

LEGAL NOTICE NO. 149

## THE MINING ACT

(No. 12 of 2016)

## THE MINING (STRATEGIC MINERALS) REGULATIONS, 2017

## ARRANGEMENT OF REGULATIONS

- 1—Citation.
- 2—Interpretation.
- 3—Purpose of the Regulations.
- 4—Application of the Regulations.
- 5—Discovery under a pre-existing mineral right.
- 6—Approvals and regulatory oversight.
- 7—Power of the Cabinet Secretary to publish guidelines.
- 8—Role of the National Mining Corporation.
- 9—Submission of request to declare a mineral or mineral deposit as strategic.
- 10—Procedure to declare a mineral or mineral deposit as strategic.

## THE MINING ACT

(No. 12 of 2016)

## THE MINING (STRATEGIC MINERALS) REGULATIONS, 2017

IN EXERCISE of the powers conferred by sections 8 (2) and 16 (3) of the Mining Act, 2016, the Cabinet Secretary for Mining makes the following Regulations:—

1. These Regulations may be cited as the Mining (Strategic Minerals) Regulations, 2017. Citation.
2. In these Regulations, unless the context otherwise requires— Interpretation.
  - “Act” means the Mining Act, 2016;
  - “agency” means a Ministry, Department or any public institution of the Government or any authority or body established by the State under the Constitution; No. 12 of 2016.
  - “Corporation” means the National Mining Corporation established in section 22 of Act;
  - “holder” has the meaning assigned to in the Act;
  - “strategic mineral” has the meaning assigned to it in the Act; and
  - “strategic mineral deposit” means a mineral deposit declared to be strategic under these Regulations.
3. The purpose of these Regulations is to— Purpose of the Regulations.
  - (a) provide a framework for declaring minerals and mineral deposits as strategic;

(b) regulate the manner in which strategic minerals may be explored, mined, processed, marketed, exported and imported; and

(c) ensure that the exploration and mining of strategic minerals is carried out in a manner that benefits the country and protects the environment.

4. These Regulations shall—

Application of the Regulations.

(a) apply to all minerals and mineral deposits declared as strategic by the Cabinet Secretary;

(b) apply to the export and import of a strategic mineral for purposes of controlling its sale, marketing or use;

(c) apply to all radioactive minerals;

(d) not apply to a holder of a licence or permit for a mineral which is declared as strategic during the term of the licence or permit; and

(e) not apply to a reconnaissance or prospecting permit or licence that is to be converted to a mining permit or licence at the time the mineral is declared strategic.

5. (1) In the event that a holder of an existing mineral right discovers within its licence or permit area a mineral with potential economic value that has been declared strategic but not included in the holder's licence or permit, the holder shall immediately report the discovery to the Cabinet Secretary.

Discovery under a pre-existing mineral right.

(2) The holder shall have the right to continue with all activities or operations within the licence or permit area in accordance with the approved work programme or programme of mining operations.

(3) The Cabinet Secretary shall within thirty days of receipt of the report under sub regulation (1), send a team to assess and submit a report on the discovery.

(4) The Cabinet Secretary shall, based on the report submitted under sub regulation (3), determine whether the mineral or the deposit may be explored or mined.

(5) Any decision to explore or mine the mineral shall take into consideration the rights of the holder.

(6) Under no circumstances shall the discovery or declaration of strategic minerals be treated as a nationalisation or expropriation of the mineral right of the holder.

6. (1) Subject to the Act, the Cabinet Secretary may, on the advice of the Mineral Rights Board and with the approval of the Cabinet, declare—

Approvals and regulatory oversight.

(a) a mineral or mineral deposit to be strategic; or

(b) areas to be restricted or excluded from operations under a mineral right.

(2) The Cabinet Secretary shall, in consultation with National Environment Management Authority or other relevant agency, determine whether the exploration or mining of a strategic mineral would significantly affect the natural environment or human health as provided under the relevant laws.

(3) A regulatory authority that is tasked with regulating the use of specific strategic minerals, shall serve as the lead institution in the regulation of the mineral for any use that is included under the mandate of that regulatory authority.

(4) All mining regulations and guidelines shall apply to strategic minerals and strategic mineral deposits.

7. (1) Subject to section 221 of the Act, the Cabinet Secretary may, from time to time publish and disseminate guidelines for –

Power of the Cabinet Secretary to publish guidelines.

- (a) the exploration for and reporting of exploration results for strategic minerals;
- (b) mining, processing and beneficiation of strategic minerals;
- (c) the import, export and marketing of strategic minerals;
- (d) the exploitation of a strategic mineral found during the exploitation of a mineral which has not been declared as strategic;
- (e) a strategic mineral which is recovered as a by-product of a mineral which has not been declared as strategic; and
- (f) any other matter that the Cabinet Secretary may consider necessary.

(2) The guidelines under sub regulation (1) shall be published in the Gazette.

8. (1) The Corporation, either on its own or in association with any other person or company, shall be responsible for the exploration and mining of all strategic minerals or deposits.

Role of the National Mining Corporation.

(2) Without limiting the scope of sub regulation (1), the Corporation shall be responsible for –

- (a) engaging in the reconnaissance, prospecting and mining of a strategic mineral or strategic mineral deposit or any other related mineral activity;
- (b) the processing, refining or smelting of a strategic mineral;
- (c) the marketing or sale of a strategic mineral;
- (d) import and export of a strategic mineral; and
- (e) any other functions that the Cabinet Secretary with the approval of the Cabinet may assign to the Corporation in respect of strategic minerals.

(3) Where it is determined by the Cabinet Secretary that the Corporation does not have the necessary technical, financial or other capacity to effectively explore, mine, refine, smelt, process or market

the strategic mineral or mineral deposit, the Cabinet Secretary with the approval of the Cabinet may authorise the Corporation to seek private sector participation.

9. An agency may, submit a request to the Cabinet Secretary to declare a mineral or mineral deposit as strategic.

Submission of request to declare a mineral or mineral deposit as strategic.  
Procedure to declare a mineral or mineral deposit as strategic.

10. (1) Where the Cabinet Secretary deems it necessary for a mineral or mineral deposit to be declared strategic, the Cabinet Secretary shall submit to the Cabinet a request together with a memorandum detailing –

- (a) the area in which the mineral or deposit is located;
- (b) the reasons why it is in Kenya's interests that the mineral or mineral deposit be declared as strategic;
- (c) information about the relevant market for the mineral including its uses;
- (d) the economic significance of the mineral to the country;
- (e) the safety or health dangers of the exploration and mining of the mineral;
- (f) estimated current market value of the mineral; and
- (g) any other reasons why the mineral or mineral deposit should be declared as strategic.

(2) Where the Cabinet approves the request, the Cabinet Secretary shall –

- (a) publish the declaration in the Kenya Gazette and the website of the Ministry; and
- (b) record in the mining cadastre, the location of any declared strategic mineral or declared strategic mineral deposits.

(3) Where the Cabinet rejects the request, the Secretary to the Cabinet shall furnish the Cabinet Secretary with the decision in writing within seven days thereof.

Dated the 19th June, 2017.

DAN KAZUNGU,  
*Cabinet Secretary, Ministry of Mining.*