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THE MINING ACT

(No. 12 of 2016)

THE MINING (USE OF ASSETS) REGULATIONS

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THE MINING ACT

(No. 12 of 2016)

IN EXERCISE of the powers conferred by Section 149 (6) of the Mining Act, 2016, the Cabinet Secretary for Mining makes the following Regulations:—

THE MINING (USE OF ASSETS) REGULATIONS, 2017

1. These Regulations may be cited as the Mining (Use of Assets) Regulations, 2017. Citation.
2. In these Regulations, unless the context otherwise requires— Interpretation.
“Act” means the Mining Act, 2016; No. 12 of 2016
“asset audit” means the conduct of an annual physical count of all movable and immovable assets to verify actual assets in hand and value and ensure the accuracy of related financial records;
“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to mining;
“County Government” means a County Government provided for under Article 176 of the Constitution of Kenya;
“immovable assets” means all tangible items that are securely affixed and attached to the land or to buildings or other structures on the land and include but are not limited to the following—

- (a) transportation facilities including roads, bridges, railways, airports, landing strips and landing pads for aircraft, hangers and other airport facilities, garages, channels, pipelines;
- (b) port facilities including docks, harbours, terminal facilities, warehouses and loading and unloading facilities;
- (c) power, water and sewerage facilities including electrical generating plants and transmission lines, and water supply systems;
- (d) welfare facilities including schools, hospitals or clinics or other facilities built for recreational purpose; and
- (e) other immovable facilities used primarily in connection with, or incidental to, operations such as offices, staff accommodation, machine and repair shops, foundries and warehouses; and

“movable assets” include plant, machinery, equipment and facilities which are not fixed and are used as an integral part of the immovable assets.

3. These Regulations shall apply to holders of mining licences.

Application of Regulations.

4. (1) The holder of a mining licence shall maintain a complete, up to date and accurate register of all its immovable and movable assets.

Obligation to keep an asset register.

(2) The holder of a mining licence shall record the following information in the register —

- (a) name, type, description and location of asset;
- (b) cost of asset;
- (c) year of purchase;
- (d) particulars of the supplier of the asset;
- (e) depreciation, start date and rate;
- (f) net book value; and
- (g) any other relevant information.

(3) The holder of a mining licence shall —

- (a) continuously update the register where any assets are acquired subsequent to any entry made in the register;
- (b) maintain a separate list for disposed assets;
- (c) submit to the Director of Mines a copy of the year’s asset audit not later than ninety days after the end of the year.

5. (1) The holder of a mining licence shall not later than sixty days after the termination of a licence, submit to the Cabinet Secretary a statement of —

Delivery of Documents of assets on termination

- (a) all its immovable and movable assets together with a statutory declaration of the correctness thereof;
- (b) the assets the holder intends to remove from the mineral right area and those that the holder intends to leave; and

(c) any potentially hazardous substances, excavations and buildings in the mineral right area in accordance with the health and safety regulations made under the Act and the environmental laws of Kenya.

(4) On receiving the statement under sub regulation (1), the Cabinet Secretary may, by notice in writing, require the holder of the mining licence to provide additional information or documents.

6. (1) Pursuant to sections 149(3) and 149(4) of the Act, the Cabinet Secretary, upon the approval of the statement submitted under regulation 5, shall issue a written notice to the holder that the holder has ceased to be owner of the assets.

Notification of ceasing to be an owner.

(2) A notice issued under sub regulation (1) shall be published in the Kenya Gazette.

7. The Cabinet Secretary shall ensure that all assets that are vested in the National Government such as health facilities, schools, power and other public infrastructure or facilities are transferred to any state institution, department, agency, body or County government that is responsible for the management of such assets under the laws of Kenya.

Use of assets.

8. Where immovable assets on land which has not been compulsorily acquired by the National Government are vested in the National or County Government, the National or County Government shall enter into an agreement with the landowner.

Agreement with landowner.

Dated the 9th May, 2017.

DAN KAZUNGU,
Cabinet Secretary, Ministry of Mining.