right or import and export permit was registered as issued;
  - (l.) any other information required under these regulations to be included in the applications register;
  - (m.) such other information as may be prescribed; and
  - (n.) such other information as the Director may require;
- (3) The Registrar shall keep separate, up-to-date records on each application for a mineral right, dealer's right, import or export permits for not less than five (5) years for unsuccessful applications and for seven (7) years after the expiry of the term for successful applications, to include the following information, after which time the records shall be archived:
- (a.) the application;
  - (b.) a copy of the application registration receipt;
  - (c.) a copy of the Technical Committee report
  - (d.) a copy of the Director's report
  - (e.) a copy of the Mineral Rights Board recommendation
  - (f.) a copy of any notices sent to the applicant by the Mining Cadastre Office and notices from the applicant received by the Mining Cadastre Office; and
  - (g.) such other information as the Cabinet Secretary may require;
- (4) The Registrar shall maintain separate, complete, electronic, up-to-date information for each of the following:
- (a.) Reconnaissance licences;
  - (b.) Prospecting licences;
  - (c.) Retention licences;
  - (d.) Mining licences;
  - (e.) Mineral agreements;

- (f.) reconnaissance permit
  - (g.) prospecting permits;
  - (h.) mining permits;
  - (i.) Artisanal mining permits;
  - (j.) mineral dealer's licences;
  - (k.) mineral dealer's permits;
  - (l.) import permits;
  - (m.) export permits; and
  - (n.) any other licence, permit or document that may be established.
- (5) The Registrar shall enter into the cadastral register any prescribed information including the:
- (a.) OMC registration number;
  - (b.) full name, nationality and contact details of the holder or the non-governmental party to an agreement;
  - (c.) date of issuance of a licence or permit, import or export permit;
  - (d.) duration and expiry date;
  - (e.) duration and expiry date of any extension or renewal;
  - (f.) description of the licence or permit rights including, where relevant, the mineral right area;
  - (g.) where relevant, mineral or minerals for which a licence or permit was issued;
  - (h.) where relevant, cadastral coordinates defining the mineral right area including any updates as a result of enlargement or relinquishment;
  - (i.) duplicate licences, permits or mineral agreements, including all conditions;
  - (j.) date that an official receipt was issued confirming the receipt by the Mining Cadastre Office of any report submitted as required by these regulations and the type of report;
  - (k.) date on which a licence or permit was extended, renewed, cancelled, revoked, expired or was modified in any way, including term extension or renewal, area relinquishment, area enlargement;
  - (l.) for a mining licence, the date on which any Community Development Agreements, the subject of the licence, became effective and the name of the affected community(ies);
  - (m.) for a mining licence, all Community Development Agreement(s);
  - (n.) for a mining licence or mining permit the commercial production start date;
  - (o.) date on which any notice was sent by the Mining Cadastre Office to the holder or the non-governmental party to a mineral agreement and the nature of such notice;
  - (p.) date that any communication was received by the Mining Cadastre Office from the holder or the non-governmental party to a mineral agreement and the nature of such communication;
  - (q.) all confidential reports;
  - (r.) all non-confidential reports;
  - (s.) all environmental and social reports;

- (t.) all notices from the Ministry and any other government agency;
  - (u.) dates on which a fee was paid, the service to which it relates, and the amount;
  - (v.) dates on which rent was paid and the amount;
  - (w.) dates on which royalty was paid, the category of mineral(s) for which it was paid, the weight and quantity of the mineral on which the royalty was calculated, and the amount(s) paid;
  - (x.) date of any consolidation of like types of licences and relevant details;
  - (y.) date and nature of any assignment or transfers including legal succession;
  - (z.) any other modification including term extension or renewal, area relinquishment, area enlargement, and any charges or encumbrance in respect thereof;
  - (aa.) such other information as the Cabinet Secretary may require; and
  - (bb.) such other information as prescribed.
- (6) The Registrar shall maintain a complete and up-to-date register of all confidential reports submitted by holders plus reports produced by the Director, the Technical Committee, the Mineral Rights Board and the Artisanal Mining Committee. Access to this file shall be limited to the Registrar, any MCO employees having official business with the files, and the Cabinet Secretary. Any access to any of the confidential reports shall be recorded by the Registrar.
- (7) Public access shall be available to any non-confidential information maintained in the cadastral registers. This information shall be freely available to view via the OMC.
- (8) Any person wishing to view any non-confidential information in the cadastral registers shall be required to register as a user in the OMC.
- (9) Public access to the cadastre may be provided either through the internet or by appointment with the Director of Mines or the respective County office during office hours upon payment of a prescribed fee.
- (10) On payment of the fee set out in **Error! Reference source not found.** of the Second Schedule to these regulations, a member of the public may obtain a copy of any non-confidential document or report contained in the cadastral registers.

## **11. Constitution of cadastral units and mineral right are as**

- (1) Pursuant to Clause 6 of the Act, for the purposes of the operations of the Mining Cadastre Office, the surface area of Kenya shall be divided into cadastral blocks.
- (2) The cadastral block system shall be established according to Part **Error! Reference source not found.** to these regulations.
- (3) All mineral rights areas shall be delineated as a contiguous polygon of cadastral blocks in accordance with the Fourth Schedule to these regulations.
  - (a.) Notwithstanding, upon renewal and accompanying part-surrender, a prospecting licence may be subdivided into up to three (3) non-contiguous areas.
- (4) All cadastral coordinates submitted to the Mining Cadastre Office for the purpose of delineating mineral right are as shall be in degrees, minutes and seconds format for latitude and longitude using the World Geodetic System 1984 (WGS-84), and shall be digitally uploaded into the OMC in a straight text version, such as comma separated value format, selected using the online cadastral block selection tool or typed in manually.



- (5) For the sake of clarity and consistency, area-based fees in respect of mineral rights shall be calculated on the basis of blocks or parts thereof regardless of any variations in actual surface area related to latitude.

## **12. Cadastral maps**

- (1) Subject to Clause 191 of the Act, the Mining Cadastre Office shall establish and maintain an up-to-date digital cadastral map of Kenya, including a full back-up system.
- (2) The cadastral map shall be based on maps specified in the Third Schedule to these regulations.
- (3) The official cadastral map maintained within the OMC shall indicate all areas:
- (a.) Where mineral rights' applications are pending;
  - (b.) Where mineral agreements are pending;
  - (c.) where mineral rights are currently in force;
  - (d.) where mineral agreements are currently in force;
  - (e.) which are reserved for small-scale mining and/or artisanal mining operations pursuant to Clause 13 of the Act;
  - (f.) which are reserved for tendering pursuant to Clause 14 of the Act;
  - (g.) which are excluded from prospecting and mining operations by order of the Cabinet Secretary pursuant to Clause 15 of the Act;
  - (h.) that have been declared to be strategic minerals or strategic mineral deposits pursuant to Clause 16 of the Act and the Strategic Minerals Regulations;
  - (i.) that have been declared closed to prospecting and mining operations under the Act; and
  - (j.) that have been declared closed under any other applicable law other than the Act, if known.
- (4) The cadastral map shall show all areas described in sub regulation(3) of this regulation and shall be used only for informational and illustrative purposes. Boundaries of such areas shall be officially established using the cadastral coordinate system specified in the Fourth Schedule to these regulations.

## **13. Specific cadastral blocks**

- (1) For large-scale mining operations, reconnaissance licences, prospecting licences, retention licences, and mining licences shall be composed of whole cadastral blocks.
- (2) For small-scale mining and artisanal mining operations a mineral right may be defined also in fractions of 0.25cadastral blocks.
- (3) The coordinates of the bounding vertices of the resulting polygon shall suffice as the legal description of any licence or permit area.

## **14. Duplicate documents and evidentiary certificates**

- (1) Pursuant to Clause 194 of the Act, the holder of a mineral right, dealer's right, import permit or export permit may apply, via the OMC, for a replacement or duplicate document, stating the reason for such request, and upon payment of the appropriate fee as stated in **Error! Reference source not found.** of the Second Schedule to these regulations.
- (2) Pursuant to Clause 195 of the Act, the holder of a mineral right may, via the OMC and on payment of a fee as stated in **Error! Reference source not found.** of the Second Schedule of

these regulations, request an evidentiary certificate in respect of one or more items listed in Clause 195 of the Act.

- (3) The Director shall issue such replacement or duplicate document or evidentiary certificate within fourteen (14) days.

## **PART III: APPLICATIONS**

### **15.Applications**

#### (1) Online Mining Cadastre access

The OMC may be accessed at the website of the Ministry of Mining.

#### (2) Submission of applications

- (a.) All new applications shall be electronically submitted via the OMC and include all required supporting documentation appended in electronic format.
- (b.) Any applications relating to mineral rights and dealer's rights, import permit and export permits and any other related communications to the Ministry with respect to maintenance of the licence or permit shall be electronically submitted via the OMC and include all required supporting documentation appended in electronic format.
- (c.) No Ministry manager, employee or other government representative, working directly or indirectly on licensing or permitting, shall be permitted to assist any applicant directly or indirectly on applications. Such an engagement shall render the application invalid.
- (d.) Unless specifically notified, hard copy documents or other physical submissions shall not be accepted by the Mining Cadastre Office in lieu of an electronic submission to the OMC.
- (e.) Paper-based applications for any mineral right or dealer's right shall not be accepted.

#### (3) OMC user registration

##### (a.) User registration:

In order for any person to submit an application for a mineral right, dealer's right, or import or export permit, that person must register to become an OMC user at the Registration tab in the Mining Cadastre Portal.

##### (b.) Multiple users

Where it is intended for more than one (1) person to have access on behalf of the same registered OMC user, the person making the application shall provide the other users with a copy of the OMC guidelines to be followed to ensure secure multiple user access.

##### (c.) User renewal

Once an OMC user registration is approved, it shall remain valid for a period of twelve (12) months and is renewable.

#### (4) OMC user responsibilities

- (a.) It shall be the responsibility of the user to maintain a valid user electronic mail (email) account. The email account shall have tracking enabled so that the system records the:
  - (i) date and time any emails were received by the OMC, including the IP address from which they were sent;
  - (ii) date and time of any emails sent by the OMC, including the IP address to which they were sent;
  - (iii) date and time any email sent from the OMC were received, read or deleted; and
  - (iv) date and time any email sent from the OMC was read or if deleted, the date and time of the deletion without having been read.

- (b.) The user shall be responsible for updating the OMC registration information in respect of any changes to the original registration details, within fourteen (14) days of reasonably knowing of such change, including but not limited to:
  - (i) user name;
  - (ii) user email address; and
  - (iii) any addition or removal of multiple user access.

## **16.Charges and fees, obligations and penalties**

### (1) Charges and fees

- (a.) All charges or fees shall be levied and paid pursuant to Clause 182 Of The Act And **Error! Reference source not found. Error! Reference source not found.** under these regulations as shall be published in the Kenya Gazette; making good on requirements for Charges and Fees, which shall be referred to as “payments.”
- (b.) All payments shall be electronically wired via the OMC payment system within the prescribed time.

### (2) Obligations

- (a.) All payments due in respect of a licence or permit shall be made via the OMC payment system.
- (b.) Minimum operational expenditure
  - (i) Where a shortfall in the minimum operational expenditures arises, the balance shall be notified to the holder using **Error! Reference source not found.**
- (c.) Other fees and payments,
  - (i) application fees;
  - (ii) annual fees;
  - (iii) area based annual fees;
  - (iv) maintenance fees;
  - (v) performance bonds;
  
  - (vi) escrow accounts; and
  - (vii) any additional payment obligations as may be prescribed.

### (3) Penalties

Any penalties shall be paid by the offender via the OMC payment system within the prescribed time period.

### (4) Receipt of all payments

Payments shall be acknowledged by the Mining Cadastre Office via the OMC with an electronic receipt that shall include:

- (a.) the date and time at which the payment was received;
- (b.) the category of the payment, obligation, or penalty; and

- (c.) the reference number to the relevant mineral right, dealer's licence, dealer's permit, import permit or export permit.

## **17.Applications to obtain licence or permit**

### **(1) Submission of application**

- (a.) An application to obtain any of the following licences or permits shall be submitted to the Cabinet Secretary via the OMC by a registered OMC user:
- (i) reconnaissance licence,
  - (ii) prospecting licence;
  - (iii) retention licence;
  - (iv) mining licence;
  - (v) reconnaissance permit;
  - (vi) prospecting permit;
  - (vii) mining permit;
  - (viii) artisanal mining permit;
  - (ix) dealer's permit;
  - (x) dealer's licence;
  - (xi) import permit; and
  - (xii) export permit.
- (b.) A registered user wishing to apply for licence or permit or any change to such licence or permit shall:
- (i) Access user account by signing in at the Mining Cadastre Portal;
  - (ii) complete the relevant application form, including the coordinates of the application area;
  - (iii) append all required documentation;
  - (iv) upon successful completion, the OMC shall be automatically advanced to the next stage in the application process.
- (c.) Once all application documents have been successfully uploaded, the applicant shall review the misrepresentation commitment stating that applicant understands that falsifying, misrepresenting or intentionally withholding information shall be grounds for rejection of the application;
- (d.) Once the payment window appears, payment should be made noting the following:
- (i) Credit card and bank wire transfers are acceptable for all payments and shall be deemed received upon verification by the OMC.
  - (ii) Upon successful payment of the application fee, the application shall be registered with the OMC.
  - (iii) Payment of the application fee is not a confirmation that the application is validated, accepted, granted, or denied.
- (e.) An OMC help facility shall be available to users to resolve any submission difficulties.

(2) Acceptance of application

(a.) An application shall be processed by the OMC provided that:

- (i) the application is made by a registered OMC user or an individual acting on behalf of that user;
- (ii) all information required as part of the relevant online application form has been correctly entered and all required attachments in digital format uploaded.

(b.) Notwithstanding sub regulation (2), an application shall be finally accepted only after it has been fully checked and validated for compliance by an authorized officer of the MCO.

(3) Application registration

(a.) Upon successful payment of the application fee, the application shall be registered.

(b.) The OMC shall issue the applicant with a receipt for the application fee stating:

- (i) the amount of the payment;
- (ii) the type of mineral right, dealer's right, import permit or export permit applied for;
- (iii) the sequentially numbered identification code for the application;
- (iv) the date the application was registered in the cadastral register in the format date, hour and minute; and
- (v) in the case of an application seeking a mineral right, a confirmation of the coordinates of the mineral right area applied for.

(4) Registration of artisanal mining permits

(a.) An application for an artisanal mining permit shall be submitted via the OMC to the Representative of the Director of Mines for that County in which fifty per cent (50%) or more of the artisanal mining permit area is located.

(b.) The application process for an artisanal mining permit shall follow the same procedure as described under sub regulations (1) to (3).

(c.) The Representative of the Director of Mines shall, within three (3) days of receipt of an application for an artisanal mining permit:

- (i) Confirm that the application is submitted by an eligible person under the Act;
- (ii) verify the application documentation and prepare one (1) signed copy of the registered application form containing all application details, and
- (iii) send the registered and signed application form to the applicant by both email and registered mail;

(d.) The Representative of the Director of Mines shall within three (3) days of notifying the applicant submit the registered application to the Artisanal Mining Committee for review as set out in PART X – ARTISANAL MINING of these regulations.

(5) Withdrawal of application

(a.) An applicant, having submitted and registered an application for the grant or renewal of a mineral right, dealer's licence, dealer's permit, import permit or export permit, may at any time withdraw the application.

(b.) Upon withdrawal of an application, all online application information shall be deleted.

(c.) In the case of withdrawal for any reason the application fee is not refundable.

(6) False statements

- (a.) Where, at any time, it is discovered that a falsified document was submitted or that a materially false statement was made in any licence or permit application, the application shall be immediately cancelled or any already-granted licence or permit revoked, and the date of such cancellation or revocation recorded in the relevant register.
- (b.) A minor error in the application made inadvertently, such as a misspelling or incorrect date, shall not be deemed to constitute a falsified document or to be a false statement.
  - (i) The Registrar may in writing, notify the applicant that he or she has seven (7) days from receipt of notice in which to modify any minor error in the application.
  - (ii) If the applicant fails to respond, the Registrar may make the proposed minor modification and send an electronic copy to the applicant.

(7) Right to appeal

- (a.) An applicant who is aggrieved by the decision of the Cabinet Secretary not to grant an application may appeal to the High Court within thirty (30) days of receipt of the notification.
- (b.) Where a licence or permit application is rejected and the applicant has not appealed within the prescribed appeal time pursuant to sub regulation **Error! Reference source not found.**, the Registrar shall immediately update the cadastral map.
- (c.) An area removed from the cadastral map shall be immediately open to new applications unless otherwise closed under the Act.

## **18. Review of applications for mineral rights, dealer's rights, import permits or export permits**

(1) Review of applications

- (a.) With respect to new applications for a mineral right, dealer's right, import permit or export permit, the Registrar shall, within the prescribed time, request the Technical Committee to conduct a review.
  - (i) Where any application is found to be wholly or partially false or spurious, the Registrar shall:
    - a. immediately recommend to the Cabinet Secretary that the application be rejected pursuant to regulation 15 **Error! Reference source not found.**; and
    - b. notify the applicant by email, giving reasons for the rejection.
  - (ii) Where an application is reviewed and found to be generally compliant, the Registrar shall.
    - a. if necessary, notify the applicant of any minor errors or omissions and request that these be corrected within seven (7) days; and
    - b. once satisfied, confirm to the applicant that the information provided in the application is complete and correct;
- (b.) Where the Technical Committee so advises, the Registrar shall:

- (i) request the applicant to provide additional information, using Form N-1 [Notice of Demand for Additional Information];
  - (ii) where necessary, recommend consultation with other specialists; and/or
  - (iii) where necessary, seek consultation with other relevant government agencies.
- (c.) Following their review, including all consultations, the Technical Committee shall prepare a written report with recommendations for the Director who shall consider the findings and submit final recommendations through the Principal Secretary to the Cabinet Secretary.
- (d.) The Cabinet Secretary and the Mineral Rights Board shall consider the report and recommendations and, where additional information is required, they shall advise the Registrar who shall request the applicant, using Form N-1 [Notice of Demand for Additional Information] to provide this within seven (7) days.
- (e.) The Cabinet Secretary, having considered all information, and on the advice of the Mineral Rights Board shall:
- (i) inform the Mineral Rights Board of his or her decision whether to grant or reject the application; and
  - (ii) once the Mineral Rights Board has been so advised shall inform the applicant of the decision through the Registrar within seven (7) days.

## (2) Applicant response

- (a.) Upon notification that the application is accepted, the applicant shall:
- (i) where no additional information or amendment is required, confirm receipt and acknowledge that the application is accepted.
- (b.) Where additional information is required
- (i) pursuant to sub regulation 18(1)(ii)(a), comply within seven (7) days of receiving a request from the Cabinet Secretary to provide any information; or
  - (ii) pursuant to sub-regulation 18(1)(ii)(b), respond within twenty-eight (28) days of receiving the request from the Cabinet Secretary to amend the application;
- (c.) The applicant may within seven (7) days of receiving a request for additional information request an extension of time, stating reasons
- (i) The response to grant or reject an extension shall be communicated to the applicant within seven (7) days of receipt of such request.
- (d.) The failure of an applicant to provide the Cabinet Secretary with the requested information within the required time, or to comply with any other application requirements, shall cause the application to be rejected; and
- (i) in such an event the Mining Cadastre Office shall within seven (7) days from the date of the submission deadline:
    - a. notify the applicant in writing that the application is rejected, and
    - b. the Registrar shall record the date of such notifications in the applications register.

## (3) Processing of application.

- (a.) Pursuant to Clause 56 of the Act, all applications for mineral rights, dealer's licence, dealer's permit, import permit and export permit shall be considered on a 'first-come, first-served' basis in the order in which complete applications are received and officially registered.



(4) Hard copies

- (a.) The Cabinet Secretary may, through the Director, require an applicant at any time during the review process, using **Error! Reference source not found.**, to provide verification in the form of hard copy documents and/or certified originals and/or sworn affidavits.
- (b.) Where so notified, these documents must be delivered to the Director within seven (7) days of the date of such notice, failing which the application shall be rejected.
  - (i) An applicant may request reasonable additional time to have documents certified or obtain sworn affidavits.
  - (ii) Where an applicant fails to comply with such request, the application shall be rejected.
- (c.) Provided such documentation or information is received within the allotted time, and is later validated, the date and time of the original application shall remain.
- (d.) For the avoidance of doubt, the request to provide original documents is not an opportunity to submit anything other than the originals of the documents submitted digitally at the time of the original application;
  - (i) Any new or modified document will not be accepted and the application shall be rejected without further notice.
- (e.) Any extension of time resulting from a request for additional information shall be added to all subsequent time lines.

(5) Rejection of a licence or permit application

- (a.) The Technical Committee shall review all applications for a licence or permit.
- (b.) Where an application is technically non-compliant, the Technical Committee report shall clearly state the reasons, including references to relevant Clause(s) of the Act, regulations, or other matters that form the basis for the rejection.
- (c.) Where the Cabinet Secretary rejects the decision of the Mineral Rights Board, he or she shall provide the Board with reasons for the rejection, and send a copy to the Registrar.
- (d.) Upon rejection by the Cabinet Secretary, the Registrar shall immediately enter such decision in the relevant cadastral register and inform the applicant using **Error! Reference source not found.** within seven (7) days.

(6) Grant of a licence or permit application

- (a.) Where the Cabinet Secretary decides against the advice of the Mineral Rights Board to grant an application he or she shall inform the Board, with a copy to the Registrar giving reasons.
- (b.) The Cabinet Secretary shall, through the Registrar, inform the applicant of the decision to grant the licence or permit, using **Error! Reference source not found.**
- (c.) The Cabinet Secretary shall, through the Registrar, ensure that notification of the grant or the rejection of an application is communicated to the applicant, and that where the application is granted, that the notification and the hard copy of the licence or permit are mailed to the applicant.

(7) Acceptance of grant of a licence or permit by applicant.

- (a.) Where the Cabinet Secretary has granted an application:
  - (i) the Registrar shall issue a notification to the applicant under sub regulation **Error! Reference source not found.** and

- (ii) the applicant shall confirm acceptance or rejection of the grant within twenty-one (21) days from the date of the Registrar's notification.
  - (b.) Where the Cabinet Secretary has approved an application and the applicant fails to respond to the Registrar,
    - (i) the approval of the application shall lapse immediately after the period specified under sub regulation 15 **Error! Reference source not found.**(a.) lapses.
- (8) Issuance of digital licence or permit
- (a.) The Registrar shall, within seven (7) days of acceptance by the applicant, issue a digital licence or permit, as the case may be, by email and enter it into the relevant register.
  - (b.) The Mining Cadastre Office shall prepare and send by registered mail to the applicant's registered mailing address a paper copy of the licence or permit using **Error! Reference source not found...**

## 19. Overlapping applications

- (1) Where during an online application for a mineral right, the area applied for partially or wholly overlaps an existing licence or permit area or any area closed to applications, the overlapping area shall be highlighted on-screen to indicate the portion of the requested area that is available.
- (2) The applicant shall then be given the opportunity to:
  - (a.) accept the reduced area; or
  - (b.) modify the area; or
  - (c.) withdraw the application and terminate the application process.

## 20. Environmental requirements in support of an application

- (1) Any applicant for a mineral right shall comply with the requirements of the Environmental Management and Coordination Act (EMCA) and any regulations or guidelines made thereunder before any mineral is granted.

## 21. Discovery of minerals

- (1) Pursuant to Clause 9 of the Act, any person who discovers a mineral or potential mineral deposit on or under land or water not held under a mineral right shall, within fourteen (14) days, report the discovery to the Cabinet Secretary, using **Error! Reference source not found.** under these regulations.
- (2) The person may report the discovery via the Mining Cadastre Office or through the County Office, which shall enter the details of the discovery in the OMC, including the name of the person making the report and the date and time of such report.
  - (a.) In the event that the person has no access to the OMC or ability to access the OMC, reporting the discovery in paper form shall be accepted.
  - (b.) The Cabinet Secretary shall issue an acknowledgement of the report in writing using **Error! Reference source not found..**
- (3) A person who at the time of reporting the discovery of a mineral or mineral deposit does not hold an exclusive mineral right over the area in which the discovery is made shall be entitled to the right of first refusal to apply for a mineral right in respect of the block or blocks containing the mineral discovery.

- (a.) such application shall be dealt with in accordance with the Act and any regulations made thereunder including all eligibility and other conditions of application; however:
- (b.) such application shall not be accepted where:
  - (i) the discovery is a strategic mineral in which case the Strategic Minerals regulations shall apply;
  - (ii) the discovery is in a restricted area; or
  - (iii) the discovery is in a reserve area
- (4) Notwithstanding having registered an interest, the person making the discovery, in order to exercise their right of first refusal, shall within fifty-six (56) days from reporting the discovery, register with the OMC and submit an application for a mineral right over the area of the discovery.
- (5) During such time period, the area in and around the discovery, defined in cadastral blocks, shall be closed to all other mineral rights' applications.
- (6) Where a holder of an exclusive mineral right discovers minerals or mineral deposits of potential commercial value in or under its licence or permit area but which mineral(s) is not included in the licence or permit, the holder shall notify the Cabinet Secretary using **Error! Reference source not found.** and shall have the sole right to apply to have the mineral or minerals included subject to the provisions of this Act and regulations.
  - (a.) Such application shall be submitted by the holder via the OMC and be accompanied by a work programme in the form of **Error! Reference source not found.** with respect to the newly-found mineral or minerals.
  - (b.) The Cabinet Secretary shall, on advice of the Mineral Rights Board, agree to amend the licence or permit subject to review and acceptance of the work programme by the Technical Committee.
  - (c.) Where a holder decides not to apply to amend the licence, the newly discovered mineral may be included on the Kenyan Geological Survey map of the area.

## **22. Areas designated for small-scale mining or artisanal mining**

- (1) The Cabinet Secretary may, by notice in the Kenya Gazette, designate a land which is not the subject of an existing mineral right exclusively for small-scale mining or artisanal mining operations.
  - (a.) A designated area shall be so categorized for up to five (5) years at which time the Cabinet Secretary shall review the status of the area which may then,
    - (i) be extended by up to an additional five (5) years on a regular basis; or
    - (ii) be removed from designation by notice in the Kenya Gazette and amending the cadastral map and register as prescribed.
- (2) Notwithstanding sub regulation (1), are reconnaissance permit, prospecting permit, mining permit or artisanal mining permit may be applied for over areas not designated as being exclusively for small-scale mining or artisanal mining operations.

## **PART IV: INSTITUTIONAL ARRANGEMENTS AND BODIES**

## **23. Mineral Rights Board**

- (1) Pursuant to Clause 31 of the Act, the Cabinet Secretary shall seek the advice of the Mineral Rights Board on matters including:
  - (a.) the granting, rejection, substantial modification or revocation of a mineral right and any matters relating to minerals including exploration, mining, and processing;
  - (b.) the transaction preparation, negotiation and conclusion of mineral agreements.
- (2) These regulations set out general guidelines for the operations of the Mineral Rights Board which shall be supplemented by the Mineral Rights Board operating procedures to be adopted by the Board by a majority vote of its members.

## **24. Composition of the Mineral Rights Board**

- (1) The Mineral Rights Board (the 'Board') shall comprise the following members-
  - (a.) Chairperson, appointed by the President, with demonstrable knowledge and experience of the minerals and mining sector;
  - (b.) Principal Secretary responsible for matters relating to mining or his representative,;
  - (c.) Principal Secretary responsible for the National Treasury or his or her representative;; one person who has relevant qualifications or experience in mining, geology, geophysics or engineering, nominated by the Council of County Governors;
  - (d.) Chairperson of the National Land Commission;
  - (e.) Director of Mines who shall be the Secretary to the Board,;
  - (f.) Director of the Geological Survey; and
  - (g.) two (2) individuals with demonstrable professional qualifications and experience in the mining industry, appointed by the Cabinet Secretary.
- (2) The Ministry shall provide secretarial support for the administration and implementation of the Board's functions.

## **25. Qualification of Mineral Rights Board members**

- (1) A person shall be qualified for appointment as a Chairperson or member of the Mineral Rights Board if that person:
  - (a.) is a citizen of Kenya;
  - (b.) holds a degree from a recognized university in geology, geophysics, mining, engineering, economics, business administration, law or other relevant subject;
  - (c.) in the case of the Chairperson has not less than ten (10) years experience of the mining sector; and
  - (d.) satisfies the requirements of Chapter Six of the Constitution.

## **26. Tenure of Mineral Rights Board members**

- (1) The Chairperson and members of the Mineral Rights Board shall hold office for a term not exceeding three years and but may be eligible for re-appointment as for one more term not exceeding three (3) years.

- (2) A person appointed to be a member of the Mineral Rights Board shall have ten (10) days to disclose any mineral holdings in the form of shares, mineral rights, permits or other investments in the mining sector.
  - (a.) The appointed person shall have sixty (60) days from the date of appointment to divest any mineral holdings in the form of shares, mineral rights, permits or other investment in the mining sector.
  - (b.) Divestment may include establishment of a trust to remain in effect for the duration of the member's term plus one (1) year following departure from the Board, removal from the investment, sale or transfer of the investment.
- (3) A person shall be ineligible to become or remain a member of the Mineral Rights Board if such person:
  - (a.) is a holder of a mineral right;
  - (b.) holds any amount of equity in any mineral right under the Act;
  - (c.) is prevented by reason of prolonged physical or mental illness from performing the required duties; or
  - (d.) has been convicted of an offence with a term of imprisonment exceeding six (6) months;

## **27. Functions of the Mineral Rights Board**

- (1) The purpose of the Mineral Rights Board is to advise the Cabinet Secretary on:
  - (a.) the grant, rejection, retention, renewal, suspension, revocation, variation, assignment, trading, tendering, or transfer of mineral rights or mineral agreements;
  - (b.) areas suitable for designation for small-scale and artisanal mining;
  - (c.) areas in which mining operations should be excluded, reserved and restricted;
  - (d.) the declaration of certain minerals as strategic minerals;
  - (e.) the cessation, suspension, or curtailment of production in respect of mining licences;
  - (f.) fees, charges and royalties payable in respect of any mineral;
  - (g.) any other matters which under the Act are required to be referred to and performed by the Mineral Rights Board; and
  - (h.) any other matters on which the Cabinet Secretary requires the Mineral Rights Board's counsel.
- (2) All Mineral Rights Board advice to the Cabinet Secretary shall be in writing, copies of which shall be kept by the Secretary to the Board..
  - (a.) Any matters relevant to the applications process shall follow the procedures used by the Online Mining Cadastre.
- (3) The Mineral Rights Board may, for the purpose of performing its functions, including review and research:
  - (a.) establish such number of committees as its members deem necessary to advise the Mineral Rights Board; or
  - (b.) hire Kenyan or international experts and consultants for short-term advisory work.

## **28. Meetings of the Mineral Rights Board**

## (1) Meetings

(a.) The Mineral Rights Board shall meet:

- (i) at least twelve (12) times in every fiscal year with not more than five (5) weeks between meetings: and
- (ii) at such times during business hours that the Chairperson may determine is necessary for the timely review of applications or matters arising in respect of a mineral right.

(b.) The Chairperson shall preside over each meeting of the Board, save that:

- (i) in the absence of the Chairperson, a member of the Board, designated in writing by the Chairperson shall preside with full powers; and
- (ii) in the absence of that appointed member, the members present shall by majority vote elect another member from amongst their number who shall, with respect to that meeting and the business conducted thereat, have the full powers to preside as Chairperson.

(c.) The Mineral Rights Board shall within ninety (90) days of the coming into effect of these regulations make provision for its operating procedures including the conduct of its meetings subject to the provisions of the Act.

## (2) Voting

(a.) The quorum at any meeting of the Mineral Rights Board shall be five (5) or two-thirds of voting members.

(b.) Matters deliberated by the Mineral Rights Board shall be decided by a majority of members present and, in the event of an equality of votes, the Chairperson or the person presiding shall have an additional casting vote.

(c.) The Chairperson and members are entitled to appoint proxy members in accordance with the Board's operating procedures.

## **29. Disclosure of interest**

(1) A member of the Mineral Rights Board, or any member of a committee constituted under the Board, or any consultant hired by or otherwise advising the Board, shall disclose to the Board:

- (a.) any holding of a mineral right in Kenya in accordance with regulation 25(3);
- (b.) any vested interest in any topic to be considered by the Board, of a committee that may reasonably be considered of relevance to that topic and its review;
- (c.) any immediate family members having any holding in minerals or related rights in Kenya or relevant to any topic to be considered that may reasonably be considered of relevance to participation on that topic.
  - (i) Immediate family members shall include parents, siblings, first cousins, immediate nephews and nieces.

(2) Any disclosure shall be made in writing and such disclosure shall be recorded in the minutes of the Mineral Rights Board meeting or relevant committee or consultant meeting.

(3) Where a disclosure is such that it may reasonably be considered to impair judgement or provide an environment of collusion, the member, committee member or consultant shall not:

- (a.) take part in any deliberations or decision relating to that matter or application ; and

(b.) shall not vote on a decision on that matter or application.

- (4) A member, committee member or consultant shall with immediate effect cease to hold such position if it is discovered that that person has an interest in any matter before the Mineral Rights Board relevant to its work and fails to disclose that interest or participates in any work related to that matter or application including attending any meetings, conducting any research, participating in any deliberations or other activity that may reasonably be considered a violation of disclosure of interest principles.

(a.) Where the failure to disclose is of a criminal nature, it may be treated as such and shall be considered an actionable offence against the member, committee member or consultant.

### **30. Reporting**

- (1) Pursuant to regulation 15 **Error! Reference source not found. Error! Reference source not found.**, the Mineral Rights Board shall report on every application received in a timely manner, providing reasons in writing for every recommendation it makes.
- (2) The Mineral Rights Board shall, not later than ninety-one (91) days after the end of each fiscal year, submit a report to the Cabinet Secretary summarising the activities of the Board during the year.
- (3) The Mineral Rights Board shall submit to the Cabinet Secretary such other reports as the Cabinet Secretary may, in writing, from time to time request.
- (4) For purposes of the openness and clarity, reports of the Mineral Rights Board shall:
- (a.) be prepared in plain written English in Word format and be available in hard and soft copy versions;
  - (b.) shall include an executive summary, a detailed review of issues, conclusions and recommendations of the Board, signatures of Board members, and dates of signing.

### **31. Allowances for members**

(1) The members of the Board shall be paid allowances determined by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

### **32. vacancies**

- (1) The Secretary of the Mineral Rights Board shall notify the Cabinet Secretary of any vacancy that occurs in the membership of the Board within seven (7) days of the occurrence of the vacancy.
- (2) A vacancy on the Board shall not prevent or hold up the work of the Board except:
- (a.) where the vacancy level is fifty-one per cent (51%) or more, in which case operations of the Board shall be suspended.

### **33. Removal of a Board member**

- (1) A member of the Mineral Rights Board may be removed by the President or the Cabinet Secretary on the receipt of reliable written evidence from a named and recorded source that:
- (a.) the member is not qualified under these regulations to serve as a member of the Board;
  - (b.) demonstrable information exists of the member's inability to perform the functions of a member; or

(c.) demonstrable information exists of the member's misbehaviour including inappropriate conduct.



## PART V: GENERAL PROVISIONS ON MINERAL RIGHTS

### 34. General obligations

- (1) Where the holder of a mineral right, pursuant to Clause 44 of the Act, acts unreasonably in respect of another mineral right holder or any legitimate owner or occupier of the land over which the mineral right extends, the Cabinet Secretary may give notice to suspend or revoke the mineral right in **Error! Reference source not found.** under these regulations or in **Error! Reference source not found.**
- (2) Where a mineral right holder fails to honour a condition, commitment or obligation of the mineral right, the Cabinet Secretary may issue notice to the holder to comply within a prescribed period using **Error! Reference source not found.** under these regulations, failing which the licence or permit may be suspended or revoked using **Error! Reference source not found.** under these regulations or **Error! Reference source not found.** Pursuant to Clause 42(2) of the Act, such condition, commitment or obligation shall continue after the expiry, suspension or revocation of all or part of a mineral right.
- (3) The Cabinet Secretary may, pursuant to Clause 43 of the Act, give notice to any holder of a mineral right in connection with any legitimate matter under this Act, its provisions or regulations, using **Error! Reference source not found.** and the holder shall comply within the prescribed time or it shall be an offence.
- (4) The Cabinet Secretary and the Mining Cadastre Office shall use all reasonable efforts to ensure that notification of the grant of an application is delivered to the applicant in a timely manner.
  - (a.) Any negligent or fraudulent action on the part of any Ministry, Mining Cadastre Office or third party that results in the failure of the applicant to receive timely notification of the grant of application shall be actionable under the Act.
  - (b.) If it becomes known that for any reason, evidenced by the applicant, that the notification of its mineral right being granted has been negligently or fraudulently withheld by a Ministry official, third party or other party, the offended applicant shall retain the right to the grant of the mineral right.
- (5) When it becomes known to the Mining Cadastre Office that a false declaration was made in First Schedule **Error! Reference source not found.** or **Error! Reference source not found.**, any resultant mineral right shall be revoked and the date upon which the mineral right was revoked shall be immediately recorded in the relevant register.

### 35. Area-based annual fees

- (1) Pursuant to Clause 182(3) of the Act, a holder shall pay an area-based annual charge that is equal to the number of cadastral units that comprise the mineral right area multiplied by the area-based annual charge per cadastral unit for that type of mineral right as set out in **Error! Reference source not found.** of the Second Schedule to these regulations.
- (2) The number of cadastral units to be used for the purposes of an area-based annual charge calculation under sub regulation **Error! Reference source not found.** of this regulation shall be the number of cadastral units that comprise the mineral right area on the date the right is issued.
- (3) in all other licence or permit years the number of cadastral units that comprise the mineral right area shall be the number that comprise the mineral right area on the day of renewal of the year for which the area-based annual charge is being paid.

- (4) A holder required to pay an area-based annual charge shall make payment via the OMC within thirty-five (35) days after the issue date of the licence or permit and for every licence year or permit year thereafter.
- (5) In the event that an area-based annual charge is not paid by the holder by the due date, the Mining Cadastre Office shall issue a written notice using **Error! Reference source not found.** to the defaulting party and:
  - (a.) The holder shall have seven (7) days from the receipt of notice to make payment;
  - (b.) if payment is not effected during that period, the Mining Cadastre Office shall record the default in the respective licence register; and
  - (c.) proceed to request the Cabinet Secretary to revoke the licence.
- (6) Any part of an area-based annual charge payable pursuant to these regulations and unpaid may be recovered by the Government in the same manner as recovery of a civil debt.
- (7) Unpaid area-based annual charges shall accrue daily interest at the prevailing Central Bank of Kenya interest rate.

### **36. Demarcation of a mineral right area**

- (1) Physical boundaries. The physical boundaries of a mineral right area shall be the vertices of the polygon defining the mineral right area being applied for, conforming to the cadastral graticule established in the Fifth Schedule **Error! Reference source not found.** under these regulations.
- (2) Use of markers. The horizontal surface demarcation points of a retention licence area, a mining licence area and a mining permit area shall be identified by markers set in or on the ground or riverbed, which shall be positioned using the cadastral coordinates that define the vertices of the polygon consisting of the cadastral units that comprise the mineral right area.
- (3) Establishment of demarcation points. Unless a survey is requested by the Director, surface demarcation points may be established using global positioning system (GPS) equipment. The Mining Cadastre Office shall provide, free of charge on request to the holder, the parameters for the transformation between cadastral coordinates and the appropriate Universal Transverse Mercator (UTM) grid system.
- (4) Demarcation points. The holder of a retention licence, a mining licence or a mining permit or a person authorised on behalf of the holder shall:
  - (a.) at every demarcation point described in sub regulation **Error! Reference source not found.** of this regulation, markers as prescribed shall:
    - (i) where physically possible, consist of a round post that shall be not less than ten (10) centimetres in diameter or a square post each side of which shall be not less than ten (10) centimetres in width, standing at least one (1) metre above the surface and sunk not less than fifty (50) centimetres in the ground or riverbed. That part of the post above the surface shall be painted white. Where posts are of timber construction they shall be barked and dried of sap before use. There shall be engraved, or in some way durably marked, on each post the holder family name and the licence or permit number;
    - (ii) where it is not possible to insert a post, consist of a cairn of stones, or a concrete cone, at least fifty (50) centimetres high erected in the place where the post would have been inserted. Stones, comprising the cairn or the cone shall be painted white. There shall be engraved, or in some way durably marked on a stone, or on the cone, the holder family name and licence or permit number;

- (iii) be maintained during the full term of the licence;
  - (iv) be removed upon revocation or expiry of the licence; and
  
  - (v) where the terrain, physical features or other impediments prevents placement of a demarcation marker in the designated point, the licence holder may erect a witness demarcation describing distance and bearing to the actual vertices, and shall confirm in writing to the licensing authority that such a witness demarcation has been made.
- (5) The field demarcation carried out under sub regulation **Error! Reference source not found.** of this regulation shall bear the expense of the holder.
- (6) A retention licence, a mining licence or a mining permit holder shall:
- (a.) complete the placement of all demarcation point markers in accordance with sub regulation **Error! Reference source not found.** of this regulation within thirty five (35) days from the start date of the licence; and
  - (b.) submit an attestation to the Mining Cadastre Office through the OMC, using **Error! Reference source not found.** signed by the holder or the holder's authorised representative.
- (7) A mining licence or a mining permit holder shall not undertake any mining operations in the mineral right area until the requirements of sub regulations **Error! Reference source not found.** and **Error! Reference source not found.** of this regulation are satisfied.
- (8) If there is any contradiction between a field demarcation point established under sub-regulation **Error! Reference source not found.** of this regulation and cadastral coordinates defining that point, the cadastral coordinates shall take priority.
- (9) Any person may challenge the validity of the location of any demarcation marker by requesting the Director in writing to order a survey of that marker's location.
- (10) Upon the order of the Director given at any time, a retention licence, a mining licence, a prospecting permit or a mining permit holder shall:
- (a.) have the land the subject thereof, or any part thereof specified by the Director, surveyed or further surveyed to establish the positioning of demarcation points and boundaries;
  - (b.) cause to be removed any miss-located demarcation point markers; and
  - (c.) place demarcation point markers at such locations as are determined by such survey.
- (11) For the purposes of sub regulation **Error! Reference source not found.** of this regulation, demarcation point marker locations shall be surveyed by a licenced land surveyor.
- (12) The Cabinet Secretary or authorized public officials shall not be liable for anything done or omitted to be done in good faith in the performance of any function vested in or delegated to them under this law.
- (13) The applicant or holder to whom an order is made under sub regulation **Error! Reference source not found.** of this regulation shall incur and be liable to pay all costs associated with the work carried out by a licenced land surveyor under this regulation, except where it can be established by the applicant or holder to the satisfaction of the Director that it is or was an unjustified request, made under sub regulation (9) above. In the latter case the

person challenging the validity of the location of any demarcation marker by requesting the Director in writing to order the re-survey shall be required to incur and be liable to pay all costs associated with the work carried out by a licenced land surveyor under this regulation.

- (14) A licenced land surveyor who holds or is entitled (directly or indirectly) to the benefits of any share or interest in a mining permit or mining licence shall not carry out a survey of the land the subject thereof for the purposes of these regulations.
- (15) The area and boundaries of a reconnaissance licence or permit shall be based on the coordinates of cadastral blocks and do not require demarcation; however, the holder may demarcate the licence area or permit area as prescribed in sub regulations 36 should he or she so choose.

### **37. Boundary disputes**

- (1) Any dispute on the demarcation of boundaries, placement of markers or other boundary matter shall be placed before the Director for resolution.
  - (a.) Each party shall be given an opportunity to be heard.
  - (b.) The Director may convene a panel of experts to conduct a review.
  - (c.) The Director may seek inputs from the Directorate of Geological Survey, or technical, land, survey or other relevant experts or parties,
    - (i) at the shared expense of the parties; or
    - (ii) at the expense of the party found to be in violation of the boundary issue.
- (2) The Director shall resolve such disputes resulting from the definition and demarcation of markers and boundary lines of mineral right areas the subject to licences and permits, and, in writing, notify the holders of the resolution.
- (3) Prospecting or mining operations shall not commence in any land that is subject to an unresolved boundary dispute.
  - (a.) Where operations are underway, the Director may determine that they shall be suspended in part or in whole where a boundary dispute is of such seriousness as to warrant such action.

### **38. Land surface rights**

- (1) Land ownership is not a right of any licence or permit.
- (2) A land holder refers to the owner or lawful occupant of land on which a licence or permit holder intends to conduct mineral operations.
  - (a.) A land holder may exploit minerals on its property for use within its territory and not for commercial use or sale;
  - (b.) A land holder shall not conduct reconnaissance, prospecting or mining of minerals of a commercial nature without having been granted a licence or a permit in accordance with the Act and these regulations.
- (3) Land holders have the right to be given prior notice by the Ministry that it intends to grant a licence or permit over the land.
- (4) The Ministry shall prescribe clear notice and consultative processes to be followed as part of each mineral right award.

- (5) Pursuant to Clause 99 in the Act, where a mineral right is granted to a person other than the owner of the land in a designated area, the holder shall compensate the owners of the land adequately.

### **39. Consent from land holders to conduct mining operations**

- (1) No application for a mining licence shall be accepted without the consent of land holders as prescribed. Consent shall be in the form of a written agreement that clearly describes the boundaries of the land in relation to the licence or permit area for which the applicant is applying.
- (2) Pursuant to Clauses 36, 37 and 38 of the Act, parties from whom consent may be required include:
- (a.) a Ministry, State agency or authority;
  - (b.) a County or local government agency or authority;
  - (c.) land holders that can include land owners and lawful occupants of land; and
  - (d.) other reasonable occupants as may be agreed between the applicant and that occupant.
- (3) Pursuant to Clauses 36, 37, and 38 of the Act, an applicant shall, following approval of an application for a mineral right, with respect to land holder consent:
- (a.) seek and obtain the written consent of any and all land holders whose consents are required or with whom agreements must be entered into;
  - (b.) submit these documents within the time limit specified in the respective application according to the category of mineral right using **Error! Reference source not found.** under these regulations.
  - (c.) where multiple land holders are required for consent, the Ministry shall work with the applicant to facilitate public consultation; and
  - (d.) where requested to do so by **Error! Reference source not found.**, the applicant shall in addition to OMC entries, deliver to the Mining Cadastre Office hard copy originals of any signed land holder consents or agreements within seven (7) days of full execution of any such consent or agreement.
- (4) The Mining Cadastre Office shall verify the validity of all consent and agreement documents and upload the fully executed consents and agreements into the applicant's registry information.
- (5) Notwithstanding, the applicant may, giving reasons, request additional time to obtain land holder consents or agreements, and the Cabinet Secretary may in writing agree to such renewal, if the Cabinet Secretary considers the request reasonable.
- (6) A Community Development Agreement is not and shall not be considered as land holder consent or agreement.
- (7) Consents shall be received from land holders in accordance with the categories of land as prescribed under the Clauses 36, 37 and 38 of the Act.
- (a.) This procedure shall apply in full to any County or local, agency, authority or person.

### **40. Categories of land**

- (1) **Restricted or excluded land**

- (a.) The applicant shall in the first instance be responsible for determining whether the area applied for includes land that is restricted or excluded or falls within one (1) or more of the categories listed under Clause 36(2)(a) to (i) of the Act and, if so, to indicate in the application whether the applicant seeks to include such land within the licence or permit area.
- (b.) The Ministry shall confirm the application area as prescribed under the Act and regulations.
- (c.) Where the applicant seeks such inclusion of land as part of the licence or permit area, it shall be the applicant's responsibility to seek and obtain the written consent in each case of the relevant:
  - (i) State agency; or
  - (ii) Government authority; or
  - (iii) any person referred to under sections 36, 37 or 38 pursuant to Clause 39 of the Act.
- (d.) Failure on the part of the applicant to make clear which lands are applied for and to supply all necessary consents shall result in such areas being automatically denied.

## **(2) Private land**

- (a.) The applicant shall in the first instance be responsible for determining whether the area applied for includes land that is restricted or excluded or falls within Clause 37 of the Act, and if so to indicate in the application whether the applicant seeks to include such land within the licence or permit area.
- (b.) The Ministry shall confirm the application area as prescribed under the Act and regulations.

## **(3) Community land**

- (a.) The applicant shall in the first instance be responsible for determining whether the area applied for includes land that is restricted or excluded or falls within Clause 38 of the Act, and if so to indicate in the application whether the applicant seeks to include such land within the licence area or permit area.
- (b.) The Ministry shall confirm the application area as prescribed under the Act and regulations.

## **41. Information, reports and confidentiality**

- (1) Holders of mineral rights are required to submit full and detailed reports of all prospecting and mining work carried out, using or accompanied by the forms provided, as follows:
  - (a.) Exploration reports including the status of prospecting and mine development, equipment and methodologies, problems encountered, related costs and any other relevant information;
  - (b.) Financial reports including labour and operational costs, royalties, taxes, fees, investment challenges, loan repayment and any other relevant information;
  - (c.) Health and safety reports in accordance with the Health and Safety regulations under the Act;
  - (d.) Environmental and social management reports in accordance with the relevant laws, regulations and guidelines;
  - (e.) Community development reports in accordance with the Community Development regulations under the Act;
  - (f.) Infrastructure development reports including the status of development, related investment and financing issues, maps of developments, and any other relevant information; and
  - (g.) Any other such reports as may be required under the licence or permit;

- (2) Holders of dealer's rights are required to submit full and detailed reports of business transactions, using the forms provided that shall include:
  - (a.) Financial reports including labour and operational costs, royalties, taxes, fees and any other relevant information; and
  - (b.) Audited profit and loss accounts.
- (3) Professional reporting standards:
  - (a.) All reporting shall be in English.
  - (b.) Reports required as a condition of a mineral right shall be prepared to professional standards in accordance with published Ministry of Mining guidelines, with emphasis on clarity, full information and timely submission; in the absence of such guidelines, best international practice shall be followed.

Reports shall include all original and interpreted data;

- (i) 'Reports shall include all original and interpreted data, except in the case of surrender reports for partially surrendered licences, where original data only may be included, until such time as the entire licence is surrendered whereupon interpreted data for the entire original licence area shall be included in the final surrender report'.
  - (ii) An executive summary shall be included in reports summarising the work carried out and the results obtained.
  - (iii) All analytical data electronically submitted shall also be provided in hardcopy form within the physical report.
  - (iv) In addition to the electronic report, the holder shall provide a bound hardcopy and, in the case of all technical reports, two (2) bound hard copies.
- (4) Confidentiality of information and reports
- (a.) All prospecting and mining reports, including original and analytical data and prospecting methodology, shall be treated as confidential.
    - (i) upon termination of the mineral right, whether by surrender, revocation, cancellation or expiry, all data and information relating to the mineral right shall become the property of the State and, unless decided otherwise by the Cabinet Secretary, shall be added to the geoscience database of Kenya; and
    - (ii) shall be made publically available in order to stimulate and encourage the further development of Kenya's mineral resources.
  - (b.) Subject to any other applicable environmental laws of Kenya, environmental reports shall be considered public documents, available for inspection via the OMC by any party who is a registered user or in person at the Mining Cadastre Office.
- (5) Financial reports
- (a.) Pursuant to Clause 53 of the Act, the holder of a mineral right shall submit audited financial statements within ninety (90) days following the end of each fiscal year.
  - (b.) International accounting standards for independent audits shall be required in respect of:
    - (i) reconnaissance licences;
    - (ii) Prospecting licences;

- (iii) retention licences;
  - (iv) mining licences; and
  - (v) mineral agreements;
- (c.) At a minimum, compliance with Kenyan accounting practices with internal audits shall be required in respect of:
- (i) Artisanal mining permits;
  - (ii) reconnaissance permits;
  - (iii) prospecting permits; and
  - (iv) mining permits;
- (6) Where the holder of a mineral right fails to provide a mandatory report, the Mining Cadastre Offices shall request the report be submitted within seven (7) days using **Error! Reference source not found.**
- (7) Failure to submit a compliant report by its due date may, by order of the Cabinet Secretary, result in:
- (a.) suspension of the mineral right until such report is submitted, in which case the Mining Cadastre Office shall give the holder seven (7) days' notice from the due date of an impending suspension or revocation using **Error! Reference source not found.**; or
  - (b.) revocation of the mineral right, in which case the Mining Cadastre Office shall give the holder seven (7) days' notice from the due date of an impending revocation using **Error! Reference source not found.**

## **42. Assignment, transfer and mortgage of mineral rights**

- (1) Pursuant to Clause 51 of the Act, a holder of a mineral right may apply in **Error! Reference source not found.** to assign, mortgage or transfer a mineral right and pay the non-refundable mineral right transfer application fee specified in **Error! Reference source not found.** of the Second Schedule to these regulations.
- (2) Application for the assignment, transfer or mortgage of a mineral right shall be submitted through the OMC to the Cabinet Secretary as prescribed and may include:
- (a.) details of the proposed mortgage, assignment or transfer including copies of any agreement; and
  - (b.) details of the assignee or transferee, confirming that:
    - (i) the assignee or transferee is a qualifying person or company under the Act;
    - (ii) the assignee or transferee has the requisite technical and financial capabilities to carry out the obligations of the holder's licence or permit; and
    - (iii) providing detailed information proving eligibility as required for that mineral right under the Act and the regulations.
- (3) Pursuant to Clause 54 of the Act, the Cabinet Secretary may request any additional information, using **Error! Reference source not found.** Where so requested:
- (a.) The applicant shall provide such additional information within seven (7) days of receiving the Cabinet Secretary request.



- (b.) The Cabinet Secretary shall review such information and may solicit the advice of experts, within:
  - (i) sixty (60) days for large scale mining operations
  - (ii) ten (10) days for small scale mining operations
- (4) The Cabinet Secretary shall notify an applicant of the approval or rejection of an application to assign, transfer or mortgage a mineral right within sixty (60) days in the case of a large scale mineral right and thirty (30) days for a small scale or artisanal mining permit from the date of receipt of the application.
- (5) An applicant who is aggrieved by the decision of the Cabinet Secretary may appeal to the High Court within thirty (30) days of receipt of the notification of the rejection of the application.
- (6) Pursuant to Clause 51(6) of the Act, a holder shall inform the Mining Cadastre Office of a change of interest using **Error! Reference source not found.** when:
  - (a.) there exists a proposed change of interest in a mineral right;
  - (b.) that proposed change of interest exceeds twenty-five percent (25%) of the entire equity of the mineral right;  
  
In such instance, the holder shall pay the non-refundable mineral right transfer application fee specified in **Error! Reference source not found.** of the Second Schedule.
- (7) A change of interest may generally be referred to as a “transfer”.
- (8) The Mining Cadastre Office shall provide the Mineral Rights Board with a copy of any notice of change of interest in a mineral right and attach any documents for review by the Mineral Rights Board.
  - (a.) Within fourteen (14) days of receipt of the Notice of Change of Interest, the Mineral Rights Board shall review the information and provide the Cabinet Secretary with its written advice on whether to:
    - (i) grant the change of interest;
    - (ii) deny the change of interest; or
    - (iii) seek additional information with respect to the change of interest.
- (9) The Cabinet Secretary shall, on advice of the Mineral Rights Board, make a final determination using **Error! Reference source not found.**
- (10) The Cabinet Secretary may seek additional information from the applicant.
- (11) The Cabinet Secretary shall, on the advice of the Mineral Rights Board, advise the applicant of the decision whether to grant or reject using **Error! Reference source not found.**
- (12) Approval of change of interest.
  - (a.) Pursuant to Clause 51(4) of the Act, prior to assignment, mortgage, of transfer and within twenty-one (21) days from the date on which the holder receives the Cabinet Secretary approval through the OMC, the transferor, assignor or mortgagor shall -
    - (i) in writing notify the Kenya Revenue Authority of the transfer of interest; and
    - (ii) immediately make arrangements to pay any outstanding tax or legal debt not carried over to the new holder.

- (13) The transferor, assignor, mortgagor shall confirm via the OMC that it has complied with all conditions of the transfer, assignment or mortgage and shall submit written evidence that satisfactory arrangements have been reached with the Kenya Revenue Authority for payment of outstanding or other due tax and debts in respect of the assignment, mortgage, or transfer.
- (14) The assignee or transferee shall confirm acceptance of all expenditure, work programme commitments and other obligations originally incumbent on the transferor for that part of the mineral right being transferred from the date of transfer of interest, using **Error! Reference source not found.**, and shall make payment of the transfer fee within fourteen (14) days of receiving the notice to pay from the Kenya Revenue Authority.
- (15) The Mining Cadastre Office shall register the interest of an assignee, mortgagee or transferee who has complied with all conditions of the assignment, transfer or mortgage and has paid the appropriate transfer fee according to **Error! Reference source not found.** of the Second Schedule within seven (7) days using Form N-12 [Notice of Change of Interest in a mineral right].
- (16) In the case of a full transfer of the mineral right, the transferor shall have its interest in the licence removed from the register and shall be notified within seven (7) days using **Error! Reference source not found.**

### **43. Inheritance of artisanal mining permit rights**

- (1) Excepting artisanal mining permit rights, no mineral right shall be inherited.
- (2) In any case of an artisanal mining permit where the holder dies, irrespective of the circumstances of death -
  - (a.) the obligations of the deceased holder shall, according to the Act and these regulations or by any regulations made under the Act ,be suspended;
  - (b.) the rights conferred on such holder by the Act or by these regulations shall be preserved for six (6) months from the date of death; and
  - (c.) additional time may be granted to preserve such rights provided that the Representative of the Director of Mines considers that good and sufficient cause exists.
- (3) Any heir(s) seeking to inherit rights and obligations of the Artisanal mining permit shall apply through the OMC to the Representative of the Director of Mines in **Error! Reference source not found.** within sixty-three (63) days of the date of death of the holder.
  - (a.) The applicant shall pay the non-refundable mineral right transfer application fee specified in **Error! Reference source not found.** of the Second Schedule to these regulations.
  - (b.) Such application shall include:
    - (i) the name and date of death of the holder;
    - (ii) details of the proposed transfer, including copies of any agreements made between or amongst relevant parties;
    - (iii) details of the transferee confirming that he or she:
      - a. is a rightful heir to the deceased;
      - b. it is a qualifying person under the Act, using **Error! Reference source not found.**;
      - c. has the requisite technical and financial capabilities to carry out the obligations of the deceased holder's Artisanal mining permit; and

- d. providing any additional information requested by the Representative of the Director of Mines.
- (4) The Representative of the Director of Mines may request any additional information using **Error! Reference source not found.**
  - (a.) The applicant shall provide such additional information within seven (7) days of receiving a written request.
  - (b.) The applicant may request additional time, which shall not be unreasonably denied;
  - (c.) In the event that the applicant does not provide the additional information in the time prescribed and any additional time granted, the application shall be rejected.
- (5) The Representative of the Director of Mines shall decide to grant or reject the application for transfer within seven (7) days of receipt of the application or submission of additional information if so requested, and inform the applicant using **Error! Reference source not found.**

#### **44.Land compensation guarantee bond**

- (1) Pursuant to Clauses 153(2) of the Act, a mineral right holder shall deliver a bond as guarantee against a claim for compensation payable to a land holder (landowner or lawful occupier) that
  - (a.) shall be of an amount prescribed to cover for any loss of land use, damage to land or loss of earnings;
  - (b.) may be in the form of a letter of credit or cash; and
  - (c.) shall be held by the Ministry of Mining in a non-interest bearing escrow account.
- (2) Pursuant to Clause 153(3) of the Act, the Cabinet Secretary in consultation with the Government Valuer, shall determine the amount and nature of the compensation bond
  - (a.) The Cabinet Secretary shall require the mineral right holder, within seven (7) days of grant of the mineral right, to deliver the bond, accompanied by **Error! Reference source not found.**
  - (b.) The holder shall within fourteen (14) days of the Cabinet Secretary's notice deliver the bond.
  - (c.) No prospecting or mining shall commence before the Mining Cadastre Office has confirmed receipt of the land compensation bond.
- (3) Notwithstanding Clause 153(2) of the Act, and pursuant to Clause 158(3) of the Act, a land compensation guarantee bond shall not be required in the case of non-invasive reconnaissance or prospecting operations.

#### **45.Encumbrance**

- (1) No encumbrance may be placed by a holder upon any:
  - (a.) mineral resource; or
  - (b.) licence or permit or upon the facilities, installations and other fixtures that are part of the operations unless it is to secure financing for any operations or activities of the holder in connection with the licence or permit.
- (2) Where any rights arising from a licence that are transferable under the Act are assigned, mortgaged, or subject to any security interest, the holder shall notify the Mining Cadastre Office within thirty (30) days in **Error! Reference source not found.**

- (3) Any encumbrance on a licence or permit shall be recorded by the Mining Cadastre Office in the respective register.

#### **46. Discovery of cultural, historic or archaeological relics**

- (1) Cultural, historic or archaeological relics shall be reported to the Cabinet Secretary in **Error! Reference source not found.** under these regulations within seven (7) days of the discovery.

## PART VI: RECONNAISSANCE AND PROSPECTING MINIMUM OPERATIONAL EXPENDITURE OBLIGATIONS

### 47. Minimum operational expenditure obligation.

- (1) The minimum operational expenditure is that amount of funds, or work of a calculated value, that a holder is required to expend on its mineral right as prescribed under these regulations.
- (2) In accordance with its approved work programme, holders of the following mineral rights shall be required to meet a minimum operational expenditure:
  - (a.) Reconnaissance licence
  - (b.) Prospecting licence
  - (c.) reconnaissance permit
  - (d.) prospecting permit.
- (3) Those holders as described in sub regulation (2) shall expend on operations in each licence or permit year not less than the minimum amount specified in sub regulation **Error! Reference source not found.** of this regulation.
- (4) If during any licence or permit year, the holder of a reconnaissance or prospecting licence or reconnaissance or prospecting permit expends in excess of the required annual minimum operational expenditure amount, any excess shall be applied to satisfy the holder's minimum operational expenditure requirement in the following licence or permit year.
- (5) The minimum operational expenditure required in each licence or permit year shall be calculated on the number of cadastral units comprising the licence or permit area at the start date of that licence or permit year, multiplied by the base amount per cadastral unit as specified in **Error! Reference source not found.** in the Second Schedule to these regulations, multiplied in turn by a factor corresponding to the licence or permit year as set out in **Error! Reference source not found.** of the Second Schedule to these regulations.
- (6) Where a reconnaissance or prospecting licence or permit holder fails to meet the annual minimum operational expenditure obligation for any licence or permit year, the shortfall shall be a debt due to the Government recoverable in a court of competent jurisdiction.
  - (a.) Any failure to meet minimum operational expenditure obligation that is attributed to an allowable event of force majeure or other reason that is acceptable under these regulations shall be exempted from this sub regulation (6).
- (7) On application by the holder of a reconnaissance or prospecting licence or permit, and where cash has been used to fund the minimum operational expenditure obligation, the Cabinet Secretary may refund a cash payment under sub regulation **Error! Reference source not found.** of this regulation, in whole or in part; provided that the holder satisfies the Director that, in the licence or permit year or years since the year in which the deficiency arose, the holder has performed required work or has incurred eligible expenditures for the performance of required work the value of which exceeds the prescribed required minimum operational expenditure value applicable in the subsequent licence or permit year or years and that no deficiency or a reduced deficiency remains in respect of required work.

### 48. Qualifying minimum operational expenditure obligations

(1) Work acceptable the Director of Mines in fulfilment of the minimum operational expenditure obligation as required in this regulation for reconnaissance or prospecting operations shall include:

- (a.) literature research and analysis of previous work;
- (b.) boundary and control surveys and topographic mapping;
- (c.) photo geological and remote imagery interpretations;
- (d.) geological, geophysical (including airborne) and geochemical surveys;
- (e.) structural mapping and interpretation;
- (f.) establishing grid lines;
- (g.) trenching, stripping and excavating pits;
- (h.) shaft sinking, tunnelling and other underground development work;
- (i.) sample collection including bulk sampling, analyses and assays;
- (j.) drilling, where core or cuttings are logged and analysed;
- (k.) geophysical logging of drill holes;
- (l.) logging of drill core or cuttings;
- (m.) petro graphical, petrological, analytical and mineralogical studies;
- (n.) beneficiation studies, pilot plants;
- (o.) mine pre-feasibility and feasibility studies;
- (p.) mineral product marketing studies;
- (q.) environmental baseline studies;
- (r.) environmental and social impact assessments;
- (s.) implementation of environmental management programmes;
- (t.) preparation of rehabilitation and mine closure plans;
- (u.) preparation of social, gender and cultural impact studies and plans;
- (v.) community consultation and outreach;
- (w.) preparation of reports in compliance with the Act;
- (x.) rehabilitation of the environment; and
- (y.) such other work as may be reasonably approved by the Director.

(2) Provided that expenditures related to the work activities are documented in sufficient detail to establish their authenticity to the satisfaction of the Director, and are directly related to the performance of work as listed in sub regulation(1) of this regulation carried out on the licence or permit area, acceptable operational expenditures shall include:

- (a.) At full cost -
  - (i) salaries and benefits of field and laboratory personnel;
  - (ii) food and accommodation for workers in Kenya at licence or permit area;
  - (iii) equipment and instrument rental including short- and long-term rentals;

- (iv) analyses and assays;
  - (v) prospecting work contracted out;
  - (vi) compensation to land owners and land users;
  - (vii) licence or permit access road construction;
  - (viii) camp construction and operation;
  - (ix) training of Kenyans including all ancillary costs of travel and accommodation;
  - (x) reasonable international transportation to Kenya for expatriate staff; and
  - (xi) domestic transportation to the licence area and related sites.
- (b.) Not exceeding ten per cent (10%) in total of the total of all costs claimed under sub regulation(2)(a.) of this regulation -
- (i) freight and customs duties;
  - (ii) office supplies and services;
  - (iii) the purchase price of equipment intended to remain on site for future production work; and
  - (iv) salaries and benefits of office/clerical personnel dedicated more than seventy-five per cent (75%) staff time to the Kenyan licence.

# PART VII SURRENDER, SUSPENSION AND REVOCATION OF MINERAL RIGHTS

## 49. Surrender of mineral rights

- (1) Pursuant to Clause 143 of the Act, a holder may apply through the OMC to the Cabinet Secretary to surrender all or part of its mineral right, using **Error! Reference source not found.**
- (2) The Cabinet Secretary, on the advice of the Mineral Rights Board, may allow a holder to surrender that mineral right in respect of the whole or any part of the area specified in the mineral right.
- (3) An application made under sub regulation (1) shall give:
  - (a.) in the case of a reconnaissance or prospecting permit, not less than thirty one (31) days' notice of intention to surrender part or the whole of the area specified in the permit; or
  - (b.) in the case of all other mineral rights, not less than ninety one (91) days' notice of intention to surrender part or the whole of the area specified in the mineral right.
- (4) An application fee is not payable in the case of a partial or complete surrender of a mineral right.
- (5) An application to surrender under sub regulation (1) shall include:
  - (a.) Where part only of the reconnaissance or prospecting area is surrendered pursuant to Clause 84, 144 of the Act or regulation 92:
    - (i) The coordinates of the cadastral blocks of that part of the area to be surrendered in the prescribed format;
    - (ii) A surrender report prepared according to Ministry guidelines, covering all activities carried out in or over the area to be surrendered since the mineral right was first granted, namely:
      - a. all records and reports with respect to the mineral right operations carried out in the mineral right area to be surrendered including all original results and data previously submitted in annual exploration reports;
      - b. the report shall summarise earlier technical reports up to and including the most recent annual report, together with final conclusions and should include:
        1. rationale for surrender;
        2. any suggestions to mothball operations or alternatives to partial development of the area;
        3. status of any mining operations as of date of surrender;
        4. plans for the removal of equipment and infrastructure;
        5. status of mine and mine-related workers affected by the surrender;
        6. environmental and social issues arising; and
        7. status of implementation of any Community Development Agreement, Environmental and Social Management Plans, infrastructure development and any ancillary work related to the area to be surrendered.



- (iii) In addition to all electronic documents, two (2) bound hardcopies of all required documents shall be delivered to the Mining Cadastre Office within seven (7) days of the application date.
  - (iv) Confirmation from the authorised agency that approved environmental and social management plans, relating to the area being surrendered have been fully implemented;
- (b.) Where the entire mineral right area is surrendered the following shall be submitted:
- (i) The original paper copy of the mineral right, sent by registered mail;
  - (ii) A final exploration report in digital and hard copy form, prepared according to published Ministry guidelines, covering all work carried out during the final year of the licence subsequent to the previous annual report, and including a summary of all work carried out and conclusions on the licence area since the mineral right was first granted.
    - a. A surrender report shall not be required provided all original data has been submitted in past annual and other technical reports, except that any original data or interpretation not previously submitted shall be provided in the final report.
  - (iii) A statement of expenditure for the current licence or permit year up to the date of application for surrender for the following mineral rights:
    - a. **Error! Reference source not found.;**
    - b. **Error! Reference source not found.;**
    - c. **Error! Reference source not found.;**
    - d. **Error! Reference source not found.;**
  - (iv) Where the operational expenditure is less than the pro-rata annual committed operational expenditure, any shortfall shall be a debt owed to the Government of Kenya;
  - (v) Confirmation from the authorised agency that any approved environmental and social management plans have been fully implemented;
  - (vi) a statement of assets the holder intends to remove from the area and assets he or she intends to leave;
  - (vii) in accordance with sub regulation 51, details of any potentially hazardous substances, excavations and buildings remaining in the area, if any.
- (c.) Upon receipt of all required information, the Cabinet Secretary shall, on the advice of the Mineral Rights Board through the OMC, issue a notice to the holder that the application for surrender has been approved, using **Error! Reference source not found.** confirming that,
- (i) the mineral right area is reduced; or
  - (ii) the mineral right is terminated.
- (6) The requested surrender of an area covered under a mineral right shall have no effect unless and until the Cabinet Secretary, on the advice of the Mineral Rights Board, gives the holder thereof written notice, pursuant to sub regulation (6) above.
- (7) An approval for the surrender of a mineral right may be granted subject to such conditions as the Cabinet Secretary, on the advice of the Mineral Rights Board, may consider appropriate.

- (a.) Where the application is for part only of a mineral right area, the mineral right shall cease to have effect in respect of that part of the area but shall continue to have effect in respect of the remaining area.
- (b.) Except as provided by Clause 146 of the Act, a mineral right shall cease to have any effect once an application to surrender the entire area is approved.

## **50. Suspension of mineral rights**

- (1) Pursuant to Clause 147 of the Act, where a mineral right holder fails to comply with a condition or obligation, the Cabinet Secretary may issue a notice to the holder using **Error! Reference source not found.** that:
  - (a.) The mineral right may be suspended within fourteen (14) days of the holder receipt of such notice unless the holder:
    - (i) complies with the outstanding condition or obligation within the prescribed time; or
    - (ii) shows cause to the satisfaction of the Cabinet Secretary why the condition or obligation cannot be satisfied; or
    - (iii) provides other reasons to the satisfaction of the Cabinet Secretary as to why the mineral right should not be suspended.
  - (2) Where a holder does not respond to such notice within the prescribed time, or fails to satisfy the Cabinet Secretary, the Cabinet Secretary shall suspend the mineral right, using **Error! Reference source not found.**
  - (3) Where the Cabinet Secretary suspends a mineral right, the holder may, within thirty (30) days, file an appeal with the High Court of Kenya for adjudication.

## **51. Revocation of a mineral right**

- (1) Only the Cabinet Secretary is authorised to revoke a mineral right.
- (2) Pursuant to Clause 147 of the Act, the Cabinet Secretary may, on the advice of the Mineral Rights Board, revoke a mineral right in accordance with the Act for any reason prescribed under the Act.
- (3) Where the Cabinet Secretary intends to revoke a mineral right, the Cabinet Secretary shall provide not less than sixty-three (63) days written notice to the holder using **Error! Reference source not found.**, and such notice shall contain in detail the grounds for revocation.
- (4) The Cabinet Secretary shall revoke a mineral right and shall notify in writing the Mining Cadastre Office:
  - (a.) where the Act requires revocation for failure to meet a condition or other contravention as prescribed and the holder fails within thirty-five (35) days of receiving a notice under regulation (2) to:
    - (i) remedy the stated grounds for revocation; or
    - (ii) provide sufficient evidence to justify its failure to meet a condition or other act as prescribed
- (5) The Cabinet Secretary shall notify the holder of the decision to revoke the mineral right, using **Error! Reference source not found.**
- (6) The Cabinet Secretary shall ensure that notification of the revocation is communicated to the holder and shall cause it to be recorded in the relevant register and on the relevant cadastral map.

- (7) Upon revocation of a mineral right, the Cabinet Secretary shall submit to the former holder a demand notice in **Error! Reference source not found.** under these regulations demanding delivery of:
- (a.) all records and reports, digitally and in hard copy that the holder has been and is legally obligated to submit under the provisions of the Act and regulations;
  - (b.) all plans and maps, digitally and in hard copy of the mineral right area covered by the licence or permit prepared by the holder or at its instructions by its agent, sub-contractor, or affiliate; and
  - (c.) such other documents, digitally and in hard copy relating to the licence or permit as may be requested in the notice.
- (8) Upon receipt of a demand notice under regulation 51(7) of this regulation, the holder shall provide all information requested in the demand to the Mining Cadastre Office within twenty-eight (28) days of receipt of the notice.

## **52. Management of assets and hazardous materials on expiry or revocation of a mineral right**

- (1) Pursuant to Clause 149(2) of the Act, where a holder does not intend to apply for an extension or renewal of a mineral right, the holder shall, at least sixty (60) days before the expiry date of the right, submit a statement to the Cabinet Secretary using **Error! Reference source not found.** listing any:
- (a.) immovable and movable assets;
  - (b.) potentially hazardous substances; and
  - (c.) excavations and buildings remaining in the area.
- (2) On receipt of the information from the holder in regard to assets and hazardous substances left in the area, the Cabinet Secretary may serve notice, using **Error! Reference source not found.** in regard to:
- (a.) instructing the former holder on the handling of the assets or hazardous substances;
  - (b.) mitigating measures to be taken;
  - (c.) advising the costs to be covered by the former holder; and
  - (d.) advising that the holder must comply within sixty (60) days of receipt of such notice or otherwise seek an extension to ensure compliance with the notice .

## **53. Management of mine-related infrastructure on expiry or revocation of a mineral right**

Subject to the Mining Act and any regulations made thereunder, all public utility infrastructure erected by the holder of a mineral right shall become the property of the State upon expiration or revocation of the right.

# PART VIII – LARGE-SCALE MINING OPERATIONS

## VIII.I -RECONNAISSANCE LICENCE

### 54.Purpose and scope

- (1) A reconnaissance licence grants a qualifying person or company the right to carry out non-invasive investigations for minerals in or over the licence area according to an approved reconnaissance licence work programme.
- (2) A reconnaissance licence right is non-exclusive.
- (3) Areas covered by existing exclusive mineral rights falling within the boundaries of a reconnaissance licence are automatically excluded from the reconnaissance licence except that airborne surveys are permitted over such land subject to restricted use of the data so collected.
- (4) More than one (1) reconnaissance licence may be granted to different applicants over the same area or parts of an area.
- (5) Where during the duration of the reconnaissance licence, any land which is the subject of the reconnaissance licence becomes the subject of an exclusive mineral right, or is declared as strategic, restricted or reserved, or is otherwise closed to prospecting or mining as may be prescribed, that land shall cease to be included under the reconnaissance licence.

### 55.Form of licence

- (1) A reconnaissance licence shall be issued in digital form along with one (1) paper copy using **Error! Reference source not found.** under these regulations.
- (2) Pursuant to Clause 61 of the Act, a reconnaissance licence shall specify the:
  - (a.) full name, nationality and address of the licence holder;
  - (b.) coordinates in the prescribed format delineating the licence area;
  - (c.) term of the licence;
  - (d.) a digital map showing the approximate geographical reconnaissance area;
  - (e.) the approved reconnaissance licence work programme;
  - (f.) the approved detailed minimum operational expenditure commitment for the first year of the licence and an estimated minimum operational expenditure commitment for the subsequent year;
  - (g.) approved plans for the procurement of Kenyan goods and services;
  - (h.) the approved plan for employment and training of Kenyan citizens;
  - (i.) resumes of the Project Manager and key staffs committed at least throughout year one (1) of the reconnaissance licence work programme; and
  - (j.) any other special conditions that may apply.

### 56.Duration of reconnaissance licence

A reconnaissance licence may be granted for a period of up to two (2) years and shall not be renewable.

## 57. Size of reconnaissance licence area

- (1) The area of land in respect of which a reconnaissance licence may be granted shall not be more than five thousand (5,000) contiguous cadastral blocks.
- (2) Any one holder may hold not more than two (2) reconnaissance licences concurrently.
- (3) Notwithstanding sub regulation (1), in the case of an aerial survey the Cabinet Secretary, on the advice of the Mineral Rights Board, may grant a reconnaissance licence over the entire territory of Kenya or such lesser area as requested.

## 58. Shape of reconnaissance licence area

A reconnaissance licence may be of any shape as defined by whole contiguous cadastral blocks.

## 59. Application for reconnaissance licence

- (1) An application in **Error! Reference source not found.** for grant of a reconnaissance licence shall be made to the Cabinet Secretary
- (2) The application shall include the following:
  - (a.) full name, nationality and address of the applicant;
  - (b.) in the case of a company;
    - (i) the legally registered name and address, the certificate of incorporation and Articles of Incorporation of the company;
    - (ii) name and addresses, nationalities and contact information of each corporate officer, Board of Directors members and shareholder(s) as listed with the Registrar of Companies;
    - (iii) a declaration, using **Error! Reference source not found.** or **Error! Reference source not found.** as the case may be, affirming that the applicant meets the eligibility requirements in accordance with the provisions of the Act;
    - (iv) a statement of past work relevant to the proposed reconnaissance licence activities;
  - (c.) details of the proposed reconnaissance area and, if less than the entire territory of Kenya, the cadastral blocks in the prescribed format defining the area;
  - (d.) a proposed reconnaissance licence work programme setting out the work intended over the duration term of the licence, with details of the equipment, methodology, and technologies expected to be used including for aerial survey;
  - (e.) a detailed minimum operational expenditures commitment for the first year of the licence and estimated minimum operational expenditure commitment for the subsequent year;
  - (f.) resumes of the Project Manager and key staff committed to the project at least throughout year one (1) of the reconnaissance licence work programme;
  - (g.) information on any minerals rights held in Kenya by the applicant or representatives;
  - (h.) an environmental and social screening report comprising a plan describing how, on an ongoing basis, local government traditional authorities and communities will be informed and consulted about those reconnaissance operations that require physical entry onto the land within their jurisdiction ;

- (i.) a plan for the employment and training of Kenyan citizens, and the progressive replacement of expatriate workers;
  - (j.) a plan for the use of national goods and services;
  - (k.) details, in writing, on how the proposed reconnaissance licence work programme will be financed;
  - (l.) a certified or signed statement or formal letter of intent from a bank or other financial source confirming the financial resources available to the applicant exclusively for this licence; and
  - (m.) any other information that may be requested in **Error! Reference source not found.** under these regulations.
- (3) The registered reconnaissance licence application shall be reviewed by the Technical Committee, pursuant to regulation **Error! Reference source not found.** and in accordance with regulations 15.

## **60. Processing of an application for a reconnaissance licence**

- (1) Pursuant to Clause 33(2)(a) of the Act, the Cabinet Secretary, on the advice of the Mineral Rights Board, shall grant or reject an application for a reconnaissance licence within ninety (90) days of the registration date.
- (2) The date that the digital reconnaissance licence is issued by the Mining Cadastre Office shall be:
  - (a.) marked on the reconnaissance licence;
  - (b.) considered the start of the reconnaissance licence year; and
  - (c.) recorded by the Registrar in the reconnaissance licence register.

## **61. Amendments to an approved reconnaissance licence work programme**

- (1) Amendments to an approved reconnaissance licence work programme may be sought as follows:
  - (a.) Pursuant to Clause 70 of the Act and subject to regulation 55(2)(e.), a holder may request to amend an approved reconnaissance licence work programme using **Error! Reference source not found.**
  - (b.) Written justification for any proposed amendment shall be based on the results of the reconnaissance work to date or other new and relevant information that has come to light that support the need for such a change.
- (2) Where the Cabinet Secretary requires more information to decide the requested amendment, the applicant shall be notified using **Error! Reference source not found.**
  - (a.) The applicant shall submit the requested information within thirty-five (35) days of receipt of the Cabinet Secretary's notice;
  - (b.) The Cabinet Secretary shall review and respond to the holder in light of the additional information; and
  - (c.) Where deemed necessary, the Cabinet Secretary may request review by technical experts.

## **62. Rights and restrictions under a reconnaissance licence**

- (1) A reconnaissance licence permits the holder to conduct preliminary exploration for minerals through aerial, geophysical, geochemical and geological surveys together with limited sampling of surface soil and rocks.

- (2) A reconnaissance licence allows the collection of surface samples in accordance with the reconnaissance licence work programme but excludes intrusive activities such as drilling, trenching and excavation.

### **63. Airborne survey conducted under a reconnaissance licence**

- (1) Pursuant to Clause 63(4) of the Act, the copyright of any regional airborne data, including geophysical and other remote sensing data, acquired under a reconnaissance licence shall rest with the holder for as long as the licence is valid.
- (2) Once the reconnaissance licence has expired or has been invalidated in any other way, the copyright of the airborne data acquired under the licence shall rest with the Government.
- (a.) Notwithstanding, the holder shall retain the copyright to areas over which a prospecting licence is applied for during the term of the reconnaissance licence and which is subsequently granted.
- (3) Any airborne survey may, in addition to anything contained herein, and if the Cabinet Secretary on the advice of the Mineral Rights Board so requires, be subject to a special agreement with the Government which shall, amongst other things, include:
- (a.) details of the flying campaign including plans and approvals from relevant authorities;
- (b.) health and safety plans;
- (c.) monitoring by Ministry personnel;
- (d.) technical specifications of the survey; and
- (e.) any special conditions governing the disposal or sale of the data and any derived products or interpretation under Kenyan Law.
- (4) All pilots shall be qualified to internationally recognised standards and all flying shall adhere to national regulations of the Kenya Civil Aviation Authority.
- (5) Throughout any aerial survey, the holder shall, on a weekly basis, keep the Ministry informed of progress and shall, without delay, advise the Cabinet Secretary through the Mining Cadastre Office of any health and safety concerns, accidents or incidents.
- (6) Notwithstanding subsection (1) above, any data collected under an airborne geophysical survey over land held under an exclusive mineral right shall not be published or sold or otherwise disclosed without the written consent of the holder of the exclusive mineral right, save that the data may be included in processed form as part of a regional interpretation so long as actual raw data values over such areas held by others cannot be derived by backward calculation.
- (7) The holder of a reconnaissance licence who undertakes an airborne geophysical survey shall, not later than seven (7) days after the end of each twenty-eight (28) day period, submit a progress report to the Ministry prepared according to published Ministry guidelines. The report shall include:
- (a.) a narrative description of the progress achieved during the previous month and since the campaign commenced;
- (b.) an index map showing flight lines (including tie-lines) and indicating line-kilometres flown; and
- (c.) hardcopy plots of any processed or interpreted data, including cumulative plots of data collected since commencement of the survey.

- (8) Not later than two (2) months following completion of the survey, the holder shall submit a final report in both digital format and hard copy, prepared according to Ministry guidelines together with a digital copy of all raw data, processed data and interpretation in an industry-standard format. Such report shall be required in addition to the annual exploration report.

#### **64. Obligations and conduct under a reconnaissance licence**

- (1) Pursuant to Clause 67 of the Act, a reconnaissance licence work programme shall be subject to the following:
- (a.) the holder of a reconnaissance licence shall commence operations within ninety-one (91) days from the start date of the licence;
    - (i) where evidence is provided to demonstrate the need for additional time to commence reconnaissance activities, application may be made to the Cabinet Secretary for consideration.
  - (b.) A reconnaissance licence holder shall submit a written notice using First Schedule **Error! Reference source not found.** not later than seven(7) days before commencing reconnaissance operations.
  - (c.) investigations shall be conducted in accordance with the approved reconnaissance licence work programme and minimum operational expenditures, and in compliance with all other terms and conditions of the licence, any special agreements, and the Mining Act, regulations and any other applicable acts and regulations.
  - (d.) an applicant whose reconnaissance licence is granted shall, before commencement of reconnaissance work, provide personal details of the senior technical manager responsible for reconnaissance operations ('Reconnaissance Manager'), including contact details. The holder shall update this information if at any time during the term of the licence the Reconnaissance Manager is replaced.
  - (e.) all transfer camps, temporary installations or installed machinery shall be removed, and any damage done to the surface of any land repaired, within sixty (60) days after the expiry date of licence or date of licence revocation

#### **65. Reporting required under a reconnaissance licence**

- (1) Pursuant to Clause 67 of the Act, and notwithstanding the reporting requirements in respect of airborne surveys under regulation 63(7) and (8), the holder of a reconnaissance licence shall submit:
- (a.) within fourteen (14) days of the end of six (6) months of each licence year, a six (6) monthly progress report on all reconnaissance work carried out over the licence area in compliance with published guidelines, and in accordance with the approved reconnaissance licence work programme and all expenditures using **Error! Reference source not found.**;
  - (b.) not later than thirty-five (35) days following the end of each licence year, a full and detailed annual report, using **Error! Reference source not found.** on all reconnaissance work carried out over the licence area in compliance with published guidelines, and in accordance with the approved reconnaissance licence work programme. In addition, two (2) hardcopies, suitably bound to provide a long-term record, shall be delivered to the Mining Cadastre Office;
    - (i) the annual report shall be accompanied by an updated reconnaissance licence work programme for the following licence year;



- (c.) an annual declaration of minimum operational expenditures on reconnaissance activities using **Error! Reference source not found.** to accompany the annual report. It shall be certified as true by the holder. Any shortfall in the committed minimum operational expenditures shall be declared by the holder;
- (2) The annual report, reconnaissance licence work programme and declaration of the minimum operational expenditures shall be reviewed by the Director of Geological Survey, and the Director of Mines shall inform the holder if any modifications are required, using **Error! Reference source not found.**;
- (i) the holder shall respond within twenty-eight (28) days of receipt the Director of Mines' notification.
- (3) Where a submitted report is non-compliant, the Mining Cadastre Office shall inform the holder within thirty-five (35) days of submission using **Error! Reference source not found.**
- (4) The Cabinet Secretary may give the holder a further thirty-five (35) days in which to submit a compliant report, failing which the holder shall be required to show cause why the licence should not be revoked using **Error! Reference source not found.**
- (5) The holder of a reconnaissance licence shall expend minimum operation expenditures for the licence area as prescribed in regulations 47 and (48), calculated as per **Error! Reference source not found.** in the Second Schedule to these regulations.
- (6) Pursuant to regulation 47 **Error! Reference source not found.**, where there is a shortfall in minimum operational expenditures, the balance shall be a debt owing to the Government. This debt shall be notified by the Mining Cadastre Office to the holder using **Error! Reference source not found.**
- (7) The holder shall have thirty-five (35) days from the end of the licence year to pay any debt of outstanding balance, failing which the holder of the licence shall be required to show cause why the licence should not be revoked using **Error! Reference source not found.** Any application for renewal of the licence shall not be considered, nor shall the licence remain valid within its current term, until such debt is paid in full.
- (8) Notwithstanding the reported expenditure and any submitted audited annual return, the Cabinet Secretary shall have the power to call for an independent audit of expenditure using **Error! Reference source not found.** under these regulations, and this shall be at the holder's expense.

## **66. Surrender of a reconnaissance licence**

- (1) Pursuant to Part VIII of the Act, the holder of a reconnaissance licence who wishes to surrender part of the original reconnaissance licence shall apply in accordance with the process established under regulation 49.

## **PART VIII.II -PROSPECTING LICENCE**

### **67.Purpose**

- (1) A prospecting licence grants a qualifying person the right to prospect for a mineral or minerals in the licence area according to an approved programme of prospecting operations.
- (2) A prospecting licence is an exclusive right.

### **68.Form of prospecting licence**

- (1) A prospecting licence shall be issued digitally together with a paper copy using **Error! Reference source not found.**under these regulations.
- (2) Pursuant to Clause 72 of the Act, a prospecting licence shall specify or have appended to it:
  - (a.) the name, nationality and address of licence holder;
  - (b.) the mineral or minerals in respect of which the prospecting licence is issued;
  - (c.) the cadastral coordinates in the prescribed form defining the prospecting area;
  - (d.) a digital map with the approximate position of the prospecting area marked upon it, and any directly adjacent mineral right areas, with the exception of reconnaissance licences;
  - (e.) the duration of the licence;
  - (f.) the approved programme for prospecting operations;
  - (g.) any approved minimum operation expenditures;
  - (h.) plans for the procurement of national goods and services;
  - (i.) the approved plan for employment and training of Kenyan citizens;
  - (j.) details of any significant adverse effects that carrying out the programme of prospecting operations is likely to have on the environment, gender impact and on any monument, cultural heritage, artefacts or relic in the proposed prospecting area, measures to be taken to mitigate such effects and an estimate of the cost of mitigating such impacts;
  - (k.) financial resources available to the applicant exclusively in respect of this application and acceptable to the Mining Cadastre Office to cover:
    - (i) the minimum operation expenditures; and
    - (ii) the approved rehabilitation programme;
  - (l.) a certified copy of the applicant's audited accounts, if any;
  - (m.) performance bond or escrow account information;
  - (n.) other proof of financial resources;
  - (o.) resumes of the Project Manager and key staffs committed at least throughout year one (1) of the prospecting programme; and
  - (p.) any other documents as appropriate or other special conditions that may apply.

### **69.Duration of prospecting licence**

- (1) A prospecting licence shall be issued for a term not exceeding three (3) years.

- (2) A prospecting licence may be extended twice, for a term of up to three (3) years on each occasion subject to the surrender of part of the licence area pursuant to Clause 84 of the Act.

## **70.Size of prospecting licence area**

- (1) A prospecting licence area shall be no larger than one thousand, five hundred (1,500) contiguous cadastral blocks and no smaller than one hundred and twenty five (125) cadastral blocks (the minimum area is already provided for in the Act).
- (2) A prospecting licence may, as a consequence of renewal and part-surrender, comprise up to three (3) discrete areas.
- (3) A person or company may hold several prospecting licences covering in aggregate not more than ten thousand (10,000) cadastral blocks.

## **71.Shape of prospecting licence area**

Prospecting licence may be of any shape as defined by contiguous cadastral blocks.

## **72.Application for prospecting licence**

- (1) An application in **Error! Reference source not found.** for grant of a prospecting licence shall be made to the Cabinet Secretary.
- (2) The application shall include the following:
- (a.) name, nationality and address of applicant; or
  - (b.) in the case of a company:
    - (i) the legally registered name and address, the certificate of incorporation and Articles of Incorporation of the company;
    - (ii) names and addresses, nationalities and contact information of each corporate officer, Board of Directors members and shareholder(s) who hold ten percent (10%) or more of shares of the company and a list of all directors, as listed at the Registrar of companies.
    - (iii) a statement using **Error! Reference source not found.** or **Error! Reference source not found.** under these regulations as the case may be affirming that the applicant meets the eligibility requirements in accordance with the provisions of this law;
  - (c.) a statement of relevant past work;
  - (d.) the mineral or minerals in respect of which the prospecting licence is sought;
  - (e.) the cadastral coordinates in the prescribed form defining the proposed prospecting licence area;
  - (f.) a digital map with the approximate position of the prospecting area marked upon it, and any directly adjacent mineral right areas, with the exception of reconnaissance licences;
  - (g.) the requested duration of the licence;
  - (h.) a programme for prospecting operations setting out the detailed work intended for the first year of the licence and an indicative programme of work for the remainder of the term of the licence, with details of the equipment expected to be used in connection with it;
  - (i.) minimum operational expenditure commitment for the first licence year and estimated minimum operational expenditure for the subsequent licence years;

- (j.) proposal for the procurement of national goods and services;
  - (k.) a plan describing how, on an ongoing basis, local government, traditional authorities and communities will be informed and consulted in regard to those prospecting works that require physical entry onto the land within their jurisdiction;
  - (l.) proposals for employment and training of Kenyan citizens;
  - (m.) activities and actions that, as a result of the programme of prospecting operations, may be reasonably expected to result in significant adverse effects on the environment, gender impact and on any monument, cultural heritage, artefacts or relic in the proposed prospecting area, together with measures to be taken to mitigate such effects and an estimate of the cost of such mitigating actions;
  - (n.) a signed statement of the financial resources available to the applicant exclusively in respect of this application and acceptable to the Mining Cadastre Office to cover:
    - (i) minimum operational expenditures;
    - (ii) remediation measures;
    - (iii) community development commitments; and
    - (iv) the rehabilitation programme;
  - (o.) a certified copy of the applicants' audited accounts.
  - (p.) a signed statement of financial resources available to implement the exploration activities and proof of financial resources, performance bond or escrow account information;
  - (q.) any permit or licence that may be required under the applicable environmental laws of Kenya;
  - (r.) names, addresses and certification of the skills of the person responsible for the prospecting work programme, including resumes of the Project Manager and key staff committed to the project at least throughout year one (1) of the prospecting work programme; and
  - (s.) any additional information requested in **Error! Reference source not found.** or as the Ministry of Mining and the applicant considers it necessary.
- (3) The registered licence application shall be reviewed by the Technical Committee, established pursuant to regulation 6 **Error! Reference source not found.** and in accordance with regulations 15.

### **73. Processing of an application for a prospecting licence**

- (1) Pursuant to Clause 33 of the Act, the Cabinet Secretary, on the advice of the Mineral Rights Board, shall grant or reject an application for a prospecting licence within ninety (90) days of the registration date.
- (2) The date that the digital prospecting licence is issued by the Mining Cadastre Office shall be:
  - (a.) marked on the prospecting licence;
  - (b.) considered the start of the prospecting licence year; and
  - (c.) recorded by the Registrar in the prospecting licence register.
- (3) Upon receiving a valid application for a prospecting licence, the Cabinet Secretary shall within seven (7) days issue a notice in writing to the relevant landowner, lawful occupier or community, and the County government, using **Error! Reference source not found.** under these regulations

and within the same period shall place an announcement in a local newspaper with wide circulation

- (4) The applicant shall be immediately informed of the cost of the published announcement, using **Error! Reference source not found.** and shall make payment within seven(7) days of receiving such notice.
- (5) Where the applicant fails to make the payment within seven (7) days, the Cabinet Secretary shall reject the application.
- (6) Any person who believes he or she has a valid objection to the granting of a prospecting licence may, pursuant to Clause 34 of the Act, within twenty-one (21) days of the Cabinet Secretary's notice referred to in regulation 73(3) above, submit the objection in writing to the Mining Cadastre Office or local County Office.
- (7) Any objections duly submitted shall be determined by the Cabinet Secretary within fourteen (14) days of receipt of the objection. An objection shall be considered only if it addresses a matter referred to in the Mining Act or its regulations or in another applicable law of Kenya.
- (8) Where an objection to the grant of a prospecting licence has been duly submitted, the Cabinet Secretary shall inform the applicant and objector of his or her decision in respect to the objection using **Error! Reference source not found.**
- (9) Pursuant to Clause 176 of the Act, and the provisions of the Environmental Management and Coordination Act, a prospecting licence shall not exempt a person from complying with any law concerning the protection of the environment. The holder of a prospecting licence shall be required to undertake an environmental and social impact assessment (ESIA) report and provide an environmental and social management plan (ESMP) to the relevant environmental authority under the Environmental Management and Coordination Act to the extent commensurate with the nature of the prospecting work planned.
- (10) Where an EISA report and/or an ESMP are required, the provision of such approved plan shall be a condition of granting of the prospecting licence.
- (11) Pursuant to Clauses 36, 37, 38 and 39 of the Act, an application for a prospecting licence shall not be granted unless and until the applicant has obtained all necessary written consents and agreements with land holders or other relevant authorities as prescribed.
  - (a.) All consents and agreements should be submitted not later than forty-nine (49) days after the original application is made.
  - (b.) If requested by the Mining Cadastre Office, **Error! Reference source not found.** the applicant shall within seven (7) days of receiving such notice deliver one (1) original copy of any consent or agreement for the Mining Cadastre Office to confirm authenticity.

#### **74. Amendments to approved programme for prospecting operations**

- (1) Pursuant to Clause 80 of the Act, an application to amend an approved programme for prospecting operations in **Error! Reference source not found.** under these regulations, shall be accompanied by a revised programme for prospecting operations. The justification for such amendment shall be that the results of the prospecting work to date or other new information require such change. Amendments may be requested by:
  - (a.) the applicant; or
  - (b.) the Ministry of Mining, which may recommend to the applicant that an amendment be made.
- (2) The Cabinet Secretary shall respond using **Error! Reference source not found.**

- (3) If the Cabinet Secretary requires more information or sees a need for a meeting, he or she shall notify the applicant, using **Error! Reference source not found.** The applicant shall submit the requested information or arrange for such meeting within thirty-five (35) days of such notice.

## **75. Renewal of a prospecting licence**

- (1) Pursuant to Clause 80 of the Act, the holder of a prospecting licence may apply for renewal of part of the licence area not later than ninety-one (91) days before the date of expiry. The term of renewal shall be for a maximum of three (3) years and only two (2) successive terms shall be allowed.
- (2) An application for renewal of a prospecting licence shall be for not more than fifty per cent (50%) of the original area, or in the case of a second renewal, not more than fifty per cent (50%) of the reduced area, defined in terms of whole contiguous cadastral blocks and comprising not more than three (3) discrete areas, save that the licence area shall not be reduced to a total area of less than one hundred and twenty five (125) cadastral blocks. The application shall give the coordinates of the area for surrender and the area to be retained
- (3) Pursuant to Clause 84 of the Act, the holder of two (2) or more contiguous prospecting licences having the same term and in respect of the same mineral(s) may, as part of the renewal application and for the purposes of relinquishment, request to have the areas consolidated as a single prospecting licence, using **Error! Reference source not found.** If so approved, the holder shall be notified, using **Error! Reference source not found.** within thirty-five (35) days of making the request.
- (a.) Where the request for consolidation is refused, the Cabinet Secretary shall inform the holder the reasons in writing.
- (4) An application for renewal shall be submitted to the Cabinet Secretary using **Error! Reference source not found.**
- (5) In addition to the electronic document a bound hardcopy of each required document shall be delivered to the Mining Cadastre Office within seven(7) days.
- (6) The application shall include the following:
- (a.) any change in management or other significant operational change to the prospecting licence;
- (b.) an annual report for the current year, accompanied by **Error! Reference source not found.** It shall give a detailed account of the prospecting work carried out during the previous year, prepared according to published Ministry guidelines, together with a summary of the work reported in previous annual reports;
- (c.) a full and detailed surrender report describing all work carried out in, over or under the surrendered ground since first granting of the licence. The report shall reproduce in detail all information relating to the surrendered ground contained in any earlier annual report (which itself cannot be placed on open file because it relates also to retained areas). Two (2) bound hardcopies shall be delivered to the Mining Cadastre Office within seven(7) days of the application being submitted.
- (d.) an updated programme for prospecting operations for the first year of the renewal period plus an outline programme for the remainder of the proposed renewal term. Where the reduced area comprises more than a single contiguous area, a programme for each discrete area shall be provided.

- (e.) in the case of a second renewal, the work programme shall include plans for feasibility and related studies designed to advance the project to a point where the holder is a position to apply for a mining licence by the end of the final renewal term.
  - (f.) a statement of expenditure incurred during the previous year, using **Error! Reference source not found.**;
  - (g.) an updated and certified or signed statement or formal letter of intent from a bank or other financial source of the financial resources available to the applicant exclusively for this application;
  - (h.) where the proposed work includes bulk sampling, diamond drilling or other invasive procedures, an ESIA and if appropriate an ESMP, approved by the National Environment Management Authority.
  - (i.) where there is an ESMP in place, a summary report on environmental mitigation and remediation activities carried out in the preceding term;
  - (j.) an updated plan describing how, on an ongoing basis, local government traditional authorities and communities will be informed and consulted about those prospecting operations that require physical entry onto the land within their jurisdiction or that may reasonably be expected to impact them;
  - (k.) a plan for the employment and training of Kenya citizens, and the progressive replacement of expatriate workers during the renewal term;
  - (l.) updated proposals for the use of national goods and services;
  - (m.) information on any other licence held by the applicant holder in Kenya; and
  - (n.) any other information that may be requested by the Cabinet Secretary or which the holder considers useful.
- (7) When an application to renew a prospecting licence term is registered by the applicant, the mineral right area applied for shall be recorded on the cadastral map and be published on the Ministry's website.
- (8) The registered licence application shall be reviewed by the Technical Committee, established pursuant to regulation 6 **Error! Reference source not found.** and in accordance with regulations 15.

## **76. Processing of application to renew a prospecting licence**

- (1) Pursuant to Clause 33 of the Act the Cabinet Secretary shall, on the advice of the Mineral Rights Board, approve or reject an application for renewal of a prospecting licence within thirty (30) days of the application registration date.
- (2) Where further information or clarification on the application is required, the Director shall notify the holder using **Error! Reference source not found.** within seven(7) days of the receipt of the Technical Committee report, and the holder shall provide the information within seven(7) days of such notification. In the event of any delays on the part of the Ministry, the holder has the right to continue prospecting operations until a decision is notified by the Ministry but any eventual renewal shall date from the prospecting licence anniversary.

## **77. Rights under a prospecting licence**

- (1) Pursuant to Clause 9 of the Act, the holder of a mineral right, having discovered a mineral occurrence not included in the licence, shall report the find to the Cabinet Secretary using **Error!**

**Reference source not found.** within fourteen (14) days and may apply to have the mineral or minerals included in the licence using **Error! Reference source not found.** The application shall be accompanied by a proposed programme to conduct commercial evaluation of the mineral(s).

- (2) The holder of a prospecting licence, having discovered a commercially viable mineral deposit shall have the exclusive right, subject to this Act and its provisions, to apply for a mining licence over the mineral deposit.

## **78. Obligations and conduct under a prospecting licence**

- (1) Pursuant to Clause 77 of the Act, prospecting licences shall be subject to the following:
  - (a.) Following granting of the licence the holder of a prospecting licence shall commence work not later than ninety (90) days from the issuance of the licence or such period as specified in the approved programme for prospecting operations.
  - (b.) A prospecting licence holder shall submit a written notice in the form of **Error! Reference source not found.** not later than seven(7) days before commencing field prospecting over the prospecting area, and shall at the same time in writing inform any affected land holders in accordance with these regulations. The holder shall not commence activities until approval is given in writing, using **Error! Reference source not found.**, which shall be within seven (7) days of submitting the request.
  - (c.) The holder shall undertake prospecting work according to the approved programme for prospecting operations and minimum operational expenditures, and in compliance with all other terms and conditions of the licence and this Act, its provisions and regulations.
  - (d.) An applicant whose prospecting licence is granted shall, before commencement of operations, provide confirmation of the technical person in charge of operations, including qualifications, experience and contact details. The holder shall update this information if at any time during the term of the licence when the individual is replaced.
  - (e.) The annual report, work programme and expenditure proposal shall be reviewed by the Director of Geological Survey, and the Director of Mines shall inform the holder if these do not meet the requirements, using **Error! Reference source not found.**

## **79. Reporting under a prospecting licence**

- (1) Pursuant to Clause 77 of the Act, the holder of a prospecting licence shall submit digital reports and in addition hard copies, suitably bound as follows:
  - (a.) Within fourteen (14) days of the end of every quarter of each licence year, a quarterly progress report, using **Error! Reference source not found.** on activities and expenditures.
  - (b.) Within thirty-five (35) days of the end of each licence year, a full and detailed annual technical report covering all prospecting activities carried out over the prospecting licence area in compliance with published Ministry guidelines accompanied by **Error! Reference source not found.** under these regulations and in accordance with the programme for prospecting operations and minimum operational expenditures, using **Error! Reference source not found.**;
  - (c.) The annual report shall be accompanied by an updated programme for prospecting operations and a declaration by the applicant of the minimum operational expenditures for the following licence year.



- (d.) An annual ESIA report, using **Error! Reference source not found.** or, where there is an ESMP attached to the licence, a detailed progress report prepared according to guidelines. Such environmental reports shall be made publicly available via the Mining Cadastre Office.
- (2) Where an annual technical report is determined to be non-compliant by the Director of Mines, he or she shall inform the holder and specify issues of non-compliance using **Error! Reference source not found.**
- (3) The Director of Mines shall give the holder thirty-five (35) days from receipt of the notice under sub regulation (3) above in which to submit a compliant report, failing which the licence shall be revoked using **Error! Reference source not found.**
- (4) The holder of a prospecting licence shall expend minimum operational expenditures in each year of the licence as prescribed in regulations 47 and (48), calculated as per **Error! Reference source not found.** in the Second Schedule to these regulations.
- (5) Pursuant to regulation 47 **Error! Reference source not found.**, where there is a shortfall in minimum operational expenditures, the balance shall be a debt owing to the Government of Kenya. This debt shall be notified to the holder using **Error! Reference source not found.**
- (6) The holder shall have thirty-five (35) days of the end of the licence year to pay the balance of its unspent minimum operational expenditure, failing which the licence shall be revoked using **Error! Reference source not found.** under these regulations. So that there is no doubt, any application for renewal of the licence shall not be considered, nor shall the licence remain valid within its current term, until such balance is paid. Notwithstanding the reported expenditure and any submitted audited annual return, the Cabinet Secretary shall have the power to call for an independent audit of expenditure using **Error! Reference source not found.**, and this shall be at the holder's expense.
- (7) Pursuant to regulation (**Error! Reference source not found.**), the holder of a prospecting licence shall pay the annual area charges, calculated according to **Error! Reference source not found.** of the Second Schedule within thirty-five (35) days of the grant of the licence and annually thereafter at the start of each licence year.
- (8) Pursuant to Clause 181 of the Act if, at any stage during the term of a prospecting licence, the Cabinet Secretary determines that an ESIA report or ESMP is required, the Mining Cadastre Office shall notify the holder, using **Error! Reference source not found.** and request an Environmental Protection Bond or other financial security. The amount and nature of the bond or other financial security shall be decided by the Mining Cadastre Office based on the cost estimate in the approved programme for prospecting operations. Until such bond or security is provided, the prospecting operations which triggered the notice shall not be carried out.
- (9) On receiving notice that an environmental protection bond is required the holder shall, within thirty-five (35) days, submit a copy of the bond through the OMC and within a further seven (7) days deliver the original hard copy bond to the Mining Cadastre Office.

## **80. Surrender of a prospecting licence**

- (1) Pursuant to Part VIII of the Act, the holder of a prospecting licence who wishes to surrender part or all of the licence shall apply to the Cabinet Secretary in accordance with the process established under regulation 49.

## **PART VIII.III - RETENTION LICENCE**

### **81.Purpose**

A retention licence grants the holder of a prospecting licence who has identified a mineral deposit which has potential economic significance but which is, in whole or in part, temporarily uneconomic, the exclusive right for a limited period and subject to continuous re-evaluation by the Mining Cadastre Office, to conduct prospecting and feasibility operations in the retention area and to apply for a mining licence.

### **82.Eligibility**

- (1) A person or company who holds a prospecting licence can apply to convert all or part of that licence to a retention licence if:
  - (a.) the holder has identified a mineral deposit within the licence area which is of potential commercial significance; but
  - (b.) the identified mineral deposit cannot be developed immediately for reasons of adverse market conditions, economic factors, technical constraints, or other factors beyond the reasonable control of the holder of the licence; and
  - (c.) the adverse conditions are expected to be of a temporary nature.

### **83.Form of licence**

A retention licence shall be issued digitally together with a paper copy **Error! Reference source not found..**

### **84.Duration**

A retention licence shall be granted for a term not exceeding two (2) years and shall be renewable once only for a further period not exceeding two (2) years.

### **85.Size**

- (1) A retention licence area shall fall within the holder's prospecting licence area.
- (2) A retention licence area shall be contiguous and may be all or part of the prospecting licence area but not less than one hundred and twenty five (125) cadastral blocks.

### **86.Shape**

A retention licence area may be of any shape defined by contiguous whole cadastral blocks.

### **87.Application for retention licence**

- (1) An application for a retention licence by the holder of a prospecting licence shall be made to the Cabinet Secretary using **Error! Reference source not found..**
- (2) The application shall include the following:
  - (a.) full name, nationality and address of the applicant; and
  - (b.) in the case of a company -
    - (i) name of the company;
    - (ii) place and date of incorporation;

- (iii) Articles of Incorporation;
  - (iv) names and nationalities of directors;
  - (v) names and addresses of all shareholders holding more than ten per cent (10%) of the registered share capital;
  - (vi) registered address; and
  - (vii) registered address in Kenya;
- (c.) The cadastral blocks in the prescribed format defining the area;
- (d.) the mineral or minerals applied for;
- (e.) a statement, using **Error! Reference source not found.** under these regulations or **Error! Reference source not found.** as the case may be affirming that the applicant meets the eligibility criteria in accordance with the provisions of the Act;
- (f.) a summary report, covering the most recent licence year, accompanied by **Error! Reference source not found.** describing the prospecting activities carried out to date and the results obtained;
- (g.) a full study and assessment of the mineral deposit by an independent expert, pursuant to Clause 87 of the Act, sufficient to demonstrate that the deposit is potentially commercially exploitable and including:
- (i) the prospects for economic recovery;
  - (ii) the commercial significance of the mineral deposit; an analysis of the relevant adverse market conditions, economic factors, technical constraints or any other factors preventing development of the deposit at the present time;
  - (iii) a clear explanation of what change in relevant adverse market conditions, economic factors, technical constraints or any other factors that make it currently impossible to develop the mineral deposit would be necessary in order for the deposit to become commercially viable, and the extent to which these factors are in the control of the applicant or can be expected on reasonable grounds to change within the foreseeable future;
- (h.) as appropriate, a programme of fieldwork, geological and/or metallurgical investigations, and research and analysis designed to advance the state of knowledge of the deposit, to monitor market conditions relevant to the development of the deposit, and if appropriate to solve any technological problems preventing development, together with the proposed expenditures;
- (i.) where appropriate, a surrender report on any part of the prospecting licence, not included in the retention licence application and being surrendered;
- (j.) evidence of financial resources available to the applicant exclusively for this application and acceptable to the Mining Cadastre Office:
- (i) to cover the proposed prospecting operational expenditures;
  - (ii) for rehabilitation and compensation;
  - (iii) a certified copy of the holder's accounts;
  - (iv) a performance bond or escrow account information, if required; and
  - (v) any other proof of financial resources;

- (k.) resumes of the retention licence manager and key management staff committed to the project at least throughout year one (1) of the retention work programme;
  - (l.) a plan describing how, on an ongoing basis, local government, traditional authorities and communities will be informed and consulted about those prospecting operations that require physical entry onto the land within their jurisdiction;
  - (m.) a plan for the employment and training of Kenya citizens and the progressive replacement of expatriate workers;
  - (n.) a proposal for the use of national goods and services;
  - (o.) a description of the positive and negative impacts the work programme is likely to have, if any, on gender relations within that community;
  - (p.) a description of the physical impact that the planned work is likely to have on the environment and community;
  - (q.) details of any other licence held by the applicant in Kenya; and
  - (r.) any other information that may be requested in **Error! Reference source not found.** under these regulations.
- (3) When a retention licence application is registered, the retention area applied for shall be recorded on the cadastral map and shown on the Ministry's website.
- (4) The registered retention licence application shall be reviewed by the Technical Committee, established pursuant to regulation 6 **Error! Reference source not found.** and in accordance with regulations 15.

## **88. Processing of an application for a retention licence**

- (1) Pursuant to Clause 33 of the Act, and on the advice of the Mineral Rights Board, the Cabinet Secretary shall approve or reject an application for a retention licence within ninety (90) days of the application registration date.
- (3) The date that the digital retention licence is issued by the Mining Cadastre Office shall be:
- (a.) marked on the retention licence;
  - (b.) considered the start of the retention licence year; and
  - (c.) recorded by the Registrar in the retention licence register.
- (2) A retention licence shall be granted only where the Cabinet Secretary is satisfied that there is a valid case why an identified mineral deposit cannot be immediately developed and where there is sound technical or financial reason to believe that the circumstances or conditions preventing such development are likely to change in the foreseeable future.

## **89. Obligations and conduct under a retention licence**

- (1) Notwithstanding the term of validity of a retention licence, the holder shall continuously review market conditions, including market predictions, technological advances, and other aspects included as the basis for the retention licence and shall submit quarterly reports, **Error! Reference source not found.** under these regulations, together with supporting documents and reports, to show that the mineral deposit remains non-viable for the reasons the licence was originally granted. Continuing validity of a retention licence is dependent on the holder demonstrating to the satisfaction of the Cabinet Secretary that the circumstances under which the

licence was first granted continue to apply, and the Cabinet Secretary may demand up-to-date evidence of this.

- (2) Pursuant to Clause 91 of the Act, where the Cabinet Secretary, on the advice of the Mineral Rights Board and supported by a report prepared by an independent expert, believes that the deposit has become viable for development he or she may instruct the holder using **Error! Reference source not found.** to apply for a mining licence before the end of the next quarter. Where the holder fails to comply, the Cabinet Secretary shall give thirty-five (35) days' notice, using **Error! Reference source not found.**, to show cause why the licence should not be revoked and, where the holder fails to respond or to show cause why development is not feasible, the licence shall be revoked within fifty-six (56) days, using **Error! Reference source not found.**
- (3) Pursuant to regulations (**Error! Reference source not found.**) the holder of a retention licence shall pay annual area charges, calculated according to **Error! Reference source not found.** of the Second Schedule within thirty-five (35) days of the grant of the licence and annually thereafter at the start of each licence year.

## **90. Renewal of a retention licence**

- (1) Renewal of a retention licence beyond the initial renewal period shall only be considered where the Cabinet Secretary is satisfied that the market conditions or technical difficulties or other circumstances under which the retention licence was granted and that made the deposit non-viable still remain and where there is reason to believe that the conditions will improve within the renewal period.
- (2) Pursuant to Clause 87 of the Act, the holder of a retention licence may apply for renewal of the licence, once only, not later than ninety-one (91) days before the date of expiry.
- (3) An application for renewal shall be submitted to the Cabinet Secretary, using **Error! Reference source not found.**
- (4) The application shall include the following:
  - (a.) a report summarising the activities carried out to date during the first term of the retention licence demonstrating that the deposit is potentially commercially exploitable;
  - (b.) analysis of the relevant adverse market conditions, economic factors, technical constraints or any other factors preventing development of the deposit at the present time;
  - (c.) a clear exposition of how the circumstances have changed, or show signs of changing, so as to make the deposit viable in the near future;
  - (d.) a programme of full feasibility investigations designed to lead to an application for a mining licence within the extension period, together with proposed expenditures;
  - (e.) a statement of expenditure incurred during the previous year, using **Error! Reference source not found.**;
  - (f.) an updated and certified or signed statement or letter of intent from a bank or other financial source of the financial resources available to the applicant exclusively for this application;
  - (g.) where the proposed work includes bulk sampling, diamond drilling or other invasive procedures, an ESIA report and if appropriate an ESMP, approved by the National Environment Management Authority;
  - (h.) where there is an ESMP in place, a summary report on environmental remediation activities carried out in the preceding term;

- (i.) an updated plan describing how, on an ongoing basis, local government, traditional authorities and communities will be informed and consulted about any operations that require physical entry onto the land within their jurisdiction;
  - (j.) a plan for the employment and training of Kenya citizens, and the progressive replacement of expatriate workers;
  - (k.) an updated plan for the use of national goods and services; and
  - (l.) an updated description of the positive and negative affects the prospecting will have on gender relations within the community.
- (5) Such application shall be submitted in accordance with regulation (88) where appropriate.
- (6) When an application to renew a retention licence term is registered, the retention area applied for shall be recorded on the cadastral map and shown on the Ministry's website.
- (7) The registered application shall be reviewed by the Technical Committee, established pursuant to regulation 6 **Error! Reference source not found.** and in accordance with regulations 15.

## **91. Processing of application to renew a retention licence**

- (1) Pursuant to Clause 33 of the Act, the Cabinet Secretary, on the advice of the Mineral Rights Board, shall approve or reject an application for renewal of a retention licence within thirty (30) days of the application registration date.
- (2) Where further information or clarification is required, the Director shall notify the holder using **Error! Reference source not found.** and the holder shall provide the information within seven (7) days. In the event of any delays on the part of the Ministry, the holder may continue retention operations until a decision is notified but any eventual renewal shall date from the licence anniversary.
- (3) Where the Cabinet Secretary is satisfied that the holder of a retention licence will be in a position to apply for a mining licence within the renewal period requested, he or she shall renew the retention licence for up to two (2) years.

## **92. Surrender of a retention licence**

- (1) Pursuant to Part VIII of the Act, the holder of a retention licence who wishes to surrender part of the original prospecting licence and or the retention licence shall apply to the Cabinet Secretary in accordance with the process established under regulation 49.

## PART VIII.IV -MININGLICENCE

### 93.Purpose

A mining licence grants a qualifying person or company the exclusive right to develop a deposit, extract, process, beneficiate and dispose of a mineral or minerals, including from mine dump or mine waste and tailings and to conduct further exploration activities within the licence area according to an approved programme for mining operations.

### 94.Form of licence

- (1) A mining licence shall be issued digitally with a paper backup copy using **Error! Reference source not found.**
- (2) Pursuant to Clause 98 of the Act, a mining licence shall specify, and have appended to it:
  - (a.) the name, nationality and address of the licence holder;
  - (b.) the mineral or minerals in respect of which the mining licence is issued;
  - (c.) the cadastral coordinates in the prescribed format of the polygon defining the mining licence area;
  - (d.) a map showing the approximate position of the mining area, and any directly adjacent mineral right areas, with the exception of reconnaissance licences;
  - (e.) the area in respect of which the licence is issued;
  - (f.) the start date and the expiry date of the licence;
  - (g.) the feasibility study;
  - (h.) the programme for mining operations;
  - (i.) an environmental licence accompanied by:
  - (j.) an agreement signed by all relevant land holders for land use including detailed information on compensation, resettlement or other land use arrangements;
  - (k.) the approved plan for the procurement of national goods and services;
  - (l.) the approved plan for employment and training of Kenyan citizens;
  - (m.) the details of any significant adverse effects that carrying out the programme for mining operations is likely to have on gender relations and on any monument, cultural heritage, artefacts or relic in the proposed mining area, measures to be taken to mitigate such effects, and an estimate of the cost of mitigating such impacts;
  - (n.) a certified copy of its audited financial accounts for the previous three (3) years;
  - (o.) evidence of the financial resources available to the applicant exclusively for this licence and acceptable to the Mining Cadastre Office, including:
    - (i) the approved mine closure and rehabilitation plan;
    - (ii) performance bond or escrow account information;
    - (iii) compensation and resettlement commitments; and
    - (iv) other proof of financial resources, required for licence commitments.

- (p.) the Community Development Agreement(s), giving particulars of the applicant's proposals with respect to social responsible investments for the local community;
- (q.) any additional community development commitments that may not be included in the Community Development Agreement;
- (r.) resumes of the mine manager and senior key staff committed at least through to the end of year two (2) of the programme for mining operations; and
- (s.) any other such documents considered by the Mining Cadastre Office or the applicant to be appropriate or other special conditions that may apply.

## 95.Duration

A mining licence shall be granted for an initial term not exceeding twenty-five (25) years and shall be renewable for a term not exceeding fifteen (15) years or the remaining life of the mine, whichever is determined by the Mining Cadastre Office, on the advice of the Director, to be the shorter.

## 96.Size

The area in respect of which a mining licence may be granted shall not be larger than is reasonably required to cover the proposed mining area, having regard to the proven, indicated and inferred resources, the surface and/or underground mining operations and processing operations, but not exceeding three hundred (300) whole cadastral blocks.

## 97.Shape

A mining licence area may be of any shape defined by contiguous cadastral blocks comprising not more than three (3) discrete areas.

## 98.Application for mining licence

- (1) A mining licence application under Clause 93 of the Act, in **Error! Reference source not found.** shall be made to the Cabinet Secretary.
- (2) The application shall include the following:
  - (a.) full name, nationality and address of the applicant
  - (b.) in the case of a company,
    - (i) the name of the company;
    - (ii) place and date of incorporation;
    - (iii) Articles of Incorporation
    - (iv) names and nationalities of Directors;
    - (v) names and address of all shareholders holding more than ten per cent (10%) of the registered share capital;
    - (vi) registered address;
    - (vii) address in Kenya;
    - (viii) a statement, using **Error! Reference source not found.** or **Error! Reference source not found.** as the case may be affirming that the applicant meets the eligibility requirements in accordance with the provisions of the Act; and
    - (ix) a detailed statement of relevant past work;



- (c.) the mineral or minerals in respect of which the licence is sought;
- (d.) a description of the area applied for which shall form not more than three (3) discrete sub-areas;
- (e.) the cadastral blocks in the prescribed format defining such area(s);
- (f.) a map of the area showing the following:
  - (i) coordinates of the area;
  - (ii) the location of any existing building, infrastructure, agricultural activity and other significant man-made surface feature within one (1) kilometre of any licence boundary;
  - (iii) the proposed route of access to such licence area; and
  - (iv) defined boundaries of each concerned district.
- (g.) the proposed programme of mining operations and production forecasts over the term of the licence, including plans for mineral processing and beneficiation within and outside of Kenya, mineral transportation, together with details of the type and sourcing of equipment and mining methodologies expected to be used;
- (h.) the feasibility study as defined in regulation 3;
- (i.) a report on the economic mineral or minerals discovered in the area of land over which the licence is sought, including the proven and probable mineral reserves defined according to:
  - (i) the Australasian Code for Reporting of Mineral Resources and Ore Reserves (The JORC Code); or
  - (ii) the Canadian Institute of Mining, Metallurgy and Petroleum (CIM), CIM Standards on Mineral Resources and Reserves; or
  - (iii) The South African Code for the Reporting of Exploration Results, Mineral Resources and Mineral Reserves (The SAMREC Code); or
  - (iv) The SME Guide for Reporting Exploration Results, Mineral Resources and Mineral Reserves; or
  - (v) Any other internationally recognised standard as the Director of the Geological Survey may approve;
- (j.) resumes of the mine Manager and key senior staffs committed through to at least the end of year two (2) of the mining programme;
- (k.) a certified and signed statement from a bank or other financial institution testifying to the financial resources available to the applicant exclusively in respect of this application sufficient to cover:
  - (i) mine development;
  - (ii) rehabilitation and mine closure;
  - (iii) compensation and resettlement;
  - (iv) Community Development Agreement commitments; and
  - (v) any performance bond or escrow account;
- (l.) pursuant to Clause 103 of the Act, an environmental licence as required and approved by the National Environmental Management Authority;

- (m.) a detailed rehabilitation and mine closure plan covering the various stages of mining and the final closure and rehabilitation of the licence area;
  - (n.) a Community Development Agreement signed by representatives of all affected communities;
  - (o.) legally binding agreements entered into with the owners of private land;
  - (p.) consents from those authorised to give such consent in the case of community land and or any land that is excluded or restricted from mining;
  - (q.) a plan describing how, on an ongoing basis, local government, traditional authorities and communities will be informed and consulted about any mining operations that require physical entry onto the land within their jurisdiction;
  - (r.) a plan for the employment and training of Kenyan citizens, including projections over time and the progressive replacement of expatriate by national staff;
  - (s.) a plan for the use of national goods and services;
  - (t.) a description of the likely positive and negative affects the mining will have on gender relations within that community; and
  - (u.) any other information that may be requested in **Error! Reference source not found.**
- (3) Where a mining licence area is to be awarded by tender, the Cabinet Secretary shall designate the entire area which shall be closed to normal applications. The Cabinet Secretary shall publish the cadastral coordinates of the area and proposed duration of the tender process, which shall not exceed three (3) years.
- (4) Any person who is otherwise eligible to apply for a mining licence shall be ineligible to apply for a mining licence if:
- (a.) the person is a former mining licence holder whose licence has been revoked for the same mining area, or any part therein, if such application is made within two (2) years of the date of such revocation; or
  - (b.) the person is a former mining licence holder in Kenya and such licence was revoked for failure to perform; or
  - (c.) the applicant has been employed by the Ministry or has been a member of the Technical Committee at any time within the two (2) years preceding the submission of the application.
- (5) The registered mining licence application shall be reviewed by the Technical Committee, established pursuant to regulation 6 **Error! Reference source not found.** and in accordance with regulations 15.

## **99. Processing of an application for a mining licence**

- (1) Pursuant to Clause 33(2)(b) of the Act, the Cabinet Secretary, on the advice of the Mineral Rights Board, shall approve or reject an application for a mining licence within one hundred and twenty(120) days of the formal registration date.
- (2) The date that the digital mining licence is issued by the Mining Cadastre Office shall be:
- (a.) marked on the mining licence; and
  - (b.) considered the start of the mining licence year; and
  - (c.) recorded by the Registrar in the mining licence register.

- (3) Upon receiving a valid application for a mining licence, the Cabinet Secretary shall in writing within seven(7) days, issue a notice to the relevant land holder, community or County government, using **Error! Reference source not found.** and within the same period shall place an announcement in a local newspaper with wide circulation.
- (4) The Mining Cadastre Office shall immediately notify the applicant of the cost of the published announcement, using **Error! Reference source not found.**including the receipt of such payment and the applicant shall reimburse such payment within seven(7) days of receiving such notice.
- (5) Any person who believes that he or she or it has a valid objection to the granting of a mining licence may, pursuant to Clause 34(2)(c)(ii) of the Act and within forty-two (42) days of the Cabinet Secretary's notice referred to in sub regulation (1) above, submit in writing the objection to the Mining Cadastre Office or local County Office.
- (6) Any objections officially submitted shall be determined by the Cabinet Secretary within fourteen (14) days of the receipt of the objection. An objection shall be considered only if it addresses a matter referred within the Mining Act or its regulations or in another applicable law of Kenya.
- (7) Where an objection to the grant of a mining licence has been officially submitted, the Cabinet Secretary shall inform the applicant and objector of his or her decision in respect to the objection using **Error! Reference source not found.**
- (8) Pursuant to Clauses 96(1)(a) of the Act, an application for a mining licence shall not be granted unless the applicant is the legal holder of a valid prospecting licence for the area applied for and has given notice to the Cabinet Secretary of the discovery of minerals in or on terrestrial or marine areas which are the subject of the prospecting licence
- (9) Pursuant to Clause 109 of the Act, a mining licence shall not be granted to a person unless the person has entered into a Community Development Agreement pursuant to applicable regulations.
- (10) Pursuant to Clauses 36, 37, 38 and 39 of the Act, an application for a mining licence shall not be granted unless and until the applicant has obtained all necessary written consents and agreements with landowners or other relevant authorities. These should be submitted not later than thirty-five (35) days after the original application is officially registered. If requested to do so by the Mining Cadastre Office, **Error! Reference source not found.**shall be used by the applicant to deliver original hard copies of written consents or signed agreements for confirmation to the Mining Cadastre Office within seven(7) days of receiving such notice.
- (11) A mining licence shall not be granted unless the Cabinet Secretary is satisfied that a commercially viable mineral deposit exists and that the proposed mining plan responsibly exploits and develops the mineral resource in the best interests of Kenya and its citizens.

## **100. Obligations and Conduct under a mining licence**

- (1) Pursuant to Clause 109 of the Act, mining operations shall commence not later than one hundred and eighty two (182) days following grant of the mining licence or as otherwise stated in the approved programme for mining operations.
- (2) A mining licenceholder shall:
  - (a.) within thirty-five (35) days of receiving notice of the amount of the environmental protection bond and any other performance or financial guarantee, submit copies of the bond document and other security via the OMC, and within a further seven(7) days shall deliver the original hard copy documents to the Mining Cadastre Office;

- (b.) pursuant to regulations (**Error! Reference source not found.**), the holder of a mining licence shall pay the annual area-based charges, calculated according to **Error! Reference source not found.** of the Second Schedule within thirty-five (35) days of the grant of the licence and annually thereafter at the start date of each licence year;
- (c.) pursuant to Clause 135(1) of the Act, the holder of a mining licence shall pay royalties, calculated according to the **Error! Reference source not found.** as set out in the Third Schedule, within thirty-five (35) days after the commencement of production, and monthly thereafter, and submit with each payment **Error! Reference source not found.**;
- (d.) not commence activities until approval is given, on **Error! Reference source not found.**, which shall be within twenty-one (21) days of submitting the request;
- (e.) before commencement of operations, provide confirmation of the technical manager in charge of operations, including qualifications, experience and contact details. The holder shall update this information if at any time during the term of the licence the manager is replaced;
- (f.) submit a written notice in **Error! Reference source not found.** not later than thirty-five (35) days before commencing mine development and shall at the same time inform all affected land holders;
- (g.) submit a written notice using **Error! Reference source not found.** at least thirty-five (35) days prior to the commercial production start date, and each time that there is a significant change in capacity, stating the design capacity of the mine(s) and any processing plants intended to produce a saleable mineral product;
- (h.) submit a written notice in **Error! Reference source not found.** not later than ninety-one (91) days before the commercial production start date and shall at the same time inform any affected land holders;
- (i.) undertake field operations according to the approved programme for mining operations and in compliance with all other terms and conditions of the licence and this Act, its provisions and regulations;
- (j.) demarcate and keep demarcated the mining area in the prescribed manner; and
- (k.) stack or dump any mineral or waste products in the manner provided for in the licence or as otherwise prescribed, having due regard to good mining industry practice;

## 101. Reporting under a mining licence

(1) Reporting shall be subject to the following:

- (a.) Pursuant to Clause 101(1)(f), the holder of a mining licence shall submit reports as detailed below. In the case of annual reports relating to the environment, social impact or community, a hardcopy must also be provided to the Mining Cadastre Office:
  - (i) Within five (5) days of the end of every month of each licence year, monthly reports on mine development and mineral production, using **Error! Reference source not found.** This shall include full details of ore mined and processed during the period, its grade, and the amount of mineral or concentrate produced, stockpiled and/or exported.
  - (ii) Within fourteen (14) days of the end of every quarter of each licence year, quarterly reports on mine development and mineral production, using **Error! Reference source not found.** This shall include full details of ore mined and processed during the period, its grade, and the amount of mineral or concentrate produced, stockpiled and/or exported.

- (iii) Within thirty-five (35) days of the end of each licence year, annual reports of mine development and mineral production, using **Error! Reference source not found.** under these regulations.
  - (iv) Any additional mineral rights and details of same that the holder has obtained in Kenya in the past twelve (12) months.
- (b.) The quarterly reports shall include:
- (i) summary details of ore mined and processed and its grade;
  - (ii) the amount of mineral or concentrate produced and exported;
  - (iii) expenditures and receipts for the specified licence period;
  - (iv) a review of status of implementation of the Community Development Agreement;
  - (v) updated plan for the employment and training of Kenya citizens, including names of counterpart training institutions, job titles, job creation projections over time and the progressive replacement of expatriate and those position title by national staff; and
  - (vi) updated proposals and detailed plans for the use of national goods and services including names of providers;
- (c.) The annual reports shall include:
- (i) summary details of ore mined and processed and its grade;
  - (ii) the amount of mineral or concentrate produced and exported;
  - (iii) an updated programme of mining operations;
  - (iv) expenditures and receipts over the licence period;
  - (v) an updated social heritage impact audit report;
  - (vi) an updated and approved environmental audit report as required under Environmental Management and Coordination Act (EMCA);
  - (vii) a review of the status of implementation of the Community Development Agreement;
  - (viii) an updated rehabilitation and mine closure plan, including an account of the previous years' rehabilitation works;
  - (ix) a report describing in detail how, on an ongoing basis, local government, traditional authorities and communities have been informed and consulted about mining operations that require physical entry onto the land within their jurisdiction and the outcomes of these consultations including dates and locations of formal consultations;
  - (x) an updated plan for the employment and training of Kenya citizens, including names of counterpart training institutions, job titles, job creation projections over time and the progressive replacement of expatriate and those position title by national staff;
  - (xi) an updated proposal and detailed plan for the use of national goods and services including names of providers; and
  - (xii) description of the positive and negative effects that mining has had on gender relations within that community;
- (2) The annual report shall be accompanied by an updated programme for mining operations for the following year.

- (3) The reports shall be reviewed by the Director of Mines and he or she shall inform the holder if these do not meet the requirements, using **Error! Reference source not found.**
- (4) Where a report is non-compliant, the Mining Cadastre Office shall inform the holder using **Error! Reference source not found.**
- (5) The Mining Cadastre Office shall give the licence holder an additional thirty-five (35) days in which to submit a compliant report, failing which the holder may be given notice to show cause why the licence should not be suspended or revoked using **Error! Reference source not found.**

## **102. Amendments to approved programme of mining operations**

- (1) Pursuant to Clause 103 of the Act, a request to amend the approved programme for mining operations shall be submitted to the Cabinet Secretary using **Error! Reference source not found.**, and shall take effect after ninety (90) days unless the Cabinet Secretary rejects the proposed amendment.
- (2) Any proposal to amend the approved programme for mining operations must be expressly approved by the Cabinet Secretary. The holder shall request written approval on **Error! Reference source not found.** The Cabinet Secretary shall respond within good time, using **Error! Reference source not found.**

## **103. Cessation or curtailment of mining operations**

- (1) The holder of a mining licence who proposes to cease or curtail mining operations shall give advance notice to the Mining Cadastre Office using **Error! Reference source not found.**, not later than:
  - (a.) one hundred and eighty two (182) days in the case of cessation of mining operations; or
  - (b.) twenty-eight (28) days for a curtailment in production.
- (2) The holder shall state the technical and/or economic reasons for the requested cessation or curtailment.
- (3) Notwithstanding, where the holder curtails production from a mine for reasons that are beyond his or her control including, without limitation, market conditions the holder shall notify the Cabinet Secretary as soon as possible and not later than three (3) days from the time of curtailment.
- (4) The Cabinet Secretary, having investigated the circumstances, may approve the requested curtailment or cessation of mining subject to any conditions he or she may consider necessary, using **Error! Reference source not found.** not later than three (3) days before the end of the time lines under sub regulation (1) above.
- (5) During any period of suspension of mining operations, the holder shall keep the Cabinet Secretary advised on a weekly basis of the conditions at the mine, including details regarding prospects for the recommencement of normal mining operations.
- (6) The holder of a mining licence who has given notice of cessation of mining operations shall, on receiving notice **Error! Reference source not found.** from the Mining Cadastre Office, deliver all reports, records and other information as specified by the Mining Cadastre Office to the Mining Cadastre Office within the period stated in the notice.
- (7) A mining licence holder who has given one hundred and eighty-two (182) days' notice of the intention to cease mining shall, not later than the end of that period and pursuant to Clauses 148,

149, 150 and 151 of the Act, apply to the Mining Cadastre Office to surrender the licence, using **Error! Reference source not found.**

- (8) Where a holder of a mining licence has ceased mining operations but has not applied to surrender, the Cabinet Secretary may instruct the holder to do so within a stated period using **Error! Reference source not found.** Notwithstanding, the holder shall be required to submit a detailed, updated rehabilitation and mine closure plan together with plans for compensation, resettlement, Community Development Agreement commitments and any additional employee and community arrangements.
- (9) The cessation of mining operations shall not relieve the holder or former holder of any obligations under the licence or the provisions of this Act and its regulations in regard to protection of the mine, its facilities, the rehabilitation and mine closure plan and any agreements entered into with land holders, communities or others. Failure to comply with any requirement or obligation or with the Cabinet Secretary's reasonable instructions shall be an offence under this Act.
- (10) Pursuant to Clause 155 of the Act, a former holder of a mining licence shall arrange with the Mining Cadastre Office to deliver all plans, maps, reports, records, logs, analyses and other information and records relating to the mining operations in digital and paper based form within thirty-five (35) days of surrender being approved.
- (11) The Cabinet Secretary may in addition require the holder to deliver any samples or cores or to make arrangements to preserve such samples or cores in a secure manner at the mine site for delivery at an agreed time.
- (12) Pursuant to regulation 52, any infrastructure or assets not removed by the holder prior to cessation shall become the property of the State.

#### **104. Surrender of a mining licence**

Pursuant to Part VIII of the Act, the holder of a mining licence who wishes to surrender part or all of a mining licence shall apply to the Cabinet Secretary in accordance with the processes established under regulation 49.

#### **105. Renewal of a mining licence**

- (1) An application for renewal of a mining licence shall be made to the Cabinet Secretary by the holder, or by a person acting on the holder's behalf, using **Error! Reference source not found.** not later than three hundred and sixty five (365) days before expiry of the licence.
- (2) Pursuant to Clause 107(1) of the Act, an application for renewal shall include the following:
- (a.) the period of renewal applied for, which shall be the lesser of:
- (i) fifteen (15) years; or
  - (ii) the remaining commercial operating life of the mine based on the proven and indicated mineral reserves;
- (b.) An updated programme of mining operations for the proposed renewal period including:
- (i) The cadastral coordinates of area to be included under the renewed mining licence in the prescribed form;
  - (ii) a technical assessment supporting the existence, quantity and grade of remaining economically viable mineral reserves;
  - (iii) a forecast of the remaining operating life of the mine;

- (iv) any proposed new mine development;
  - (v) planned mining operations including production figures;
  - (vi) a demonstration that the programme of mining operations includes the recovery of any remaining marginal reserves and minor by-products in an efficient manner; and
  - (vii) a description of any new or upgraded equipment, or improvements to infrastructure, processing, beneficiation and waste disposal;
- (c.) a report describing environmental remediation actions taken since mining began;
  - (d.) an updated environmental licence approved by the National Environmental Management Authority;
  - (e.) an updated Community Development Agreement;
  - (f.) audited profit and loss accounts and balance sheets for the last three (3) years of operating;
  - (g.) a signed statement of available financial resources;
  - (h.) a business plan giving details of the financial resources available to the holder together with financial and economic projections for the mine;
  - (i.) mine and related mining activities workforce statistics over time including present and future employment and training of Kenyan citizens including job titles, wage/salary payments and the status of implementation of the progressive replacement of expatriate by national staff;
  - (j.) incident and accident reports and remediation measures to be taken to ensure mitigation of incidents during renewal period;
  - (k.) violations and penalties occurring during the initial licence period;
  - (l.) current and proposed future use of national goods and services;
  - (m.) any additional mineral rights in Kenya acquired by the holder since issuance of the mining licence and details of those mineral rights; and
  - (n.) such further information or clarification that the Cabinet Secretary may reasonably require or is at the time prescribed, using **Error! Reference source not found.** under these regulations.

## **106. Processing of an application to renew a mining licence**

- (1) Pursuant to Clause 33(2)(b) of the Act, the Cabinet Secretary, on the advice of the Mineral Rights Board, shall approve or reject an application for renewal of a mining licence within ninety-one (91) days of the official registration date.
- (2) Where further information or clarification is required, the Director shall notify the holder using **Error! Reference source not found.** within seven(7) days of the receipt of the Technical Committee report, and the holder shall provide the information within twenty-one (21) days. In the event of any delays on the part of the Ministry or the Mining Cadastre Office, the holder may continue mining operations until a decision is notified but any eventual renewal shall date from the licence year anniversary.
- (3) On renewal of a mining licence, the Cabinet Secretary shall notify the holder of any change in the amount and or nature of the environmental protection bond and any other financial security, using **Error! Reference source not found.** Until such bond or security is in place, the mining licence shall not be renewed.



- (4) On receiving notice that a change to a bond or security is required, the holder shall within thirty-five (35) days submit a copy of the bond or security, and within a further seven(7) days shall deliver the original bond or security document to the Mining Cadastre Office.

## **PART VIII.V – MINERAL AGREEMENTS**

### **107. Mineral agreement**

- (1) Pursuant to Part VII of the Mining Act 2015 the Cabinet Secretary, in consultation with the National Treasury and with the approval of Parliament, may enter into a mineral agreement with the holder of a mining licence where the proposed investment in mining is at least five hundred million (500,000,000) US dollars.
- (2) A holder of a mining licence who wishes to enter into a mineral agreement with the Government shall apply in writing to the Cabinet Secretary, using **Error! Reference source not found.**
- (3) The mineral agreement shall be prepared in accordance with the mineral agreement regulations 2015, using **Error! Reference source not found.** under these regulations.

## **PART IX – SMALL-SCALE MINING OPERATIONS**

This Part of the regulations concerns the formal and informal small-scale and artisanal mining sector of Kenya and is intended to ensure that mining operations are regulated, conducted on a legal basis, and integrated into the general economy of Kenya.

- (1) Small-scale mineral rights include:
  - (a.) reconnaissance permits;
  - (b.) prospecting permits;
  - (c.) mining permits; and
  - (d.) Artisanal mining permits
- (2) Only Kenyan citizens or, in the case of a body corporate where at least sixty (60) percent of the shares are held by Kenyan citizens, are eligible to apply for a small-scale mineral right.

### **PART IX.I -RECONNAISSANCE PERMIT**

#### **108. Purpose**

Subject to Clause 111 of the Act, a reconnaissance permit grants a person or body corporate the non-exclusive right to carry out non-invasive investigations for minerals within the permit area.

#### **109. Form of permit**

- (1) A reconnaissance permit shall be issued digitally together with a paper copy **,Error! Reference source not found..**
- (2) Pursuant to Clause 117 of the Act, a reconnaissance permit shall specify:
  - (a.) the full name and address of the permit holder;
  - (b.) the mineral or minerals to be included under the permit;
  - (c.) the County in which the reconnaissance operations are to be carried out; and
  - (d.) any other special conditions prescribed by the Cabinet Secretary or authorized Government agency that may apply.

#### **110. Duration**

A reconnaissance permit shall be granted for a period not exceeding one (1) year.

#### **111. Renewal**

A reconnaissance permit shall not be renewable.

#### **112. Size**

A reconnaissance permit shall be for an entire County and is non-exclusive.

#### **113. Application for a reconnaissance permit**

- (1) Pursuant to Clause 125 of the Act, an application for the grant of a reconnaissance permit shall be submitted to the Cabinet Secretary, using **Error! Reference source not found..**
- (2) The application shall include:

- (a.) full name, nationality and address of the applicant;
  - (b.) the mineral or minerals in respect of which the permit is sought; and
  - (c.) a statement, using **Error! Reference source not found.** or **Error! Reference source not found.** as the case may be affirming that the applicant meets the eligibility requirements in accordance with the provisions of the Act;
- (3) An application that is found not to be materially complete or that does not provide all supporting information under regulation 15 **Error! Reference source not found.** of this regulation shall be rejected and not registered.
- (4) When a reconnaissance permit application is registered, the mineral right area applied for shall be recorded online on the cadastral map and be shown on the Ministry's website.
- (5) If requested by the Mining Cadastre Office in writing, using **Error! Reference source not found.**, the applicant shall provide such further information or clarification as required within seven(7) days, and an application shall not be determined until this is supplied.
- (6) If the applicant fails to provide additional information or clarification as requested under regulation 13(5) within seven(7) days of issuance of the request, the application shall be deemed rejected.

#### **114. Processing of an application for a reconnaissance permit**

- (1) Pursuant to Clause 33 of the Act, the Cabinet Secretary, on the advice of the Mineral Rights Board, shall approve or reject an application for a reconnaissance permit within ninety (90) days of the formal registration.
- (2) The date that the digital reconnaissance permit was issued by the MCO and which is included on the permit shall be considered to be the start of the permit year for all matters related to the permit including ongoing reporting, fees and expiry date purposes, and shall be recorded by the Registrar in the reconnaissance permit register.

#### **115. Obligations and conduct under a reconnaissance permit**

- (1) The holder of a reconnaissance permit shall pay the fixed fee annual area charges, as listed in **Error! Reference source not found.** of the Second Schedule within fourteen (14) days of the permit being issued. Failure by the holder to make such timely payment shall result in the permit being revoked.
- (2) A reconnaissance permit holder may collect surface geological samples with the consent of the land owner; and
- (3) A reconnaissance permit holder may transport, assay, and export samples of a size commensurate with the testing of that soil, rock or mineral type, and which shall not under any circumstance exceed ten kilograms (10kg) per sample.

#### **116. Reporting under a reconnaissance permit**

The holder of a reconnaissance permit shall, within fourteen (14) days after the end of the permit term, submit a report on reconnaissance work, including laboratory results, on **Error! Reference source not found.** Failure on the part of the holder to submit such report shall result in any subsequent application for a reconnaissance permit being rejected.

## **PART IX.II - PROSPECTING PERMIT**

### **117. Purpose**

Subject to Clause 132 of the Act, a prospecting permit grants a person or body corporate the exclusive right to prospect for a mineral or minerals in the permit area according to an approved programme for prospecting operations.

### **118. Form of permit**

(1) A Prospecting permit shall be issued digitally together with hardcopy in the form of **Error! Reference source not found.**

(1) Pursuant to Clause 129 of the Act, a prospecting permit shall specify:

- (a.) the full name, nationality and address of permit holder; or
- (b.) in the case of a company:
  - (i) the name of the company
  - (ii) its place and date of incorporation;
  - (iii) Articles of Incorporation; and
  - (iv) Its registered address;
- (c.) the mineral or minerals in respect of which the prospecting permit is sought;
- (d.) the cadastral coordinates in the prescribed form defining the prospecting area;
- (e.) a map showing the approximate position of the prospecting area and any directly adjacent mineral right areas, with the exception of reconnaissance licences or permits;
- (f.) the duration of the permit;
- (g.) the approved programme of prospecting operations;
- (h.) details of the experience and financial resources available to the applicant to enable the prospecting operations;
- (i.) a statement of any significant adverse effects that carrying out the prospecting programme is likely to have on the environment, and mitigating measures to be undertaken; and
- (j.) any other such documents as appropriate or other special conditions that may apply.

### **119. Duration**

The term of a prospecting permit shall be specified in the permit and shall not exceed five (5) years, renewable once only for a further term of up to five (5) years.

### **120. Size**

- (1) A prospecting permit shall not exceed twenty five (25) whole contiguous blocks.
- (2) A person or company may hold several prospecting permits covering in aggregate not more than one hundred (100) cadastral blocks.

### **121. Shape**

Pursuant to Clause 6(6) and 131 of the Act, a prospecting permit may be of any shape as defined by whole, and fractions of 0.25, cadastral blocks.

## **122. Application for prospecting permit**

- (1) Pursuant to Clause 129 of the Act, a prospecting permit application shall be made to the Cabinet Secretary, using **Error! Reference source not found.**
- (2) The application shall include or have appended the following:
  - (a.) full name, nationality and address of the applicant; or
  - (b.) in the case of a company,
    - (i) the name of the company;
    - (ii) place and date of incorporation;
    - (iii) Articles of Incorporation; and
    - (iv) registered address;
  - (c.) the mineral or minerals sought;
  - (d.) the cadastral blocks in the prescribed form defining the area;
  - (e.) a proposal for a programme for prospecting operations;
  - (f.) a statement, using **Error! Reference source not found.** or **Error! Reference source not found.** as the case may be affirming that the applicant meets the eligibility requirements in accordance with the provisions of the Act;
- (3) When a prospecting permit application is registered, the mineral right area applied for shall be recorded on the cadastral Map and shown on the Ministry's website.
- (4) The registered permit application shall be reviewed by the Technical Committee, established pursuant to regulation 6 **Error! Reference source not found.** and in accordance with regulations 15.
- (5) Any person who otherwise qualifies to apply for a prospecting area shall be ineligible to apply for a prospecting permit if -
  - (a.) the applicant is a former prospecting permit holder whose permit has been revoked for the same prospecting area, or any part therein applied for, if such application is made within two (2) years from the date of such revocation; or
  - (b.) the applicant has been employed by the Ministry or been a member of the Technical Committee within two (2) years of application submission.

## **123. Processing of an application for a prospecting permit**

- (1) Pursuant to Clause 33 of the Act the Cabinet Secretary, on the advice of the Mineral Rights Board, shall approve or reject an application for a prospecting permit within ninety (90) days of the official registration date.
- (2) The date that the digital prospecting permit was formally issued by the Mining Cadastre Office and which is included on the permit, shall be considered the start of the permit year for all prospecting permit related matters including ongoing reporting, fees and expiry date purposes, and shall be recorded by the Registrar in the prospecting permit register.
- (3) Upon receiving a valid application for a prospecting permit, the Cabinet Secretary shall within seven (7) days issue a notice in writing to the relevant land holder, community, County government, or others as required, using **Error! Reference source not found.** and within the same period shall place an announcement in a local newspaper with wide circulation.

- (4) The applicant shall be immediately informed of the cost of the published announcement, using **Error! Reference source not found.** and shall make payment via the OMC within seven(7) days of receiving such notice.
- (5) Any person who claims to have a valid objection to the granting of a prospecting permit may, pursuant to Clause 34 of the Act, within twenty-one (21) days of the Cabinet Secretary's notice referred to in sub regulation (3) above, submit the objection in writing to the Mining Cadastre Office or local County Office.
- (6) Where an objection to the grant of a prospecting permit has been officially submitted, the Cabinet Secretary, on the advice of the Mineral Rights Board, shall inform the applicant and objector of the decision in respect to the objection, using **Error! Reference source not found.**
- (7) Pursuant to Clauses 36, 37, 38 and 39 of the Act, an application for a prospecting permit shall not be granted unless and until the applicant has obtained all necessary written consents and agreements with landowners or other relevant authorities. These should be submitted not later than forty-nine (49) days after the original application is made. If requested to do so, on **Error! Reference source not found.**the applicant shall deliver original copies of consents or agreements for verification purposes to the Mining Cadastre Office within seven(7) days of receiving such notice.
- (8) An applicant whose application is rejected shall have thirty-five (35) days in which to remedy the deficiency by making a further submission, failing which the application shall be rejected.
- (9) Based on the applicant's further proposals, the Cabinet Secretary may approve or reject the prospecting permit and shall advise the applicant of his or her final decision using **Error! Reference source not found.**

## **124. Obligations and conduct under a prospecting permit**

- (1) Pursuant to Clause 133 of the Act, a prospecting permit shall be subject to the following:
  - (a.) The holder of a prospecting permit shall commence work in accordance with the approved programme for prospecting operations.
  - (b.) A prospecting permit holder shall submit a written notice in **Error! Reference source not found.**not later than fourteen (14) days before commencing field prospecting over the prospecting area and shall at the same time inform any affected land holders. The holder shall not commence activities until approval is given, using **Error! Reference source not found.**, which shall be within seven(7) days of submitting the request.
  - (c.) The holder shall undertake prospecting work according to the approved prospecting programme and minimum operation expenditures, and in compliance with all other terms and conditions of the permit and this Act, its provisions and regulations.
  - (d.) An applicant whose prospecting permit is granted shall, before commencement of operations, provide confirmation of the manager in charge of operations, including experience and local contact details. The holder shall update this information if at any time during the term of the permit the individual is replaced.
  - (e.) The annual report, programme for prospecting operations and expenditure proposal shall be reviewed by the Director of Mines who shall inform the holder if any information provided does not meet the requirements, using **Error! Reference source not found.**

## **125. Reporting under a prospecting permit**

- (1) Reporting shall be subject to the following:

- (a.) Pursuant to Clause 133 of the Act, the holder of a prospecting permit shall submit digitally and in addition suitably bound hardcopies, to provide a long-term record:
  - (i) Within thirty-five (35) days of the end of each permit year, an annual report covering all prospecting activities carried out over the prospecting permit area, using **Error! Reference source not found.** and an annual expenditure report using **Error! Reference source not found.**; and
  - (ii) An annual environmental progress report which shall be made publicly available via the OMC.
- (2) Where a report is non-compliant, the Mining Cadastre Office shall inform the holder using **Error! Reference source not found.**
- (3) The Mining Cadastre Office shall give the holder an additional thirty-five (35) days in which to submit a compliant report, failing which the permit shall be revoked using **Error! Reference source not found.**
- (4) The holder of a prospecting permit shall expend the minimum operational expenditures for the permit area as prescribed in regulations 47 and (48), calculated as **Error! Reference source not found.** in the Second Schedule to these regulations.
- (5) Pursuant to regulation 47 **Error! Reference source not found.**, where there is a shortfall in minimum operational expenditures, the balance shall be a debt owing to the Government of Kenya. This debt shall be notified to the holder using **Error! Reference source not found.**
- (6) The permit holder shall have thirty-five (35) days of the end of the permit year to pay the debt, failing which the permit shall be revoked using **Error! Reference source not found.** So that there is no doubt, any application for renewal of the permit shall not be considered, nor shall the permit remain valid within its current term, until such debt is paid.
- (7) Pursuant to regulations (**Error! Reference source not found.**) the holder of a prospecting permit shall pay the annual area charges, calculated according to **Error! Reference source not found.** of the Second Schedule within thirty-five (35) days of the grant of the permit and annually thereafter at the start date of each permit year.

## **126. Renewal of a prospecting permit**

- (1) Pursuant to Clause 134 of the Act, the holder of a prospecting permit may apply for renewal of the permit area, using **Error! Reference source not found.** not later than ninety-one (91) days before the date of expiry of the original permit.
- (2) The renewal shall not exceed five (5) years.
- (3) The application shall include the following:
  - (a.) a report, using **Error! Reference source not found.**, summarising the prospecting work carried out to date and the minerals found;
  - (b.) an update programme for prospecting operations, describing the proposed prospecting work to be carried out during the renewal period;
  - (c.) a statement of expenditure incurred during the previous year, using **Error! Reference source not found.**; and
  - (d.) any additional information that the Mining Cadastre Office or holder believes is relevant to the application.



- (4) Upon registration of an application, the mineral right area applied for shall be recorded on the cadastral map and published on the Ministry's website.
- (5) The registered permit application shall be reviewed by the Technical Committee, established pursuant to regulation 6 **Error! Reference source not found.** and in accordance with regulations 15.

## **127. Processing of an application to renew a prospecting permit**

- (1) Pursuant to Clause 33 of the Act, the Cabinet Secretary, on the advice of the Mineral Rights Board, shall approve or reject an application for renewal of a prospecting permit within forty-nine (49) days of the official registration.
- (2) Where further information or clarification is required, the Director shall notify the holder using **Error! Reference source not found.** and the holder shall provide the information within fourteen (14) days of the receipt of the notice. In the event of any delays on the part of the Ministry, the holder may continue prospecting operations until a decision is notified by the Director but any eventual renewal shall date from the permit year anniversary.
- (3) Where the Cabinet Secretary, after due consideration of all information and on the advice of the Mineral Rights Board, rejects an application for renewal such rejection shall be notified to the holder using **Error! Reference source not found.**, together with reasons. The holder shall have thirty-five (35) days from date of receipt of the rejection notice to appeal the decision and to remedy any deficiency to the satisfaction of the Cabinet Secretary, failing which the permit shall be revoked.

## **PART IX.III –MININGPERMIT**

### **128. Purpose**

A mining permit grants an eligible person or body corporate the exclusive right to carry out small-scale mining operations in the permit area according to an approved mining permit programme.

### **129. Mining permit applicant status**

- (1) A mining permit application shall be submitted using **Error! Reference source not found.**, in conformity with the provisions of Clause 136 of the Act and regulation 134(2) of these regulations whether or not the application is emergent from a prospecting permit.
- (2) An application for a mining permit may be submitted by the holder of an extant prospecting permit covering the same area or part of it.
- (3) An application for a mining permit may be submitted by a person or body corporate not holding a prospecting permit.

### **130. Form of permit**

- (1) A mining permit shall be issued using **Error! Reference source not found.**
- (2) Pursuant to Clause 136 of the Act, a mining permit shall specify:
  - (a.) the full name and address of permit holder or;
  - (b.) in the case of a company,
    - (i) the name of the company;
    - (ii) its place and date of incorporation;
    - (iii) Articles of Incorporation; and
    - (iv) Its registered address;
  - (c.) the mineral or minerals to be mined;
  - (d.) the cadastral coordinates of the polygon in the prescribed format defining the permit area;
  - (e.) a map showing the approximate location of the mining area together with any directly adjacent mineral right areas, excluding reconnaissance permits;
  - (f.) the duration of the permit;
  - (g.) the approved mining permit programme of work;
  - (h.) details of the mining experience and financial resources available to the applicant to conduct the mining operations;
  - (i.) an environmental licence; and
  - (j.) any other such documents that the Cabinet Secretary considers appropriate or any other special conditions that may apply.

### **131. Duration**

A mining permit shall be granted for a period not exceeding five (5) years and shall be renewable. The term of renewal shall not exceed five (5) years or the commercial life of the mine whichever period is the shorter.

### **132. Size**

- (1) A mining permit shall not exceed two (2) contiguous whole cadastral blocks in area but may comprise or include contiguous fractions of a cadastral block.
- (2) A person or company may not hold more than five (5) mining permits per County.

### **133. Shape**

Pursuant to Clause 6(6) and 131 of the Act, a mining permit may be any shape as defined by whole, and fractions of 0.25, cadastral blocks.

### **134. Application for mining permit**

- (1) Pursuant to Clause 136 of the Act, a mining permit application shall be made to the Cabinet Secretary, using **Error! Reference source not found.**
- (2) The application shall include:
  - (a.) the full name, nationality and address of permit holder or;
  - (b.) in the case of a company,
    - (i) the name of the company;
    - (ii) the names and nationalities of the directors;
    - (iii) its place and date of incorporation;
    - (iv) Articles of Incorporation; and
    - (v) Its registered address;
  - (c.) the mineral or minerals to be mined;
  - (d.) the cadastral coordinates of the polygon in the prescribed format defining the permit area;
  - (e.) the duration of the mining permit applied for;
  - (f.) the proposed mining permit programme;
  - (g.) a description of the proposed permit area and a map showing the approximate location of the mining area together with any directly adjacent mineral right areas, excluding reconnaissance permits;
  - (h.) a pre-feasibility study report as may be prescribed by the Director demonstrating that a mineral deposit can be mined economically by using small scale-mining methods and including a summary of community consultation activities;
  - (i.) an environmental licence;
  - (j.) a proposed mine closure and rehabilitation plan;
  - (k.) a detailed statement of relevant past work;

- (l.) a statement, using **Error! Reference source not found.** or **Error! Reference source not found.** as the case may be affirming that the applicant meets the eligibility requirements in accordance with the provisions of the Act;
  - (m.) evidence of the declared financial and technical resources available exclusively for this application within seven(7) days of receiving the request;
  - (n.) details of any licence held within Kenya by the applicant or the applicant's legal representative; and
  - (o.) any other such documents that the applicant considers relevant.
- (3) When a mining permit application is registered, the mining permit area applied for shall be recorded on map and published on the Ministry's website.
  - (4) The registered permit application shall be reviewed by the Technical Committee, established pursuant to regulation6**Error! Reference source not found.** and in accordance with regulations 15.
  - (5) Any person who is otherwise eligible to apply for a mining permit shall be ineligible to apply for a mining permit if:
    - (a.) the applicant is a former mining permit holder whose permit has been revoked for the same mining area, or any part therein applied for, if such application is made within two (2) years from the date of such revocation; or
    - (b.) the applicant has been employed for the administration of the Act and related regulations by the Ministry of Mining, Environment, Finance or Minerals Advisory Board or been a member of the Technical Committee or served in any capacity as advisor or consultant on mineral-related topics within two (2) years of application submission,
 in which case, any application submitted shall be rejected.
  - (6) The ESMP shall be available for public scrutiny for a period of at least thirty-five (35) days prior to the Cabinet Secretary making a decision on the mining permit application.

### **135. Processing of an application for a mining permit**

- (1) Pursuant to Clause 33 of the Act, the Cabinet Secretary, on the advice of the Mineral Rights Board, shall approve or reject an application for a mining permit within ninety (90) days of the official registration date.
- (2) The date that the digital mining permit was officially issued by the Mining Cadastre Office and which is included on the permit, shall be considered the start of the permit year for all permit-related matters including ongoing reporting, fees and expiry date purposes and shall be recorded by the Registrar in the mining permit register.
- (3) Upon receiving a valid application for a mining permit, the Cabinet Secretary shall issue a notice in writing to the relevant land holder, community, County Government or others using **Error! Reference source not found.**and within the same period shall publish an announcement in a local newspaper with wide circulation.
- (4) The applicant shall be immediately informed of the cost of the published announcement, using **Error! Reference source not found.** and shall make payment via the OMC within seven(7) days of receiving such notice of cost.
- (5) Any person who claims to have a valid objection to the granting of a mining permit may, pursuant to Clause 34 of the Act, within forty-two (42) days of the Cabinet Secretary's notice

referred to in sub regulation (3) above, submit the objection in writing to the Mining Cadastre Office or local County Office.

- (6) An objection shall be considered only if it addresses a matter referred within the Mining Act or its regulations or any applicable law or regulation of Kenya.
- (7) Where an objection to the grant of a mining permit has been submitted, the Cabinet Secretary shall, on the advice of the Mineral Rights Board inform the applicant and objector of his or her decision in respect to the objection within twenty-one (21) days of receipt of the objection, using **Error! Reference source not found.**
- (8) Pursuant to Clause 176 of the Act, and the provisions of the Environmental Management and Coordination Act or any successor legislation, a mining permit shall not exempt a person from complying with any law concerning the protection of the environment. The holder of a mining permit shall be required to provide an ESMP to the relevant environmental authority to the extent that is reasonably commensurate with the nature of the proposed mining permit work programme.
- (9) A mining permit shall not be granted unless the Cabinet Secretary is satisfied that a commercially viable mineral deposit exists and that the proposed mining permit programme exploits the mineral resource in the best interests of Kenya and its citizens.
- (10) An environmental licence is required and the provision of such approved plan shall be a condition of granting of the mining permit.
- (11) Pursuant to Clauses 36, 37, 38 and 39 of the Act, an application for a mining permit shall not be granted unless and until the applicant has obtained all necessary written consents and agreements with land holders or other relevant authorities. Any consents and agreements shall be submitted not later than forty-nine (49) days after the original application is registered. If requested by the Mining Cadastre Office to do so, **Error! Reference source not found.** the applicant shall deliver copies of written consents or signed agreements for confirmation purposes to the Mining Cadastre Office within seven(7) days of receiving such notice.

### **136. Obligations and conduct under a mining permit**

- (1) Pursuant to Clause 140 of the Act, mining permits shall be subject to the following:
  - (a.) The holder of a mining permit shall commence work in accordance with the approved mining permit work programme.
  - (b.) On receiving notice that an environmental protection bond is required, the holder of the mining permit shall, within thirty-five (35) days, submit a copy of the bond and within a further seven(7) days deliver the original bond to the Mining Cadastre Office.
  - (c.) Pursuant to regulations (**Error! Reference source not found.**), the holder of a mining permit shall pay the annual area charges, calculated according to **Error! Reference source not found.** of the Second Schedule within thirty-five (35) days of the grant of the permit and annually thereafter at the start date of each permit year.
  - (d.) Pursuant to Clause 140 of the Act, the holder of a mining permit shall pay royalties, calculated according to the **Error! Reference source not found.** in the Third Schedule within thirty-five (35) days after the commencement of production and monthly thereafter.
  - (e.) A mining permit holder shall submit a written notice in **Error! Reference source not found.** not later than fourteen (14) days before commencing mining operations over the mining area and shall at the same time inform any affected land holders.

- (f.) The holder shall not commence activities until approval is given, using **Error! Reference source not found.**, which shall be within seven(7) days of submitting the request.
- (g.) The holder shall undertake mining operations according to the approved mining permit programme and in compliance with all other terms and conditions of the permit and this Act, its provisions and regulations.
- (h.) An applicant whose mining permit is granted shall, before commencement of operations, provide confirmation of the technical manager in charge of operations, including, experience and contact details. The holder shall update this information if at any time during the term of the permit if the individual is replaced.
- (i.) A holder shall demarcate and keep demarcated the mining area in the prescribed manner.
- (j.) A holder shall stack or dump any mineral or waste products in the manner provided for in the permit or as otherwise prescribed, having regard to good mining industry practice.
- (k.) A holder shall not use any equipment larger than the equipment size trucks and excavators, permitted on public roads; and
- (l.) A holder shall not utilise chemicals including cyanide and mercury.

### **137. Reporting under a mining permit**

- (1) Pursuant to Clause 140 of the Act the holder of a mining permit shall:
- (a.) maintain full records of all prospecting and mining operations and shall make these available for inspection by any duly authorised Inspector of Mines;
  - (b.) conduct mining operations with due regard to the environment and shall submit an annual report on environmental damage and remediation which shall be made publically available;
  - (c.) submit reports digitally and in addition in the form of suitably bound hard copies to provide a long-term record:
    - (i) within fourteen (14) days of the end of every quarter of each permit year, a quarterly report of mine development and mineral production, using **Error! Reference source not found.** This shall include full details of ore mined and processed, its grade, and the amount of mineral or concentrate produced and exported; and
    - (ii) within thirty-five (35) days of the end of each permit year, an annual report of mine development and mineral production, using **Error! Reference source not found.** which shall include:
      - a. summarised details of ore mined and processed and its grade;
      - b. the amount of mineral or concentrate produced and exported; and
      - c. an updated mining permit programme for the following year;
  - (d.) within ninety-one (91) days following the end of each financial year, furnish the Cabinet Secretary with a copy of annual financial statements in such manner as the Cabinet Secretary shall prescribe;
  - (e.) an updated environmental licence;
  - (f.) an updated rehabilitation and mine closure plan, reporting also on the previous years' rehabilitation works; and
  - (g.) a description of the positive and negative affects that mining has had on gender relations within that community.

- (2) The annual report shall be reviewed by the Director of Mines and he shall inform the holder within thirty-five (35) days of receipt if additional information are required, using **Error! Reference source not found.**
- (3) Where an annual technical report is non-compliant, the Mining Cadastre Office shall inform the permit holder within thirty-five (35) days of submission using **Error! Reference source not found.**
- (4) The Mining Cadastre Office shall allow the permit holder a further thirty-five (35) days in which to submit a compliant report, failing which the permit shall be revoked using **Error! Reference source not found.**

### **138. Application for renewal of a mining permit**

- (1) An application for renewal of a mining permit shall be made to the Cabinet Secretary by the holder, or by a person acting on the holder's behalf, using **Error! Reference source not found.** not less than ninety-one (91) days before expiry of the mining permit.
- (2) An application for renewal under Clauses 141 of the Act shall include or be accompanied by the following:
  - (a.) a report using **Error! Reference source not found.** under these regulations summarising mining work undertaken since the permit was granted;
  - (b.) the proposed term of the renewal which shall not exceed five (5) years;
  - (c.) a revised and up-to-date mining permit work programme;
  - (d.) a report describing environmental remediation actions taken since mining began;
  - (e.) an updated environmental licence; and
  - (f.) evidence of the declared financial and technical resources available exclusively for this application within seven(7) days of receiving the request;
- (3) The Cabinet Secretary shall notify the applicant if any further information or clarification is required using **Error! Reference source not found.** and the applicant shall provide this within thirty-five (35) days of receipt of such notice
- (4) The registered permit application shall then be reviewed by the Technical Committee, established pursuant to regulation 6 **Error! Reference source not found.** and in accordance with regulations 15.

### **139. Processing of an application to renew a mining permit**

- (1) Pursuant to Clause 33 of the Act, the Cabinet Secretary, on the advice of the Mineral Rights Board, shall approve or reject an application for renewal of a mining permit within forty-nine (49) days of the formal registration date.
- (2) Where further information or clarification is required, the Director shall notify the holder using **Error! Reference source not found.** and the holder shall provide the information within seven(7) days. In the event of any delays on the part of the Ministry, the holder may continue mining operations until a decision is notified but any eventual renewal shall date from the permit year anniversary.
- (3) On renewal of a mining permit, the Cabinet Secretary shall notify the holder of any change in the amount and or nature of the environmental protection bond and any other financial security, using

**Error! Reference source not found.** under these regulations. Until such bond or security is in place, the mining permit shall not be renewed.

- (4) On receipt of notice by the holder from the Mining Cadastre Office that a change to a bond or security is required, the holder shall within thirty-five (35) days submit a copy of the bond or security, and within a further seven(7) days shall deliver the original hard copy bond or security document to the Mining Cadastre Office.



## **PART X – ARTISANAL MINING**

### **140. Purpose**

Pursuant to Clause 95 and the Second Schedule, Clause 2(b) of the Act an artisanal mining permit grants an eligible person, who shall be a resident of the County, the exclusive right to carry out prospecting and mining operations using traditional and customary methods in accordance with an approved artisanal mining programme.

### **141. Form of permit**

- (1) An artisanal mining permit shall be issued using **Error! Reference source not found.** under these regulations.
- (2) Pursuant to Clause 95 of the Act, an artisanal mining permit shall specify:
  - (a.) the full name, nationality and address of the applicant; or
  - (b.) in case of a cooperative, association or group, the place of registration and the address of registered office;
  - (c.) the mineral or minerals sought;
  - (d.) the cadastral coordinates of the polygon in the prescribed format defining the permit area;
  - (e.) a map showing the approximate location of the permit area together with any directly adjacent mineral right areas, excluding reconnaissance permits;
  - (f.) the duration of the permit;
  - (g.) the approved artisanal mining programme to be carried out;
  - (h.) an environmental licence;
  - (i.) the relevant land holder's consent; and
  - (j.) any other such documents considered appropriate or other special conditions that may apply.

### **142. Duration**

An artisanal mining permit shall be granted for a period not exceeding three (3) years and shall be renewable once only for a period not exceeding three (3) years.

### **143. Size**

- (1) An artisanal mining permit area shall not exceed one (1) whole cadastral block.
- (2) An artisanal mining permit holder may hold not more than five (5) artisanal mining permits concurrently.

### **144. Shape**

Fractions of 0.25 cadastral blocks may be used to configure the shape of an artisanal mining permit.

### **145. Application for an artisanal mining permit**

- (1) An application for grant of an artisanal mining permit, shall be submitted to the Representative of the Director of Mines using **Error! Reference source not found.** pursuant to Clause 93 of the Act.

- (2) The application shall include:
- (a.) in the case of an individual, the full name, nationality and address of the applicant; or
  - (b.) in the case of a cooperative, association or group, the place of registration and the registered office address;
  - (c.) the mineral or minerals sought;
  - (d.) a description of the permit area, a map and the cadastral coordinates of the polygon in the prescribed form defining the permit area;
  - (e.) the proposed duration of the permit;
  - (f.) an artisanal mining programme to be carried out;
  - (g.) a statement, using **Error! Reference source not found.** or **Error! Reference source not found.** as the case may be affirming that the applicant meets the eligibility requirements in accordance with the provisions of the Act;
  - (h.) the relevant land holder's written consent where the land has not been designated as an artisanal or small-scale mining area;
  - (i.) an environmental and social impact screening report, together with suggested mitigating measures commensurate with scale and nature of the operation;
  - (j.) details of any other mineral rights held in Kenya; and
  - (k.) any other such documents considered appropriate or other special conditions that may apply.
- (3) When an artisanal mining permit application is registered, the artisanal mining permit area applied for shall be recorded online on the cadastral map and be shown on the Ministry's website.
- (4) The registered permit application shall be reviewed by the Artisanal Mining Committee, established pursuant to Clause 94 of the Act.
- (5) Any person who otherwise qualifies to apply for an artisanal mining area shall be ineligible to apply for an artisanal mining permit if:
- (a.) the applicant is a former artisanal mining permit holder whose permit has been revoked for the same mining area, or any part therein applied for, if such application is made within two (2) years from the date of such revocation, or
  - (b.) the applicant has been employed by the Ministry in the administration of the Act or has been a member of the Technical Committee within two (2) years of the application submission; or
  - (c.) the applicant holds five (5) artisanal mining permits at the time of registration;
- in which case, any the application shall be rejected.
- (6) Where an artisanal mining permit application is rejected by the Representative of the Director of Mines the artisanal mining permit register and the cadastral map shall be immediately updated by the Registrar.

## **146. Processing of an application for an artisanal mining permit**

- (1) Pursuant to Clause 93 of the Act, the Representative of the Director of Mines, on the advice of the Artisanal Mining Committee, shall approve or reject an application for an artisanal mining permit within fifty-six (56) days of the official registration date and shall inform the applicant, using **Error! Reference source not found.** of the decision within seven(7) days.

- (2) Once an application has been assigned a registration number, the Representative of the Director of Mines shall review the application.
- (3) In carrying out the application review, the Representative of the Director of Mines shall, where necessary:
  - (a.) where it is so determined, recommend rejection of an application pursuant to regulation 12(3), sent to the applicant by email, detailing reasons for the rejection;
  - (b.) request the applicant to correct any defects or omissions;
  - (c.) consult with other technical experts as may be helpful in assessing the merits of the application;
  - (d.) request additional information and or propose amendments to the application, using **Error! Reference source not found.**; and
  - (e.) consult as necessary with Ministry and/or other relevant government entities;
- (4) Where an applicant fails to provide any of the information requested or to amend the application pursuant to sub regulation(3)(b.) and (d.) within seven(7) days of receiving the request, or to comply with any other application requirements, the application shall be rejected, and the Representative of the Director of Mines, in such case, shall:
  - (i) in writing, notify the applicant that the application is rejected; and
  - (ii) record the date of such notifications in the application register.
- (5) Where the Representative of the Director of Mines considers the application is technically compliant with the current legislation to prepare a report and forward the application and the report to the Artisanal Mining Committee who shall confirm or otherwise.
- (6) The Representative of the Director of Mines shall upon review of the Artisanal Mining Committee report approve or reject the application.
- (7) Following the grant of an artisanal mining permit, the Representative of the Director of Mines shall immediately notify the Artisanal Mining Committee and thereafter the applicant, using **Error! Reference source not found.**
- (8) Where the application is approved, the grant notice, issued by the Representative of the Director of Mines, shall require the applicant to accept or reject the grant of the permit within fourteen (14) days from the date of notification.
- (9) Where the applicant fails to respond within the required period, the grant of the mining permit shall lapse.
- (10) The Representative of the Director of Mines shall issue an artisanal mining permit in digital form through email and send a paper copy by registered mail in the form of **Error! Reference source not found.**
- (11) The date on which the digital artisanal mining permit is officially issued by the Representative of the Director of Mines and that is included on the permit shall be considered the start of the permit year for all permit-related issues including ongoing reporting, fees and expiry date purposes, and shall be recorded by the Registrar in the artisanal mining permit register.
- (12) In the event that the Representative of the Director of Mines determines that the application is not technically compliant, his report shall give reasons.

- (13) The Representative of the Director of Mines may require an applicant, using **Error! Reference source not found.** to provide verifications in the form of hardcopy documents and or certified originals documents and or sworn affidavits. Where so notified, such verification must be delivered to the Representative of the Director of Mines within seven(7) days of the date of such notice, failing which the application shall be rejected.
- (14) Provided that such verification is received within the allotted time, and is later validated, the date and time of the original application shall remain. For the avoidance of doubt, the request to provide original, hard copy documents is not an opportunity to submit any new information other than the originals of the documents submitted digitally at the time of application. Any new or modified information will be rejected, the application invalidated, and the application rejected without further notice.
- (15) An applicant, having submitted and had registered an application for grant or renewal of an artisanal mining permit, may at any time withdraw the application. In the case of withdrawal for any reason, the application fee is not refundable.
- (16) An applicant whose application is rejected may, within thirty-five (35) days, remedy any deficiency in the application and re-submit, failing which the application shall be finally cancelled. Any re-submitted application shall be treated as a new application. The Representative of the Director of Mines may approve or reject the application and shall advise the applicant of his or her final decision using **Error! Reference source not found.** under these regulations.
- (17) An applicant who is aggrieved by the decision of the Representative of the Director of Mines may appeal to the High Court within thirty (30) days.
- (18) Where a permit application is rejected and the applicant has not appealed within the time period prescribed in sub regulation (17), the cadastral map shall be immediately updated by the Registrar and the area made available for new applications.

#### **147. Renewal of an artisanal mining permit**

- (1) An application for renewal of an artisanal mining permit shall be made to the Representative of the Director of Mines by the holder, or by a person acting on the holder's behalf, using **Error! Reference source not found.** not less than forty-nine (49) days before expiry of the permit.
- (2) An application for renewal under Clauses 96 of the Act shall include or be accompanied by the following:
- (a.) a report **Error! Reference source not found.** summarising mining work undertaken since the permit was granted;
  - (b.) the proposed duration of the renewal period that shall not exceed three (3) years;
  - (c.) a revised and updated artisanal mining programme;
  - (d.) a summary report describing environmental remediation actions taken since mining first began; and
  - (e.) an environmental licence.
- (3) The Representative of the Director of Mines shall notify the applicant if any further information or clarification is required using **Error! Reference source not found.** that may be reasonably provided in the prescribed time period and the applicant shall respond within thirty-five (35) days of receipt of the notice.

#### **148. Processing of an application to renew an artisanal mining permit**

- (1) The Representative of the Director of Mines shall, on the advice of the Artisanal Mining Committee, approve or reject an application for renewal of an artisanal mining permit within thirty-five (35) days of receipt of a complete application, using **Error! Reference source not found.**
- (2) Where further information or clarification is required, the Representative of the Director of Mines shall notify the permit holder using **Error! Reference source not found.** within seven(7) days of the receipt of the Artisanal Mining Committee report, and the holder shall provide the information within seven(7) days. In the event of any delays on the part of the Representative of the Director of Mines, the holder may continue artisanal mining operations until a decision is notified but any eventual renewal shall date from the permit anniversary.
- (3) Where the Representative of the Director of Mines, after due consideration of all information and on the advice of the Artisanal Mining Committee, refuses a renewal this shall be notified to the holder using **Error! Reference source not found.** together with the reasons.
- (4) The holder shall have thirty-five (35) days to appeal the decision to the Representative of the Director of Mines' satisfaction failing which the permit shall be revoked.
- (5) An applicant who is aggrieved by the decision of the Representative of the Director of Mines may appeal to the High Court within thirty (30) days.

#### **149. Obligations and conduct under an artisanal mining permit**

- (1) Pursuant to Clause 98 of the Act, the holder of an artisanal mining permit shall commence prospecting and or mining operations not later than thirty-five (35) days following grant of the permit.
  - (a.) A holder may show just cause for extension of this time period to the Representative of the Director of Mines;
  - (b.) The Representative of the Director of Mines may suspend or revoke the permit when a holder fails to comply.
- (2) The holder of an artisanal mining permit may:
  - (a.) access the permit area;
  - (b.) process any mineral derived from operations within the permit area;
  - (c.) stack or dump a mineral or waste product;
  - (d.) utilize water as required to conduct artisanal mining activities; and
  - (e.) conduct other activities related to artisanal mining.
- (3) The holder shall undertake mining in an effective, efficient and safe manner with due regard to the protection of the environment. Pursuant to the Second Schedule, Clause 2(b) of the act, the holder shall:
  - (a.) not exceed any of the following production limits:
    - (i) for extraction of minerals an annual throughput of twenty five thousand cubic metres (25,000 m<sup>3</sup>);
    - (ii) not mine underground; and
    - (iii) not use:
      - a. specialised prospecting equipment, including metal detectors;

- b. mechanised mining technologies;
  - c. mercury or cyanide;
  - d. harmful chemicals as may be prescribed; or
  - e. dynamite or explosives as are prescribed.
- (b.) conduct operations with due regard to the health and safety provisions of this Act and the Mine Health and Safety regulations;
- (c.) not pollute water courses or surface waters; and
- (d.) backfill excavations to protect people, livestock and flora.
- (4) An artisanal mining permit holder shall submit a written notice in **Error! Reference source not found.** not later than fourteen (14) days before commencing mining operations over the mining area and shall in writing at the same time inform any affected land holders.
- (5) The permit holder shall not commence activities until approval is given, using **Error! Reference source not found.**
- (6) The holder of an artisanal mining permit shall submit monthly returns on mineral production using **Error! Reference source not found.** and shall make these available for inspection by an Inspector.
- (7) The holder shall submit an annual report on environmental damage and remediation which shall be made publicly available.
- (8) The holder of an artisanal mining permit shall pay an area-based annual charge as set out in **Error! Reference source not found.** of the Second Schedule of these regulations within thirty-five (35) days of the grant of the permit and annually thereafter at the start date of each permit year, failing which the permit shall be suspended and may be revoked by the Representative of the Director of Mines.

