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LAWS OF KENYA

THE MINING (USE OF ASSETS) REGULATIONS

NO. 80 OF 2017

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Kenya

Mining Act

The Mining (Use of Assets) Regulations

Legal Notice 80 of 2017

Legislation as at 31 December 2022

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The Mining (Use of Assets) Regulations (Legal Notice 80 of 2017)

Contents

1. Citation	1
2. Interpretation	1
3. Application of Regulations	1
4. Obligation to keep an asset register	1
5. Delivery of Documents of assets on termination	2
6. Notification of ceasing to be an owner	2
7. Use of assets	2
8. Agreement with landowner	3

MINING ACT

THE MINING (USE OF ASSETS) REGULATIONS

LEGAL NOTICE 80 OF 2017

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1. Citation

These Regulations may be cited as the Mining (Use of Assets) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“Act” means the Mining Act (Cap. 306);

“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. Application of Regulations

These Regulations shall apply to holders of mining licences.

4. Obligation to keep an asset register

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

- (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. Delivery of Documents of assets on termination

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

6. Notification of ceasing to be an owner

- (1) Pursuant to section 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.
- (2) A notice issued under subregulation (1) shall be published in the Kenya Gazette.

7. Use of assets

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.

8. Agreement with landowner

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.