



KENYA MINING INVESTMENT HANDBOOK 2016

Republic of Kenya



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MESSAGE FROM THE PRESIDENT OF THE REPUBLIC OF KENYA

With a youthful population that will soon form the largest global workforce, and lands blessed with natural resources beyond compare, Africa is on the verge of economic takeoff. With our brothers and sisters in the region, we are working ever more closely to realize our potential, and to ensure that the fruits of our growth are shared equitably.

That potential will be realized with the help of our partners, both new and old. That is why we are committed to delivering an environment in which their investment in the region will be rewarded. Indeed, our recent large infrastructure projects aim to open up the East coast of Africa for trade with Africa and the rest of the world. We are also investing heavily in education infrastructure to ensure that our people have the skills and

knowledge that the new Africa will require. These measures are supported by our integration agenda: the push for a common market, a customs union, and a host of other measures to strengthen the ties that bind East Africa together. Once realized, these plans will ensure that we become and remain the leading destination for investment in Africa.

Our country, much like its neighbors, has attracted global attention, following recent discoveries of minerals and hydrocarbons. Recent announcements of the availability of world-class deposits of oil, gas, coal, iron ore and rare earth minerals across the country invigorate our prospects. It is our hope that these resources will bring prosperity to this and future generations. It is our duty to realize that hope. Given our skilled men and women, our responsive governance, our enabling legal and regulatory framework, and our stable macroeconomic environment, you may be sure that an investment in the extractive industries in Kenya will be a success.

We recognize that an abundance of investors in the sector is crucial for Kenya's ability to exploit its mineral wealth. We welcome local, regional, and foreign investors to come and contribute to the development of the sector. We welcome you to join us in the epic journey to Kenya's destiny as a leader in the region, and the continent.

Karibuni Kenya.

H.E. Hon. Uhuru Kenyatta, C.G.H.

President and Commander-in-Chief of the Defence Forces of the Republic of Kenya



FOREWORD

Karibu,

Welcome to Mining in Kenya!

Over the last decade, business publications have referred to Kenya as the gateway to investments in East Africa and we are happy this is so. Our continuously developing infrastructure and educated workforce make Kenya a destination for investments in services and manufacturing. But we here at the Ministry of Mining believe this is also true for our sector, especially as increasing geological knowledge points to an ever attractive mineral potential.

This handbook is the first of its kind for the mining sector in Kenya and it is our intention that it will support your decisions to explore Kenya as a destination for mining exploration and production. We will continue to update it as regulations and conditions change, and as we continue to progress on our agenda: to provide a robust and stable legal framework, a transparent and efficient licensing process, and provide an equitable sharing of the country's mineral benefits.

Significant progress has been achieved in a number of areas that should support investment. We have set out to acquire national geological data through an aero magnetic data survey to be carried out shortly. This data will be housed in our new geo-data bank and will improve access to information for investors. We will be launching the only internationally accredited mineral certification laboratory in the East Africa region and will soon be able to provide critical mineral analytical services. We have also launched the online transactional mining cadastre which will ensure transparency and efficiency in the licensing process. Lastly, our country is investing significantly in infrastructure and energy, so as to facilitate industrial capacity. We invite you to join us in making this sector a success.

I would like to acknowledge the support of the UK Department for International Development in Kenya that supported the production of this handbook.

We hope that this publication will guide the first steps of the investors on the way to success. Additional advice and information is always available at the Ministry of Mining and we hope you will visit us whenever you feel the need.

Hon. Dan Kazungu, E.G.H.

Cabinet Secretary, Ministry of Mining





1. INTRODUCTION TO THE KENYA MINING HANDBOOK

The Kenya Mining Investor Handbook is the first guidebook for investors and those with an interest in the mining sector of Kenya. Published by the Ministry of Mining, this guide provides essential information to assist regional and international investors in understanding the mining landscape of Kenya and making informed evaluation of investment opportunities provided by the sector. The Handbook provides background information on Kenya in Section 2 and follows with an overview of the mining potential and occurrence in the country in Section 3. Section 4 provides information on the key institutions, mining terms, and fiscal provisions presented in the existing legal and regulatory framework for mining. Section 5 provides essential information on the business environment and essential procedures for conducting business in Kenya.



2. BACKGROUND INFORMATION ON KENYA

2.1 LOCATION

Kenya is located at the heart of East Africa, famous for its beautiful beaches, entrancing wildlife variety, and superior athletic prowess. The country just recently celebrated 50 years of self-governance.

Kenya straddles the equator and is located on the eastern coast of Africa. It covers a total surface area of about 586,600 square kilometres and has 480 kilometres of coastline on the Indian Ocean. It is bordered by Somalia to the East, Ethiopia and South Sudan to the North, Uganda to the West and Tanzania to the South. Kenya operates under a single time zone, GMT +3.

Kenya has relatively stable climate and is usually characterized as being warm and dry with seasonal rainfall in the months of Mar/Apr and Oct/Nov. The central highlands tend to be cooler in contrast to the northern and north-eastern areas where the weather is primarily dry and hot.

Kenya has a democratic system of governance with its parliamentary politics being characterized as open, free, fair and highly competitive. In August 2010, Kenya promulgated a new constitution that established a national government, headed by the President, as well as a county governing structure headed by Governors. The country has a bicameral parliament with the Senate and National Assembly.

According to the Kenya National Bureau of Statistics, Kenya boasts a population of about 44.35 million people with a large percentage of its population living in Nairobi which is its capital city. Kenya has a varied population that includes most major ethno racial and linguistic groups found in Africa. There are an estimated 42 different communities, with Bantus (67%) and Nilotes (30%) constituting the majority of local residents. Cushitic groups also form a small ethnic minority, as do Arabs, Indians and Europeans.

Figure 1: Map of Kenya

Source: <http://www.nationsonline.org/>

2.2 ECONOMIC CONTEXT

Since its independence, Kenya has followed a mixed economic development strategy aimed at attracting foreign direct investment. Most recent national development plans have seen Kenya remain the regional hub for trade and finance in East Africa.

Kenya is strategically located in the region with a sea port capable of handling post-panamax vessels, an extensive manufacturing base, excellent resources for agriculture and tourism, a highly skilled and industrial workforce and an international air transport hub for the region. Industrial activity in Kenya is concentrated around the three largest cities, Nairobi, Mombasa and Kisumu, though devolution of government is expected to rejuvenate county commercial centers.

The Government of Kenya is also committed to further developing a work force that can support enterprise in Kenya. The creation of a robust technical and vocational professional human resource base has been identified as quite important and it is anticipated that youth across the country will form a majority of the vocational level professionals. Comprising nearly 60% of the population, the contribution of youth to the economic production base of the country is essential and the government is keen to create opportunities for youth through employment in key sectors such as mining as well as business enterprise development and support.

Kenya just recently joined the middle income status after it rebased its GDP which lead to a 23% expansion. The country has outperformed other economies in Sub-Saharan Africa (SSA) and is now the 9th largest economy in the SSA region. GDP growth rates have been above 5% for the last five years and as of 2013, Kenya's GDP per capita was USD 1,246 with GNI per capita of USD 2,780. Public service reforms have continued to ensure that the country supports its fiscal requirements. Over 80% of the country's current budget is financed through taxes with a little under 20% being financed by non-tax revenues such as appropriations-in-aid and donor funds.

Kenya's financial system is relatively well developed primarily due to implementation of enabling regulatory controls over the sector. The banking sub-sector is relatively stable and has been able to weather recent global crises as a result of monitoring and control by the Central Bank of Kenya as well as implementation of stricter requirements on credit portfolios. The capital markets in Kenya have also steadily grown with increased activity being registered on the Nairobi Securities Exchange (NSE), the largest securities exchange in East Africa with over 60 listed companies. In the last five years, with recovery from the global financial crisis gaining

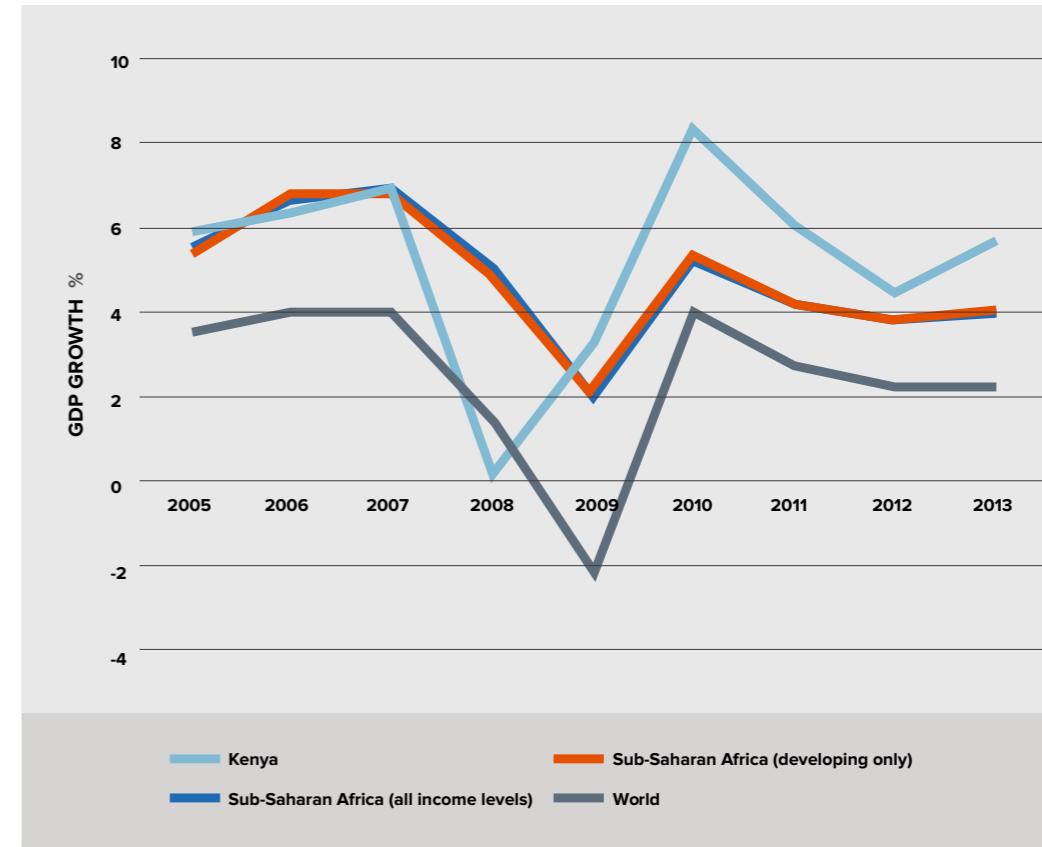


Figure 2: GDP Growth Rates 2005 – 2013

Source: World Bank

traction, the share of stock market capitalization as a proportion of GDP has improved. At the height of the financial crises, stock market capitalization was at a low of 35% in 2008 and built up to 45% in 2010. More recent statistics indicate an upward trend in market capitalization as attraction to Kenya's capital markets is realized and new products are offered to a wider range of investors.

In general, Kenya's credit worthiness is positive as it is one of the few developing countries that has not defaulted on its commitments to the World Bank and IMF since independence. Kenya's credit rating is stable with ratings by Standard & Poors at B+ while Moodys rating for Kenya sovereign debt is B1. Fitchs credit rating for Kenya is also B+. The ability to acquire sovereign debt at attractive rates is important as it has seen to the diversification of Kenya's fixed income market so that a variety of foreign and local investors regularly participate in purchase of regularly issued government securities. In addition, the fixed income market has emerged particularly useful to infrastructure development as the country seeks to issue debt to finance the capital intensive projects in this sector.

Kenya is also well-known for platforms that allow for money transfer, mobile banking, and other transactions through mobile phones and offered by various telecommunications providers and is emerging as a world leader in mobile banking.

Principal opportunities for investment lie in the fields of mining, oil & gas, agriculture, tourism, manufacturing and services. Agriculture is the second largest contributor to Kenya's gross domestic product (GDP), after the service sector. Horticulture has been an outstanding success while in the services sector, which contributes over 60% of GDP, tourism has dominated in performance and continues to be one of the principle sources of foreign exchange. Although Kenya is the most industrially developed country in the African Great Lakes region, manufacturing still accounts for only 14% of the GDP. The mining sector currently contributes less than 1% of Kenya's GDP but has potential capacity to contribute 4% to 10%. This means that much of Kenya's natural resource wealth is yet to be exploited and there could be significant opportunity for growth.



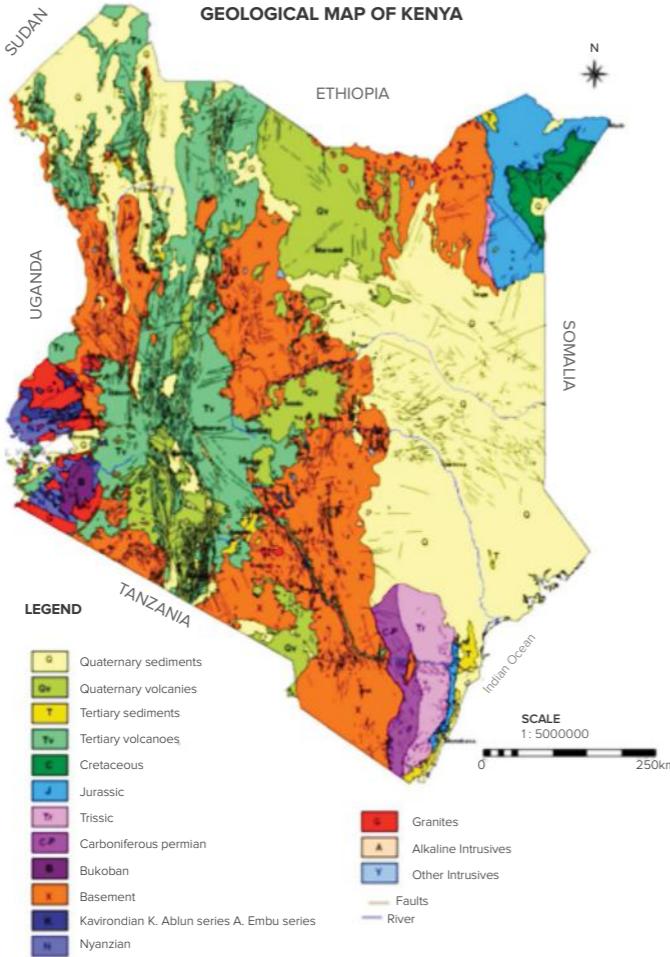


Figure 3: Geological Map of Kenya
Source: Ministry of Mining

3. MINING SECTOR AND POTENTIAL

3.1 MINING SECTOR PERFORMANCE

Kenya is still in early exploration of its mineral potential. Initially, the country was mapped as an agricultural zone and in previous generations, this led to reduced exploration for minerals.

The country is vastly underexplored for minerals and its mining sector is currently dominated by the production of non-metallic commodities. Kenya is the third largest producer of soda ash in the world and the seventh producer of fluorspar.

Metallic minerals currently produced in the country include titanium, gold and iron ore. Export statistics for Kenya indicate a constantly growing sector. In 2014, for instance, Kenya exported 281,503 mt of ilmenite, 52,465 mt of rutile and 23,000 mt of Zircon. It is however expected that with increased development, the country could contribute substantially to annual global supply. With further exploration and uptake of mineral rights then, it is estimated that Kenya will have the capacity to position itself as a regional mining sector hub for Eastern Africa.

Kenya also recently made announcements of having world class deposits of rare earth elements in the coastal region of the country. The recent discoveries are estimated to be worth USD 62.4B and will propel Kenya to the list of top five countries with rare earth deposits in the world. In addition, the country has the world's top six deposits for Niobium. Commercial deposits of coal have been discovered in the north eastern region of the country and are currently under review for potential uses and production.

3.2 KEY PLAYERS IN THE INDUSTRY

A number of global mining companies have operations in Kenya. Of note include Tata Chemicals Magadi which has its operation in the Lake Magadi region in the Great Rift Valley and is Africa's largest soda ash producer and one of Kenya's leading exporters with an annual production of about 360,000 mt of Soda Ash.

Kenya Fluorspar Company Limited has been mining fluorspar for export in the Rift Valley System since 1971. The third largest mineral income earner for Kenya, the Company has an estimated production of 100,000 tons of Fluospar annually. Since its establishment in 1942, Africa Diatomite Industries Limited (ADIL) has been exploiting diatomite in Gilgil, a town north west of Nairobi, for export. ADIL has access to good quality diatomite deposits estimated at over 6 million tons and currently boasts having the only known viable quality deposits of Diatomite in Kenya.

Kenya has sizeable deposits of limestone, marbles and dolomites mostly utilized in cement manufacturing and construction industries. Among the large cement manufacturers present in Kenya are Bamburi Cement (Lafarge Group) with an installed annual capacity of 2.3 million tons; East Africa Portland Cement Company (EAPCC) with 1.4 million tons, and Athi River Mining boasting more than one million tons. Both Mombasa Cement and Savannah Cement have nearly 1.5 million tons of manufacturing capacity.

Base Resources, who acquired the Kwale Mineral Sands Project from Tiomin Resources in 2010, consider this project to be a world class advanced development project. The Kwale mine is estimated to have reserves of 140 million tons of titanium. Through its Kenyan subsidiary Base Titanium, the project will produce 80,000 tons of rutile per year, or 14% of the world's supply, 330,000 tons of ilmenite and 40,000 tons of zircon once fully operational.

Acacia Mining (formerly African Barrick Gold) acquired in October 2012 the Aviva Corporation interest in the Bumbo base metal prospect in Western Kenya through a joint venture with AfriOre International, a wholly owned subsidiary of Lonmin Plc. The project comprises 2,800km² of the Ndori Greenstone Belt in Kenya, which in previous exploration has identified significant potential for gold, as well as copper, lead and zinc. Acacia Mining, will focus on advancing knowledge of the three primarily locations where potential gold systems and base metals deposits may exist.

Fenxi Mining, together with a local joint venture partner, Great Lakes Corporation are currently exploiting two exploration areas where coal deposits have been identified. The Company estimates that the area holds more than 400 million tons of coal reserves with estimated value of USD 40B and expects to invest close to USD 500 M in exploration and production activities.

A partial list of mining companies in Kenya is provided in [Appendix A](#).

3.3 PROMISING GEOLOGY

Numerous mineral occurrences have been recorded and mapped in the country. However, no detailed exploration work has been carried out to establish the extent of most of these mineral occurrences. Nonetheless, Kenya has numerous ores and industrial minerals which have been established to be in substantial quantities. These minerals include soda ash, fluorspar, titanium, niobium and rare earth elements, gold, coal, iron ore, limestone, manganese, diatomite, gemstones, gypsum and natural carbon dioxide.

A. CHARACTERIZATION OF KENYA'S GEOLOGY

Kenya's geology is characterized by:

- Archean Granite/greenstone terrain in western Kenya
- The Proterozoic Kisii group of rocks
- The Neoproterozoic "Pan- African System" Mozambique Belt which underlies the central part of the country
- Upper Palaeozoic, Mesozoic Karoo to Recent sediments underlying the eastern and coastal areas.

The table below summarizes the key features of the geological systems and their corresponding mineral occurrences.

GEOLOGICAL SYSTEM	KEY FEATURES IN KENYA	MINERAL OCCURRENCE
The Nyanzian Shield (Nyanzian and Kavirondian System)	<ul style="list-style-type: none">• Forms the Nyanza Craton which are the oldest rocks (2,500 million years) in the country• The Nyanzian system is mainly composed of lavas and pyroclastics with minor sediments and banded ironstones.• The Kavirondian system mainly consists of grits, sandstones, grawackes and conglomerates.	<ul style="list-style-type: none">• Metallic mineralization of base and precious metals are known to occur.• Gold, copper and silver have been mined.• Potential for ferrous and no-ferrous metals with Kimberlitic bodies also being reported.

GEOLOGICAL SYSTEM	KEY FEATURES IN KENYA	MINERAL OCCURRENCE	GEOLOGICAL SYSTEM	KEY FEATURES IN KENYA	MINERAL OCCURRENCE
Mozambique Belt	<ul style="list-style-type: none"> A structural unit within which a wide variety of meta-sedimentary and meta-igneous rocks are found. Basic igneous complexes are found and range in size from bosses to small dykes. Occur both east and west of the Rift Valley. Majority of Mozambique rocks have been placed in upper Precambrian (Proterozoic). 	<ul style="list-style-type: none"> Kyanite, corundum, graphite, wollastonite, marble, asbestos, fluorspar, magnesite, kaolin, variety of gemstones are found. Minerals are found together with minerals associated with basic and granite rocks. 	Tertiary and Quaternary Volcanics	<ul style="list-style-type: none"> Volcanic rocks cover the central parts of Kenya from South to North. There are many sedimentary deposits in various parts of Kenya that usually occur at the base of volcanic succession, intercalated with it or occurring in tectonic troughs. Oldest volcanics are of Lower Miocene Afre and comprise the eroded lavas and pyroclastic piles of South Nyanza. Further eruption accompanied by faulting persisted and also gave rise to the Rift Valley and the volcanic piles of Mounts Kenya, Elgon and Kilimanjaro. 	<ul style="list-style-type: none"> Host a variety of minerals and construction materials. Have deposits of clays, evaporates, soda ash, diatomite, natural carbon dioxide, kunkar and gypsum. Gem quality rubies have recently been discovered as well.
Palaeozoic and Mesozoic Formations	<ul style="list-style-type: none"> Palaeozoic and Mesozoic formation are found near the coast and in north-eastern Kenya. Earliest of these rocks are Permo-Carboniferous which are mostly sandstones and shales that form the Duruman series. Equivalent to the Karoo system in Southern Africa. The local formations are Taru; Maji-ya-Chumvi; Mariakani and Mazeras which extend for approximately 100km. 	<ul style="list-style-type: none"> Rocks in these formations are sources and hosts of limestone, gypsum, clays, manganese, and construction materials. Base metal mineralization, lead-zinc-barite and copper are known to occur in the sedimentary basin along the coastal belt. Heavy mineral sands also occur along the coastal beach sands that host recently discovered deposits of titanium. 	Tertiary and Quaternary Sediments	<ul style="list-style-type: none"> There are numerous deposits of sediments in various parts of Kenya, usually occurring at the base of volcanic succession, intercalated with it or occurring in tectonic troughs. Important sediments of middle Pleistocene are the Olorgesailie lake beds; a lacustrine series with much diatomite, mammalian fossils and artefacts. The Suguta Valley and Lake Turkana sediments are expected to yield further interesting information. 	<ul style="list-style-type: none"> Host a variety of minerals such as Manganese, Coal and Iron.

Figure 5: Geological Systems, Key Features, and Mineral Occurrences in Kenya

Source: Kenya Mining Journal Supplement 2007 and Geological and Mineral Potential of Kenya

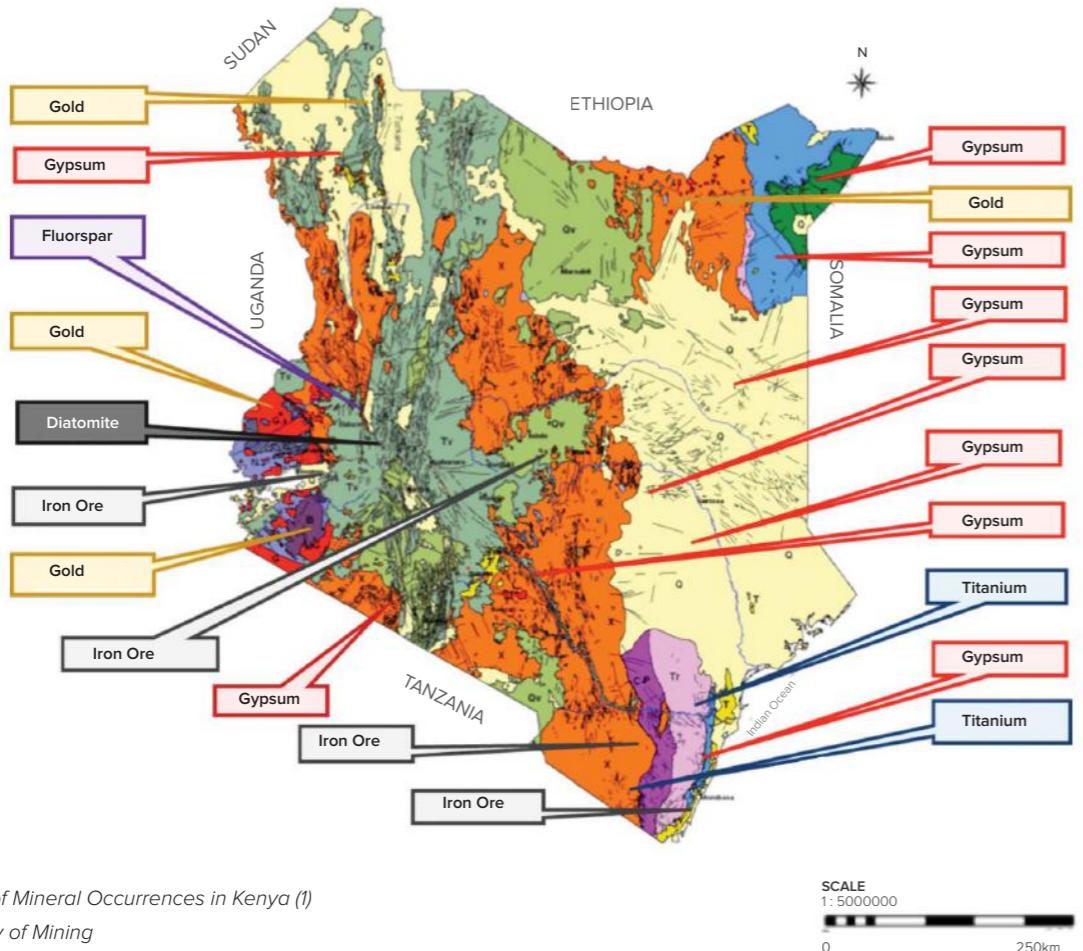


Figure 7: Map of Mineral Occurrences in Kenya (1)

Source: Ministry of Mining

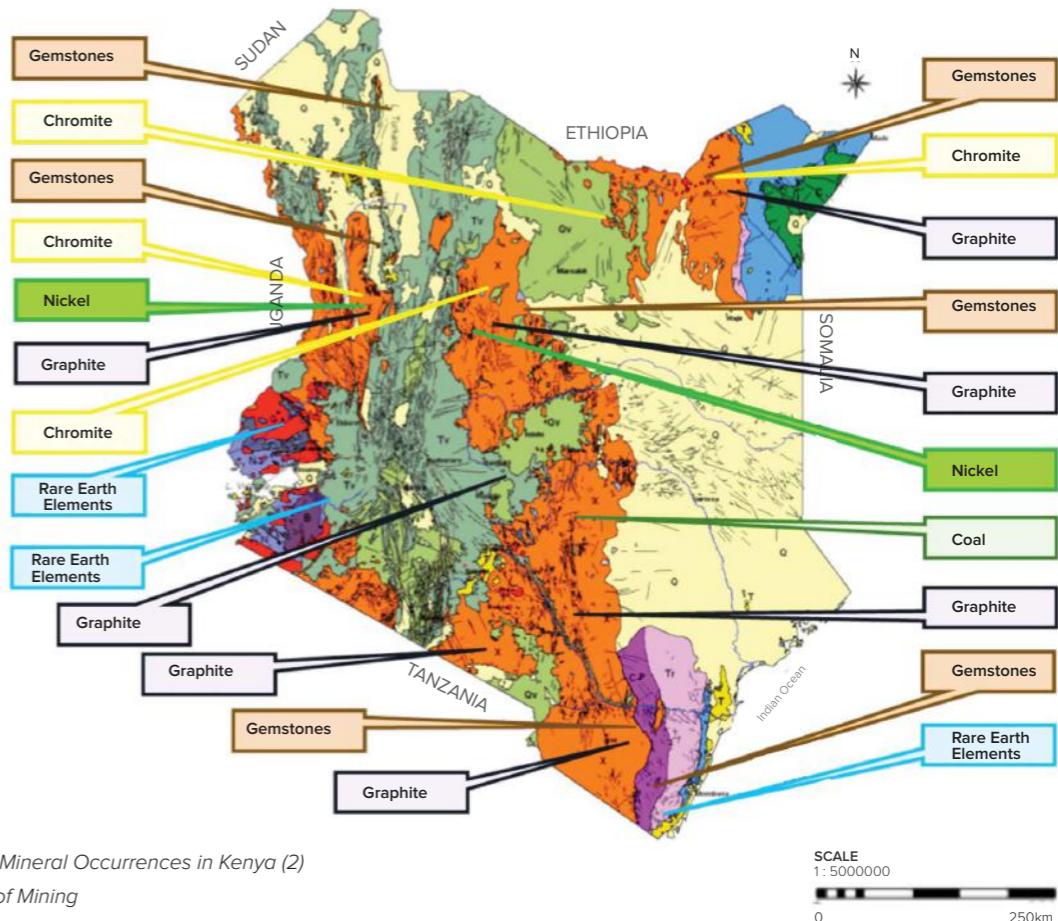


Figure 8: Map of Mineral Occurrences in Kenya (2)

Source: Ministry of Mining

B. MINERAL OCCURRENCES IN KENYA

As noted previous, much of Kenya remains a greenfield with much of its mineral potential unquantified; however, registered mineral occurrences are in the following locations:

REGION	COUNTY	MINERALS
RIFT VALLEY	Kajiado	Soda Ash, Feldspar, Limestone Gypsum, Gemstones, Marble & Granite(dimension stone)
	Uasin Gishu	Carbon Dioxide Gas,
	Elgeyo Marakwet	Fluorspar
	Baringo	Gemstones (Baringo Ruby), Diatomite
	Nakuru	Diatomite
	Turkana	Gold, Gemstones, Gypsum
	West Pokot	Gold, Gemstones, Chromite
	Samburu	Gold, Gemstones, Manganese, Chromite, Vermiculite
	Narok (Transmara)	Gold
	Nandi (Kibigori)	Gold
WESTERN	Kakamega	Gold, Dimension stone
NYANZA	Siaya	Gold, Iron Ore
	Migori	Gold, Copper
	Homa Bay	Iron Ore, Gold

REGION	COUNTY	MINERALS
CENTRAL	Kiambu	Carbon Dioxide, Diatomite
	Machakos	Gypsum, Pozzolana,
	Kitui	Coal, Iron Ore, Copper, Gemstones, Limestone, Magnetite
	Makueni	Vermiculite, Gemstones
	Tharaka Nithi	Iron Ore, Gemstones
	Isiolo	Gemstones
	Marsabit	Gold, Gemstones, Manganese, Chromite
COAST	Taita Taveta	Iron Ore, Gemstones, Manganese, Graphite
	Kwale	Gemstones, Heavy Mineral sands (titanium minerals), Silica Sand, Rare Earth Elements, Niobium
	Kilifi	Titanium Minerals, Manganese, Barytes, Gypsum, Gemstones
NORTH EASTERN	Tana River	Gypsum
	Garissa	Gypsum
	Mandera	Gypsum

Figure 6: Summary of Mineral Occurrences in Kenya by Region
Source: Ministry of Mining

3.4 STRATEGIC DEVELOPMENTS

Several developments in the sector will make Kenya a more attractive destination for mining investments.

A. ESTABLISHMENT OF THE MINISTRY OF MINING

Recognizing the importance of mining to the achievement of national development goals, the government established the first ever Ministry of Mining. The Ministry has set out to grow the contribution of extractives to the country's GDP and has spearheaded several projects that will put Kenya on the global map as an investment hub for the Mining sector in East Africa.

B. ACQUISITION OF DATA

The Ministry of Mining has intensified efforts to acquire mineral and geological data. A countrywide aero magnetic survey project is expected to begin imminently. The contract to acquire the data has been awarded to the Chinese Geological Institute, a non-commercial entity and government body, which will work under the supervision of an independent panel that will ensure the quality of data acquired is up to international standards. Additionally, the Ministry has upgraded data acquisition and processing systems and it is anticipated that access to national geological data for investors will be simplified considerably.

C. FORMATION OF MINING CERTIFICATION LABORATORY AND GEO-DATA BANK

Under its current strategic plan, the Ministry of Mining is pursuing international accreditation for mining certification for its laboratory in Kenya. The laboratory will provide qualitative mineral analytical services, certify minerals, identify various precious and semi-precious minerals, carry out research on mineral analytical techniques; and provide assay and lapidary services. Together with the national geo-data bank that will house the national mineral and geological data, investors can be sure to access critical preliminary information that will enhance their ability to exploit minerals in Kenya.

D. MINING CADASTRE SYSTEM

The Ministry of Mining has automated its mineral licensing system through the launch of an online mining cadastre portal. This system will increase efficiency and transparency in the grant of mineral rights and concession management.

E. INFRASTRUCTURE PROJECTS

Infrastructure development is a key economic pillar in Kenya's Vision 2030, the nation's development blueprint. The country is therefore investing heavily in infrastructure projects that, collectively, will ensure that mining operations costs are reduced over time. These include:

New Paved Roads Construction Project

(<http://www.kura.go.ke/index.php/media/news-a-events/98-kenya-set-to-build-10000km-of-roads-through-alternative-financing.html>)

The Government of Kenya has embarked on a roads construction project under which the Government will work with private parties to finance, design and oversee construction and maintenance of 10,000 km of new paved roads in the country. The project, launched in 2014, will be carried out in three phases over the next five years and will target construction of both minor roads and new highways. The additional paved roads will ease transportation within the Country and lower the cost of doing business in Kenya.

Mombasa Port Efficiency Project

The Mombasa Port is the largest and busiest port on the East Coast of Africa and in June 2014, a project to increase the Port's efficiency was launched. Due to an approximate 10% increase in traffic annually, additional construction of berths, container terminals, and dredging of a large channel are anticipated under this project. Additional investments in port operations have already resulted in significant reductions in the number of days it takes for cargo to clear; it is possible now to clear cargo in three (3) days from previous ten days. The benefits of such efficient operations at the Port to mining companies cannot be underscored enough and it is clear that improvements will only secure Kenya's places as the region's center for the trade and transit.

Standard Gauge Railway

(http://www.vision2030.go.ke/index.php/projects/details/Macro_enablers/197)

Construction of the standard gauge railway (SGR) from Mombasa to Nairobi is underway with a planned expansion further in the interior to connect to Uganda on the western border of the country. With 40 stations for loading and offloading cargo, the SGR will have the capacity to transport cargo to and from the port in under four hours on high speed trains with modern facilities. In addition to the Mombasa Port Efficiency project, the SGR will ease the cost of importing equipment for mining operations and exporting bulk cargo from the country.

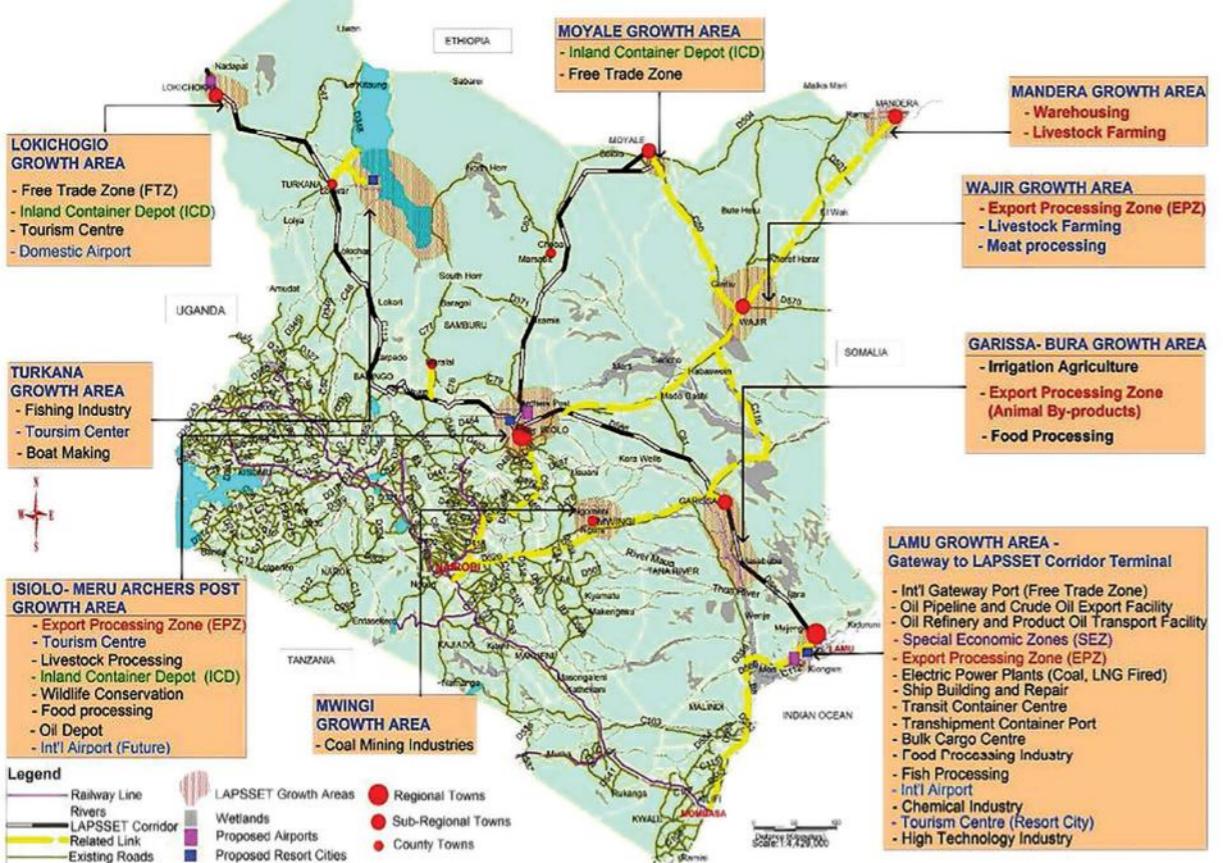


Figure 9: LAPSSET Project Detail

Source: LAPSSET Corridor Development Authority

National Optic Fiber Project

(<http://www.icta.go.ke/fibre-project/>)

The National Optic Fiber Backbone Infrastructure Project is set to position Kenya as the leading communications hub in Africa. The implementation of the project across all 47 counties in Kenya will ease communication across counties in Kenya and across countries in Africa. The project will cover 2,100 kilometers of national fiber optic infrastructure to connect Nairobi with other key towns therefore easing the cost of communication and improving delivery of Government services across the country.

LAPSSET Project

(<http://www.lapsset.go.ke/profile>)

The Lamu Port and South Sudan Ethiopia Transport (LAPSSET) Corridor, one of Kenya Vision 2030's flagship infrastructure development projects, has also registered significant progress. LAPSSET anticipates the development of a new transport corridor from the new port of Lamu through to Ethiopia and South Sudan. Once completed, the project will increase transportation connectivity to the Northern parts of Kenya and facilitate emerging mining exploration activity.

The Lamu port construction began in March 2012 and once completed, it will be an international port handling over twenty four million tons of cargo. This port will have 20 berths by 2030 and will have associated infrastructure such as causeway, port access roads, railway yard and electricity supply.

The National Highway construction project has also registered significant progress with completion of the 505 km of roadway (Isiolo – Moyale Road) to the border of Ethiopia having scheduled for completion in 2014. This road provides direct access to Ethiopia as well as opens up the vast mineral potential of Northern Kenya to the rest of the continent and the world. In addition to the Isiolo – Moyale road construction, the Kitale- Lodwar- Nadapal highway design has been completed and construction contracts already awarded.

With recent discoveries of oil and gas in Kenya and Uganda, continued production of crude oil in South Sudan and earnest exploration ongoing in Ethiopia, the oil pipelines and refineries are a major component of the LAPSSET Corridor project. The crude oil pipeline, extending from the Hoima in Uganda to Lamu in Kenya with branches to South Sudan, will be the longest heated pipeline in the world at an estimated length of 1,335 km. The refined products pipeline from Lamu to the North Eastern part of Kenya and Ethiopian will ease the current reliance on Mombasa for refined products to the North of the country and thus reduce the cost of refined products across the region.

F. ENERGY COSTS

The Government has embarked on reducing the cost of energy in the country and is on track to deliver 5,000MW of electricity power output to the national grid by 2017. As at October 2014, there was an impressive 30% reduction in energy costs and further decreases are expected. Additional power to the national grid will stimulate economic growth in Kenya's various industries with the Mining sector amongst those that will be positively affected with reduction in cost of energy. According to the Ministry of Energy and Petroleum, at project end, with industrial tariffs well under USD 0.09 per kWh, Kenya will be as competitive as other investment destinations in Africa.



4. INSTITUTIONAL, LEGAL & REGULATORY FRAMEWORK

4.1 KEY INSTITUTIONS

The institutional, legal, and regulatory framework for the mining sector in Kenya is guided by the Mining Act, Cap. 306. Under this law, presented in detail below, minerals are vested in government as administered by the Commissioner of Mines and Geology under the oversight authority of the Minister (now Cabinet Secretary) in charge of minerals and mining. The mandate of the Ministry includes:

- Mineral exploration and mining policy and management;
- Inventory and mapping of mineral resources;
- Mining and minerals development;
- Policies on the management of quarrying and mining of rocks and industrial minerals e.g. limestone, building stone, clay, gemstones, cement, sand, coal, etc.
- Management of health conditions and health and safety in mines;
- Policy around extractive industry;
- Resources survey and remote sensing; and
- Maintenance of geological data (research, collection, collation, analysis).

The Cabinet Secretary (CS) is supported by the Principal Secretary (PS) and as provided in the Mining Act, the Commissioner of Mines and Geology is the chief technical advisor to the Cabinet Secretary. The Commissioner of Mines and Geology conducts the day-to-day operations that realize implementation of the provisions of the Act. The Commissioner is supported by a team of officers as provided by the Act and directed by the Cabinet Secretary.

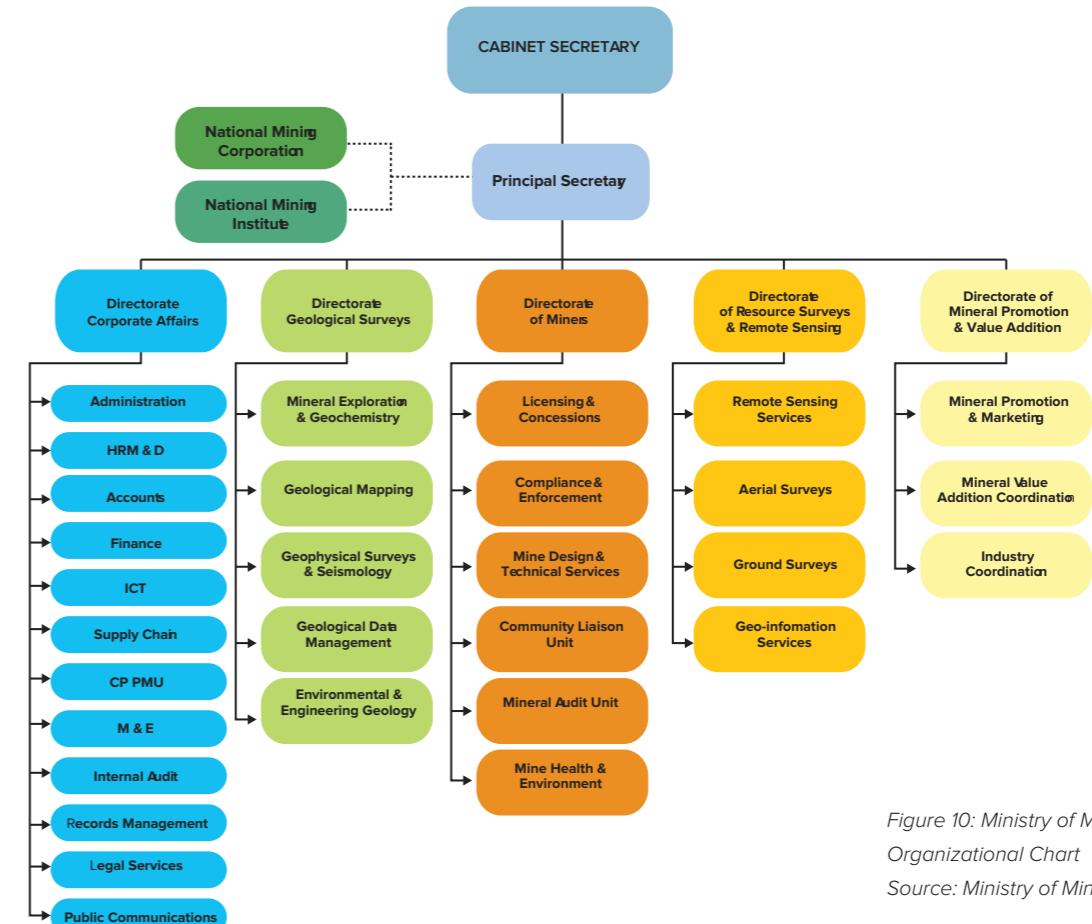


Figure 10: Ministry of Mining
Organizational Chart
Source: Ministry of Mining

The table below details other key institutions:

INSTITUTION	ROLE
Ministry of Environment, Water and Natural Resources	<ul style="list-style-type: none"> Its mandate is to develop policy and provide direction in the sustainable use of natural resources, water, and environment to secure the livelihoods of Kenyan citizens. The environmental policies have the goal of minimizing the impacts of the mining activities.
The National Environmental Management Authority	<ul style="list-style-type: none"> Through the National Environmental Management Authority (NEMA), the government implements environmental management and the conduct of all audit and monitoring activity. Mining prospecting and processing activities and related projects must undergo environmental impact assessment (EIA), environmental audit and monitoring continually. These activities are coordinated by NEMA as per the Environmental Management and Coordination Act 1999 (EMCA) and a subsidiary legislation, the Environmental Impact Assessment and Audit Regulations (EIAAR) 2003.
The National Treasury	<ul style="list-style-type: none"> The National Treasury has a mandate to formulate finance and economic policy among other critical functions related to its role as custodian of national assets and financial resources. As supervising ministry for entities related to taxation and remit of funds provided to government for various investment activity, its policies and related laws have an impact on the investment environment in the extractives industry.
The Kenya Revenue Authority	<ul style="list-style-type: none"> The Kenya Revenue Authority (KRA) has the mandate to assess and collect taxes on behalf of government. In as far as development of taxation policy and implementation of the same, KRA remains a key stakeholder in understanding and interpreting taxation law as well as its application in industry.

INSTITUTION	ROLE
Kenya Investment Authority	<ul style="list-style-type: none"> Mandated under the Investment Promotion Act 2004 to promote and facilitate investment in the country. In addition to providing services for registered investors, they are an important stakeholder in understanding the incentives that exist for investors in various sectors including the extractive industries. Their work in advocating for investor promotion and rights has some implication for parties interested in beginning business operations in Kenya. its policies and related laws have an impact on the investment environment in the extractives industry.
Ministry Of Lands, Housing, and Urban Development	<ul style="list-style-type: none"> Charged with the responsibility of ensuring efficient administration and sustainable management of the land resource in the country. Licensing process requires several certifications from the Ministry on documentation.
National Land Commission	<ul style="list-style-type: none"> The National Land Commission (NLC) is the constitutional commission charged with the responsibility of administering transactions related to public land and those involving exploitation of natural resources on behalf of both national and county governments. The NLC provides approvals of consents for public land and resolves any other land matters.
County Governments	<ul style="list-style-type: none"> County governments, in an effort to bring governance closer to communities and citizens, are charged with development of counties and administration of activities in local jurisdictions. Notifications to County governments are required in licensing and their consent is required before any prospecting or mining activity begins.

Figure 11: Summary of Key Institutions

4.2 MINING LAW AND RELATED TERMS

The Constitution of Kenya 2010 (the “Constitution”) is the supreme legislation of Kenya and it provides guidance on the use and protection of natural resources. The Constitution vests ownership of all minerals and mineral oils on the Kenyan people with the national government holding them in trust on their behalf. The Constitution also provides that granting of agreements for exploitation of natural resources must be ratified by Parliament.

The Mining Act, Chapter 306 of the Laws of Kenya was first promulgated in 1940 with revised editions being published severally including most recently in 2012. In keeping with requirements for harmonization of all laws with the Constitution, the Mining Bill 2015 has been approved by the National Assembly and reviewed by the Senate. It is presently awaiting the final approval by parliament and assent by the President.

The Mining Bill vests ownership of mineral resources in the government as the trustee of the people of Kenya. The Minister (now Cabinet Secretary) administers the right to explore and exploit mineral resources and appoints the Commissioner of Mines and Geology to implement provisions of the Act.

Some important provisions to note in the Act are:

Right to Prospect and Mine:

The legal and regulatory regime for mining in Kenya allows for licensees to prospect and mine on any land subject to terms and conditions stipulated by the Commissioner of Mines and Geology (the Commissioner). Parties may make application for prospecting licenses to the Commissioner, pay prescribed fees, and conduct prospecting activities following approval of such applications.

Prospecting licenses take the form of exclusive prospecting licenses and/or special prospecting licenses. Conferred rights allow licensees to create prospecting areas, building facilities for operations, access water, and secure prospecting areas provided they abide by terms and conditions. Prospecting licenses also confer the right to remove and dispose of any minerals for which prospecting activity was licensed subject to approval of the Commissioner and payment of prescribed royalties, and additional fees, if any.

The right to mine is conferred to holders of prospecting licenses or locations and mining licenses in the form of leases. All leases are subject to approval by the Commissioner of Mines and when granted, leases confer exclusive rights to access the land, to mine, and remove and/or dispose of the minerals for which the prospecting licenses were issued. The law provides that the Commissioner may authorize the mining of minerals other than those for which a license or lease was registered.

Prospecting and mining for diamonds requires special authorization from the Commissioner and is further regulated by the Diamond Industry Protection Act.

Mineral and Surface Land Ownership :

As mentioned previously, all natural resources are vested in the people of Kenya with the government as trustee. Minerals are classified as public land and therefore belong to all the citizens of Kenya. There is thus a distinction in the ownership of subsurface land and minerals and surface land. The law requires that holders of prospecting and mining titles secure access to the land required for prospecting and mining and offer fair compensation for the same. Specifically, the licensing procedures require consents from local communities, owners and occupiers of land, as well as other governing bodies at the devolved level of government. Licensees are also obligated to offer fair compensations for damages, obstructions, and other inconveniences, to owners and/or occupiers of the land, where applicable.

Security of Tenure :

The Constitution of Kenya 2010 guarantees the protection of life and private property and therefore prospecting and mining titles are secured in form and tenure. The Mining Act further secures prospecting and mining titles provided terms and conditions are adhered to, work programs are fulfilled, and timely payments of fees are made. There are provisions in law that clearly state the conditions under which licenses and leases may be revoked.

Duration and Renewals :

Prospecting licenses are typically valid for a year and subject to renewal for a maximum of five (5) years. Mining leases, on the other hand, can be issued for durations between 5 and 21 years. Leases can be renewed for any duration not exceeding 21 years. Extensions on both licenses and leases can be granted by the Commissioner of Mines, as deemed fit. Renewals have assessed fees and are predicated on the completion of work programs subject to approval of the Commissioner of Mines. Special Prospecting Licenses and Mining Leases have no restriction on duration of prospecting or mining, as case may be.

Prospecting Areas :

The sizes of prospecting and mining areas are dictated by the type of license conferred. Locations have the most limited areas ranging from 1,000 m² to 50,000 m². Licenses and lease have a minimum of 1,000 km² and areas are bounded by applicants (as submitted in their work programs). There are provisions within the law to issue special prospecting or mining titles with unlimited prospecting areas.

Right to transfer rights :

Licensees are allowed to transfer licenses with the consent of the Commissioner. Transfers are subject to application and transfer fees.

Dispute Resolution :

In the Mining Act, all disputes are referred to the Commissioner of Mines and Geology for resolution. The Commissioner's decisions are final but appeals may be referred to the High Court of Kenya. The dispute resolution mechanism provided in the Act does not preclude parties from instituting proceedings in court as provided by law.

Trading and Dealing in Minerals :

Kenyan law regulates dealing in minerals and requires annual registration and licensing for parties buying, selling, and/or exporting minerals. Parties with mining licenses are not required to have dealing licenses as the law confers the right to dispose of the minerals they have mined.

Export Permits :

When an investor has started production and wants to export a mineral consignment, the ministry processes his or her export through an export permit. The exporter is expected to pay an application fee along with royalties for the mineral consignment before permits are granted. This provision also applies to licensed mineral dealers.



Environmental Matters :

In Kenya, the environmental matters are regulated by a legal and institutional framework established by the Environmental Management and Coordination Act (EMCA) 1999. Subsidiary legislation, Environmental Impact Assessment and Audit Regulations (EIAAR) 2003, prescribes procedures for environmental regulation. In addition to addressing principles for sustainable development that promotes responsible use of natural resources, EMCA spells out the requirements for environmental impact assessment for industrial activity including mining activity. It confers the responsibility to the National Environmental Management Authority (NEMA) for EIA planning and implementation as well as environmental audit and monitoring.

Mining operations under the environmental laws of Kenya are required to conduct environmental impact assessments and receive a license. The process is supervised by the National Environmental Management Authority (NEMA) and requires that a registered EIA expert conduct the study and develop appropriate action plans. The EIA process requires a period for public participation and project owners are required to hold at least three public meetings with the affected parties and communities.

Once an EIA study is completed and filed, and authorities are satisfied as to the adequacy of the EIA, NEMA will issue an environmental impact assessment license. The license is issued subject to such terms and conditions as may be appropriate and necessary to facilitate sustainable development and sound environmental management. Implementation of the EIA, its requirements, plans, and recommendations remain the purview of the project owner.

An allocation of 0.1% of the total project cost is assessed by NEMA as the cost of administrating the EIA.

County Government and Community Notifications :

Participation of local communities in the licensing process is protected under the Constitution of Kenya 2010 and remains a critical issue in licensing. Most of the exploration and mining activities take place, or are going to be carried out, in the communities which fall under the administration of the County Governments. Additionally, most of the lands that are likely to be the subject of mineral rights are owned by communities. It is therefore important that communities and counties have a say in how mineral resource development impact their livelihoods and at a minimum, information disclosure for minimal citizen participation during the different stages of the mining project is expected.



Consequently, the mining legal and regulatory framework requires that communities and the relevant county governments where mineral activities are likely to take place are notified and their consents sought before mineral operations are carried out on their land. The notification requirements provide a platform for the county, community, landowners and lawful occupiers to get to know the applicants of licenses. It also allows them to seek answers from the Applicant and the Ministry of Mining on the potential impacts of an intended mineral activity on their livelihoods. It is also intended that this process ensures free, prior and informed consent before the actual commencement of any mining operations. Therefore, the notification of the communities and the county government through publication and the facilitation by the Ministry of Mining (after the receipt of a complete application) for the applicant to meet the community and discuss its intentions constitutes the first leg of the entire licensing process.

4.3 FISCAL TERMS

Fiscal terms for mining in Kenya are covered under the Mining Act and the Finance Act 2014. Provisions of note include:

Fees :

The Mining Act provides for assessment of fees for licenses and other activities related to prospecting and mining.

Royalties :

The Mining Act makes provision for royalties to the government with respect to extracted minerals and several regulations issued by the ministry in charge of mining and minerals have, over time, stipulated the levels of royalties. Different rates apply to different minerals. The most recent royalties are published in legal notices and are made publicly available.

Ring Fencing :

Kenyan law provides that expenses incurred in a mining license area can only be utilized against revenues derived from the same license area.

Corporate Tax :

This is a direct tax on profits made by corporate bodies and governed by the Income Tax Act, Chapter 470, which details the determination of taxable income and rates of taxation. The normal rates are 30% for resident companies and 37.5% for non-resident companies.

Value Added Tax (VAT) :

VAT is administered under the Vat Act No. 35 of 2013. Registration for VAT is compulsory where the annual turnover is expected to be KES 5 million and more in taxable supplies. It is a consumption tax levied on designated goods and services. The normal rate for VAT is 16%.

Supplies of services or goods made to extractive companies for direct and exclusive use in mining exploration or prospecting are exempt from VAT upon recommendation by the Cabinet Secretary for Mining. Importation of capital goods i.e. plant, machinery, and equipment, is also exempt from VAT.

Income Tax :

The income tax rates applicable in Kenya are 30% for residents and 37.5% for non-residents. A non-resident subcontractor who derives a fee for the provision of services to a licensee in mining operations is liable to pay non-resident withholding tax of 20% on revenues.

Withholding Tax on Natural Resource Income :

Natural Resource Income is defined to mean “any amount including a premium or such other amount paid as consideration for the right to take minerals or non-living resources from land, sea or an amount calculated in whole or part by reference to the quantity or value of minerals living or non-living taken from land or sea.” Transactions that are classified within natural resource income include overriding royalties and production payments amongst others.

Further the following payments made by licensee to a non-resident shall be subject to withholding tax: (i) 20% on Service fees for non-resident persons; (ii) 10% on dividends; (iii) 15% on Interest payments; and (iv) 12.5% on management or professional fees.

Tax Losses :

Tax losses incurred in respect of mining operations can be carried forward indefinitely and are allowed as deduction against future income of the licensee arising from the same license area. If a licensee suffers a loss in relation to their mining operations in the year it ceases operations, it may transfer that loss to another license if the second license falls wholly within the area covered by the first license. Alternatively, the licensee may elect by notice in writing to the Commissioner to treat the loss as arising in relation to the mining operations undertaken by the licensee in the contract area in the previous year of income. The tax loss may then be carried back for not more than three years of income from the year in which the loss arose.

Rehabilitation Expenditure :

Rehabilitation expenditure incurred by a licensee is deductible for tax purposes. An amount accumulated in an escrow account to be used in the rehabilitation costs, will be tax exempt. However, if the amount is withdrawn and returned to the licensee, it is subject to tax. Additionally, any surplus in the escrow account established under an approved decommissioning plan will be subject to income tax.

Customs Requirements :

Machinery and inputs but not including motor vehicles imported by a licensed company for direct and exclusive use in mining operations are exempt from import duty. There are however other levies introduced from time to time through the Finance Act, such as the Railway Development Levy (RDL) paid on all goods imported into the country. Mining companies are not exempt from such. The current rate of the RDL is 1.5%.

Capital Gains on Farm Outs :

Gains arising from the assignment of mining interests will be taxed at prevailing corporate tax rates of 30% for resident mining companies and 37.5 % for non-resident mining companies. The tax base is the net gain where all past expenses related to the assigned interest are deducted. Working obligations and/or future carry in operations are excluded from the consideration deemed realized from the disposal of mining interests. Reimbursement of past costs and any premium earned on the disposal of an interest are part of consideration under the new law.

Notification to Kenya Revenue Authority in event of Change of Ownership :

A licensee is required to notify the Kenya Revenue Authority in writing, if there is a 10% or more change in ownership.

4.4 LICENSES, PERMITS, AND PROCEDURES

In order to qualify for any of the licenses and leases allowed under the Mining Act, individuals must first apply for a Prospecting Right. The Prospecting Right allows individuals and agents of companies, bodies of persons, and partnerships to prospect on any land as authorized by the Commissioner of Mines and Geology and qualifies them to acquire licenses and peg locations. This is the first step in acquiring all other mining licenses. The types of licenses available are:

Mining Location :

Mining locations are mostly granted to small-scale miners. Regulation allows for eight (8) locations per district and conditions attached to their grant are less onerous than in the case of other titles. A location consists of a block of not more than ten claims. A claim is an area of:

- 20,000 m² (or 200 m x 100 m) in the case of precious metals (gold, silver etc.) and precious stones (ruby, emerald, opal etc.)
- 50,000 m² (or 250 m x 200m) for all other minerals (copper, lead, graphite, barite etc.)

Exclusive Prospecting License :

Exclusive Prospecting Licenses are granted over areas 1,000 km² or more as selected by the applicant who has: a valid Prospecting Right; deposited necessary securities and fees with the relevant authorities in the area over which the application made is situated; written consents from relevant local authorities; consents from land owners; and other approvals by the Commissioner of Mines and Geology.

Special Prospecting License :

Similar to the Exclusive Prospecting License, the Special Prospecting License is granted to applicants with a valid Prospecting Right and other qualifications as noted above, with the exception that these are granted for previously closed or excluded areas for mining such as game reserves, forest reserves, etc.

Mining Lease :

A Mining Lease bestows mining rights and is granted for the exploitation of a mineral deposit which has been discovered following successful prospecting and exploration under either of the first three types of licenses.

Special Mining Lease :

The Special Mining Lease is similar to the Mining Lease in form with the exception that it is granted for areas previously closed to mining. There is not a restriction on acreage nor limits to mining duration.

Appendix B: Application Procedures for Licenses and Permits summarizes the procedures for applying for above noted licenses.



5. BUSINESS ENVIRONMENT

5.1 STARTING A BUSINESS

In Kenya, companies are regulated and registered under the Companies Act (Cap 486) and may be categorized as registered limited liability corporations, branch office of a foreign company, partnership and/or sole proprietorship.

Companies are required to register business names, file company documentation, and pay prescribed registration fees before they can conduct any business in Kenya. The Registrar of Companies will receive company documentation including Memorandum of Articles, Articles of Association, and various forms on shareholding, office registration, and requisites consents and then issue a certificate of registration. Partnerships and sole proprietorships will usually file a statement of particulars form with the Registrar of Companies together with prescribed filing fees before they are issued with registration documents.

In addition, businesses must register for Personal Identification Numbers (PIN) and Value Added Tax (VAT) numbers with the Kenya Revenue Authority. County governments will usually assess fees for business permits as well.

A foreign based company may conduct its business in Kenya by setting up a local representative branch office. The company is required to register the branch with the Registrar of Companies within 30 days of opening the offices. Registration requires submission of documentation and requisite filing fees.

NO.	PROCEDURE	ESTIMATED TIME OF COMPLETION (DAYS)
1	Registration of legal entity, statistical and tax registration with the Centre for Public Registration	3
2	Stamping the MoA & Articles of Association & a Statement of Nominal Capital	5
3	Payment of stamp duty at a commercial bank designated by K.R.A	1
4	Signing of Declaration of Compliance (Form 208) before a Commissioner of Oaths/Notary Public	1
5	Filing the forms with the Registrar of Companies at the Attorney General's Chamber	7 - 14
6	PIN and VAT registration through the KRA	1 - 2
7	Application for a business permit	5
8	National Social Security Fund (NSSF) registration	1
9	National Hospital Insurance Fund (NHIF) registration	1
10	Pay As You Earn (PAYE) registration	1
11	Creation of a company seal	2

Figure 12: Summary of Business Registration Procedures

Source: Doing Business in Kenya Economic Profile 2015 World Bank

5.2 LABOR

Kenya has an abundant supply of well trained and skilled labor force rated among the best educated in Africa, with literacy rates well over 80%. Due to these high levels of education and substantial resources in areas such as business support services, Kenya presents prospective investors with a well-developed business infrastructure.

Foreign investors are allowed to have expatriate staff in senior management, or where local Kenyans with specific skills are not available. Work permits are valid for a maximum of two years and can be renewed by the Immigration Department. Recent reforms have seen a revision of the fees and procedures associated with application and issuance of work permits to benefit operations planning and implementation.

5.3 LOCAL CONTENT

Kenya's private sector remains one of the more vibrant in the region with an array of sectors being well developed. The private sector has been proactive in making available an array of goods and services that can be consumed by the mining sector. While provisions for local content are negotiated on a project-by-project basis, the availability of quality goods and services in Kenya is appreciated by existing mining sector investors as it results in reduced costs of operations. As noted above, the existence of an able workforce in a number of related industries coupled with relatively low cost of labor should accrue some savings to companies as well.

5.4 INVESTOR RIGHTS

Investor Protection :

Investors have protection under the laws of Kenya. The Constitution of Kenya 2010 guarantees protection of life and private property and the Foreign Investment Protection Act offers additional protection and particularly guarantees against expropriation of private property by government. The country has extensive institutional frameworks that support and facilitate enterprise and investment development.

Bilateral Investment Treaties :

Kenya has entered into a number of bilateral investment treaties (BITs) that entitle investors to full protection and security of investment, no less favorable treatment than the State's own investors, protection against unreasonable and discriminatory treatment, and in some cases, offer fair compensation in the event that investments are nationalized. BITs current in force with Kenya include Germany, Italy, the Netherlands, Switzerland, and the United Kingdom. According to UNCTAD, Kenya has signed but not put in force BITs with Burundi, China, Finland, France, Kuwait, Libya, Mauritius, and Slovakia.

Investment Certificate :

Obtaining an Investment Certificate is a useful first step for foreigners investing in Kenya. An Investment Certificate grants the investor such benefits as entitlement to all licenses required for his or her operations, and work permits for three members of management or technical staff and three shareholders or partners valid for 2 years each.

An investor may apply for an Investment Certificate from the Kenya Investment Authority (KIA) provided the investment capital is at least USD 100,000 and anticipated investment as well as activities related will be carried out lawfully and benefit the country. Though local investors are not required to have investment certificates, they may access the benefits of obtaining an Investment Certificate by application, provided that the amount to be invested is at least KES 1M and anticipated investment activities are beneficial to Kenya.

Termination of an Investment Certificate :

A foreign investment certificate may be revoked if the applicant gave corrupted or fraudulent information during the application process or if there is a breach of a term in the certificate.

In all cases, the holder of the certificate receives written notice of the Kenya Investment Authority intention to revoke it and is provided the opportunity to make representations. In practice, the Kenya Investment Authority has rarely revoked licenses and will normally rely on consultation and counsel to achieve the desired corrective action.

Exchanging and Remitting Funds :

No foreign exchange controls currently exist in Kenya and both residents and nonresidents may open foreign-currency accounts with domestic banks. No person except authorized dealers is allowed to engage in the foreign exchange business, except where the Central Bank permits a specific person or class of persons to do so, subject to the conditions it may impose. All banks, however, are required to report significant dealings in foreign exchange (over USD 10,000) to the Central Bank of Kenya.

Dispute Settlement :

In Kenyan, dispute settlement can be resolved through litigation in court, arbitration and alternative dispute resolution mechanisms.

The Arbitration Act governs arbitration and is provided for parties whose agreements include an arbitration clause. The authority of an arbitrator appointed by virtue of such an agreement is final and irrevocable, except by leave of the High Court or unless a contrary intention appears in the agreement.

Kenya is also a member of the International Centre for the Settlement of Investment Disputes (ICSID), a World Bank agreement for the settlement of disputes between States and Nationals of other States. Under this agreement, Kenya is required to recognize ICSID arbitral awards.

Kenyan courts would, as a general rule, recognize a governing-law clause in an agreement that provides for foreign law. However, the selection of such a law must be real, genuine, bona fide, legal and reasonable. A Kenyan court would not give effect to a foreign law if the parties intended to apply it in order to evade the mandatory provisions of a Kenyan law with which the agreement has its most substantial connection and which, for this reason, the court would normally have applied. The Foreign Judgments (Reciprocal Enforcement) Act (Chapter 43, Laws of Kenya) does provide, however, for the enforcement in Kenya of judgments given in other countries that accord reciprocal treatment to judgments given in Kenya. The countries with which Kenya has entered into reciprocal enforcement agreements are Australia, Malawi, Rwanda, Seychelles, United Republic of Tanzania, Uganda, the United Kingdom and Zambia. Without such an agreement, a foreign judgment is not enforceable in the Kenyan courts except by filing suit on the judgment.



APPENDICES



APPENDIX A. PARTIAL LIST OF MINING COMPANIES OPERATING IN KENYA

NO.	OPERATOR	LOCAL OR FOREIGN	LOCALITY	MINERAL SOUGHT/MINED
1	Kenya Fluorspar Company Limited	Local	Keiyo	Fluorspar
2	African Diatomite Industries Ltd	Local	Nakuru	Diatomite
3	BOC Kenya Limited	Local	Koibatek	Carbon Dioxide
4	Carbacid Co2 Ltd.	Local	Kireita (Kiambu) & Sosiani (Eldoret)	Carbon Dioxide
5	Skylight Limited	Local	Homa Bay	Iron Ore
6	Mineral Mining (1965) Corporation Ltd	Local	Kitui	Magnesite
7	Yamata Gypsum Limited	Local	Tana River	Gypsum
8	Athi Stores Ltd	Local	Tana River	Gypsum
9	Base Titanium Limited	Foreign	Kwale	Titanium Minerals
10	Tata Chemicals Magadi Limited	Foreign	Kajiado	Soda Ash
11	Karebe Gold Mining Ltd	Foreign	Nandi	Gold
12	Kilimapesa Gold Pty Limited	Foreign	Transmara, Narok	Gold
13	Acacia Mining	Foreign	Siaya, Kakamega	Gold

Source: Ministry of Mining

APPENDIX B. APPLICATION PROCEDURES FOR LICENSES AND PERMITS

TYPE OF LICENCE	RIGHTS CONFERRED	PROCEDURES	TIME FRAME (APPROX.)	NOTES
Prospecting Right (PR)	For identifying potential mineralized areas.	<ul style="list-style-type: none"> ▪ Purchase of Mining Act and acquainting oneself with its provisions & regulations ▪ Issuance of the prospecting right on payment of prescribed fees and upon filling of the necessary forms (Form 1) 	- 30 min	<ul style="list-style-type: none"> ▪ For a company an agent/attorney has to be identified for applying for/and issuance of the Prospecting Right ▪ Renewed annually subject to payment of renewal fees
Mining Locations	To carry out detailed geological investigations to quantify the mineral deposits over small areas (in unclosed zones up to 4 km ² per district)	<ul style="list-style-type: none"> ▪ Have a valid prospecting Right as in 1 above ▪ Get land owner consents ▪ Survey, obtain UTM/GCS coordinates (Datum: ARC 1960) and peg/stake the area ▪ Get County Government consents in case of trust land. ▪ Apply for the registration of the areas by filling Form 8 and enclosing sketches, certificates of business registration, etc. ▪ The application is forwarded for consideration to the Ministerial Licensing Advisory Committee, which sits fortnightly (every 2 weeks). 	<1 day One (1) or more days depending on size & No. of land owners involved 1–7 days One or more days 1 day The committee sits every 2 weeks	<ul style="list-style-type: none"> ▪ One can be authorized to undertake limited mining on establishing a deposit and after seeking authority from the CMG besides fulfilling conditions for mining. ▪ Renewal annually subject to satisfactory performance and payment of renewal fee

TYPE OF LICENCE	RIGHTS CONFERRED	PROCEDURES	TIME FRAME (APPROX.)	NOTES
Exclusive Prospecting Licenses (EPL)	To carry out detailed geological investigations to quantify the mineral deposit over large areas in unclosed zones.	<ul style="list-style-type: none"> ▪ Issuance of the necessary certificates (titles) on payment of fees ▪ Have a valid Prospecting Right ▪ Consents from land owner ▪ Consents(s) from County Governments (s) in case of trust land ▪ Apply for the Exclusive prospecting license by filling Form 6 and enclosing, Prospecting Right, Company Registration Documents, sketch plans and area description, proposed work programme, expenditure proposals, experience and financial capability ▪ Application is checked before being recommended to the Ministerial Licensing Advisory Committee, which sits fortnightly. ▪ Application is published in the Kenya Gazette for any objections within 30 days from the date of publication. ▪ If no objection, license document prepared upon payment of necessary fees. ▪ Stamp duty at land's office. 	Upon payment of fees by applicant <1 day One or more days One or more days 1 day The committee sits every 2 weeks Provides for 30 days for public comments 1–7 days license document preparation (including drawing of license plan) upon payment of fees 2 days – 1 week	<ul style="list-style-type: none"> ▪ EPLs are issued for one year and renewable annually for up to 5 years
Special Licenses (SL)	To carry out detailed geological investigations to quantify mineral deposits over closed zones	▪ Same procedures as for EPL	Same as for EPL	<ul style="list-style-type: none"> ▪ SLs have no acreage limitations ▪ One can be allowed unlimited mining ▪ SLs are normally issued for duration of 2 years and are subject to renewal(s)
Mining Lease (ML) or Special Mining Lease (SML)	Right to mine the mining deposits established under proceeding exploration licenses i.e. mining locations, EPLs and SLs	<ul style="list-style-type: none"> ▪ Undertake mining feasibility study on the established mineral deposit. ▪ Undertake cadastral survey of the deposit area by a registered surveyor and have it approved by the Director of Surveys. 	1–6 months 1–2 months depending on acreage	<ul style="list-style-type: none"> ▪ EIA reports are published in the media for public comments before approval at the applicants' cost. ▪ MLs can be issued for duration between 5 and 21 years ▪ MLs can be renewed for any duration not exceeding 21 years

Type of Licence	Rights Conferred	Procedures	Time Frame (approx.)	Notes
		<ul style="list-style-type: none"> Undertake an Environmental Impact Assessment Study (EIA) for the Mining Project, Environmental Action Plans, etc. approved by National Environment Management Authority NEMA. Undertake compensation survey estimates, negotiating rates with the landowners in case of private land. Apply for the mining lease/special mining lease by filling Form 18 and enclosing mining feasibility study report, approved cadastral survey by the Director of Surveys, EIA and Environmental Action plans (EMPs) approved by NEMA, compensation agreement with land owners, company's registration documents, financial capability, etc. Application is checked before being recommended to the Ministerial Licensing Advisory Committee Application is published once in the Kenya Gazette and three (3) times in a local newspaper at intervals of not less than a week to invite objections within 90 days from the date of last publication, at the cost of the applicant. Issuance of the mining/special mining lease followed by stamp duty at land's office. 	3 – 6 months or more 1 – 3 months or more depending on acreage and landowners - The committee sits every 2 weeks 90 days after last publication of the application 1 – 7 days	<ul style="list-style-type: none"> SLs have no duration and/or renewal limitations
Mineral Dealer's License	To trade in minerals. (Buy and sell locally or export)	<ul style="list-style-type: none"> Apply for the license indicating type of minerals and trade (e.g. export or local trade for some minerals), enclosing experience, physical address of a premises (office), financial capability, registration documents in case of a company, etc. Premises are checked/inspected and the application recommended to the Ministerial Licensing Advisory Committee License issued to the approved application Stamp duty at land's office 	- The committee sits every 2 weeks 1 – 2 days 1 – 4 days	<ul style="list-style-type: none"> Trading in minerals covers buying and selling locally and/or exporting MDLs are issued per calendar year and are renewable Fees for licenses are assessed annually
Export Permits (EP)	Authority to export a particular mineral consignment	<ul style="list-style-type: none"> Fill and submit 5 copies of export permit form attaching invoice and address of consignee. Customs documentation is done by the consignor The mineral consignment is inspected and royalty due ascertained before authorization. 	Approval within a few minutes 1 day Authorization within a few hours to a day	<ul style="list-style-type: none"> EPs are issued per particular mineral consignment

Source: Ministry of Mining





CONTACT INFORMATION

For additional information on the content of this handbook and other matters related to investing in the mining sector in Kenya, please contact:

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Or visit the **Ministry of Mining** website
www.mining.go.ke



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