



THE REPUBLIC OF KENYA

LAWS OF KENYA

**THE NATURAL RESOURCES (CLASSES OF
TRANSACTIONS SUBJECT TO RATIFICATION) ACT**

CHAPTER 387B

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CHAPTER 387B

**NATURAL RESOURCES (CLASSES OF
TRANSACTIONS SUBJECT TO RATIFICATION) ACT**

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section

1. Short title
2. Interpretation
3. Application

PART II – CLASSES OF TRANSACTIONS

4. Classes of Transactions

PART III – SUBMISSION OF AGREEMENTS TO PARLIAMENT

5. Submission of agreement to Cabinet Secretary
6. Submission of agreement to Parliament
7. Validity of agreements
8. Consideration by Parliament
9. Relevant considerations on transactions subject to ratification
10. Procedure for approval by Parliament
11. Procedure in case of different resolutions

PART IV – ADMINISTRATIVE ARRANGEMENTS

12. Register of transactions
13. Confidentiality

PART V – MISCELLANEOUS

14. Regulations
15. Computation of time
16. Savings

SCHEDULES

CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION

CHAPTER 387B

NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) ACT

[Date of assent: 13th September, 2016.]

[Date of commencement: 4th October, 2016.]

An Act of Parliament to give effect to Article 71 of the Constitution of Kenya, 2010 and for connected purposes

[Act No. 41 of 2016.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Natural Resources (Classes of Transactions Subject to Ratification) Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"concession" means the right to exploit a natural resource pursuant to an agreement between the grantor and the beneficiary or a permit issued under national or county legislation;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to environment;

"days" means calendar days;

"effective date" has the meaning assigned to it in Article 260 of the Constitution;

"exploitation" means an activity that confers or is aimed at conferring a benefit on the beneficiary of the grant of the concession or right but does not include an activity that is exploratory in nature;

"grantor" means the person who or which under an agreement relating to natural resources has granted to another the concession or right to exploit a natural resource of Kenya;

"natural resources" has the meaning assigned to it in Article 260 of the Constitution;

"permit" includes a licence or other authorization validly issued under national or county legislation;

"state organ" has the meaning assigned to it in Article 260 of the Constitution; and

"transaction" means an arrangement or other dealing between a grantor and a beneficiary under which the beneficiary lawfully acquires a concession or a right to exploit a natural resource of Kenya.

3. Application

(1) This Act applies to any transaction entered into on or after the effective date which, under Article 71 of the Constitution, is subject to ratification by Parliament on account of the fact that the transaction—

*Natural Resources (Classes of
Transactions Subject to Ratification)*

- (a) involves the grant of a right or concession by or on behalf of any person to another person for the exploitation of a natural resource of Kenya; and
 - (b) falls within the class of transactions designated as subject to ratification by section 4 of this Act.
- (2) This Act applies to any transaction involving the—
- (a) national government, county government, state organ and all county government entities; and
 - (b) grant of a right or a concession by a private person in cases in which such transaction is required by this Act to be ratified by Parliament.

PART II – CLASSES OF TRANSACTIONS

4. Classes of Transactions

(1) The classes of transactions set out in the Schedule are subject to ratification by Parliament pursuant to Article 71 of the Constitution.

(2) Notwithstanding subsection (1), the following classes of transactions shall not be subject to ratification by Parliament—

- (a) subject to paragraph (e), the grant of a concession or right to exploit a natural resource through a permit, licence or other authorization issued in accordance with the requirements of national or county government legislation;
- (b) the grant of a concession or right by a private person to exploit a natural resource through an agreement or a contract;
- (c) the grant of a concession or right to exploit a natural resource for scientific research, educational or other non-commercial purposes unless the exploitation involves taking the natural resource or an portion of it outside of the jurisdiction of Kenya;
- (d) the exploitation of a natural resource by a Kenyan national for subsistence purposes in circumstances in which the law does not require that a permit, licence or other authorization be obtained; and
- (e) the exploitation of a natural resource in quantities falling below a threshold prescribed by the Cabinet Secretary by notice in the *Gazette* or below a threshold specified in the Schedule to the Act.

PART III – SUBMISSION OF AGREEMENTS TO PARLIAMENT

5. Submission of agreement to Cabinet Secretary

(1) As soon as practicable, but not later than fourteen days after entering into a transaction, a beneficiary shall submit an agreement or other instrument evidencing the transaction to the Cabinet Secretary responsible for the natural resource that is the subject of the transaction.

(2) The agreement shall be accompanied by a memorandum in the prescribed form.

6. Submission of agreement to Parliament

Within seven days of receiving the agreement and the memorandum, the Cabinet Secretary responsible for the natural resource that is the subject of the transaction shall submit the agreement and memorandum to Parliament for ratification in terms of Article 71 of the Constitution.

7. Validity of agreements

(1) A transaction which under this Act, is subject to ratification by Parliament shall only be effective once it is ratified, and where Parliament has declined to ratify any transaction under this Act, the transaction shall be null and void.

(2) A public officer shall not give effect to or otherwise take cognisance of a transaction subject to ratification under this Act which has not been ratified in accordance with this Act.

8. Consideration by Parliament

Parliament shall deal with any agreement submitted to it under this Act within sixty days of receiving such agreement in accordance with the laid down procedures.

9. Relevant considerations on transactions subject to ratification

The following shall be relevant considerations in deciding whether or not to ratify an agreement—

- (a) the applicable Government policy;
- (b) recommendations of the relevant regulatory agency;
- (c) comments received from the county government within whose area of jurisdiction the natural resource that is the subject of the transaction is located;
- (d) adequacy of stakeholder consultation;
- (e) the extent to which the agreement has struck a fair balance between the interests of the beneficiary and the benefits to the country arising from the agreement;
- (f) the benefits which the local community is likely to enjoy from the transaction; and
- (g) whether, in granting the concession or right the applicable law has been complied with.

10. Procedure for approval by Parliament

(1) The process of approval of an agreement shall commence in the National Assembly.

(2) The National Assembly shall consider an agreement within thirty days of its submission to the National Assembly and shall forward its resolution to the Senate for consideration.

(3) If within thirty days of submission of an agreement to the National Assembly, the National Assembly has not forwarded its resolution on the agreement to the Senate, the Senate shall commence its consideration of the agreement and shall forward its resolution to the National Assembly.

(4) If both Houses—

- (a) approve the ratification of an agreement; or
- (b) do not approve the ratification of an agreement;

the Speaker of the National Assembly shall, within seven days of the decision, notify the relevant Cabinet Secretary.

11. Procedure in case of different resolutions

(1) Where one House of Parliament resolves to ratify the transaction but the other House resolves not to ratify the transaction, the matter shall be dealt with in accordance with the procedures and mechanisms provided in Articles 112 and 113 of the Constitution and the relevant Standing Orders of both Houses.

(2) Where a mediation committee is constituted under subsection (1), the period for dealing with the agreement shall be extended by thirty days.

PART IV – ADMINISTRATIVE ARRANGEMENTS**12. Register of transactions**

(1) The Cabinet Secretary shall establish and maintain a central register of agreements relating to natural resources and other transactions which have been ratified as provided under this Act.

(2) The Register shall be maintained in electronic format and any member of the public may inspect it without the payment of any fee.

(3) Upon request and on payment of a reasonable fee, any member of the public may obtain an authenticated printout of an agreement from the Cabinet Secretary.

(4) The Cabinet Secretary shall, on an annual basis, publish a report on the summary of the transactions submitted under this Act and the status of ratification of transactions.

13. Confidentiality

(1) The Cabinet Secretary responsible for the transaction that is subject to ratification may, pursuant to Article 35 of the Constitution, grant a request that the agreement or portions of it ought not to be publicly disclosed on account of commercial confidentiality, national security or other public interest considerations.

(2) Where the request for confidentiality is granted, the Cabinet Secretary responsible for the natural resource that is subject of the transaction shall submit the agreement to Parliament which shall conduct the process of ratification in camera without disclosing any confidential material, but a summary of the agreement shall be made available to the public.

(3) The decision of the Cabinet Secretary on the request for confidentiality may be challenged by any person through appropriate proceedings in the High Court, and the High Court shall have the power to call for and examine the Agreement in camera before determining the matter.

PART V – MISCELLANEOUS**14. Regulations**

(1) The Cabinet Secretary may, in consultation with the Cabinet Secretary responsible for the applicable natural resource, make regulations for giving effect to the provisions of this Act and prescribing anything required under the Act.

(2) Without prejudice to the generality of subsection (1), the regulations made under this section may—

- (a) prescribe the particular classes of transactions, entered into between the effective date and the commencement date which should be audited, the modalities for conducting such audits and the use for which such findings may be put;

*Natural Resources (Classes of
Transactions Subject to Ratification)*

- (b) define the thresholds, quantitatively, qualitatively or a combination of both, below which transactions need not be subject to ratification;
- (c) prescribe requirements and provide guidelines on the memorandum to accompany the agreement under section 5; and
- (d) prescribe procedures for making applications and requests to the Cabinet Secretary.

(3) The regulations to be prescribed under subsection 2(a) shall be made within two years of the commencement of this Act.

15. Computation of time

Where under this Act the computation of time depends on the Parliamentary calendar, the period during which Parliament is not in session shall be excluded in the computation.

16. Savings

A transaction that is subject to ratification by Parliament, which was lawfully entered into on or after the effective date but before the commencement date, shall continue in effect and be deemed valid and lawful notwithstanding the absence of ratification by Parliament.

SCHEDULE

[ss. 4(1), (2)(e)]

CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION

Resources *Transaction requiring Parliament Ratification*

Crude Oil and Natural Gas Authorization to extract crude oil or natural gas.

Minerals Mineral agreements with a threshold of US \$ 500 million.

Water resources The extraction of sea water within the territorial sea for private commercial use.

Underground water resources The extraction of underground steam within a water conservation or other water resource protected area.

Wildlife Extraction of oil, gas, and minerals within a wildlife conservation area or other wildlife protected area.

Wildlife Export and re-export of endangered wildlife species.

Wildlife Excision or change of boundaries of gazetted national park or wildlife protection area.

Forests Long term concession of a gazetted forest resource.

Forests Excision or change of boundaries of gazetted public forests or nature reserves

Any other transaction subject to ratification under an Act of Parliament.