

The Mining (Royalty Collection and Management) Regulations, 2023

LEGAL NOTICE NO.

THE MINING ACT
(No.12 of 2016)

**THE MINING (ROYALTY COLLECTION AND MANAGEMENT)
REGULATIONS, 2023**

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THE MINING ACT
(No.12 of 2016)

IN EXERCISE of the powers conferred by sections 183, 188(2) and 223 (2) (a) of the Mining Act, 2016, the Cabinet Secretary makes the following Regulations —

THE MINING (ROYALTY COLLECTION AND MANAGEMENT)
REGULATIONS, 2023

- Citation. **1.** These Regulations may be cited as the Mining (Royalty Collection and Management) Regulations, 2023.
- Interpretation. **2.** In these Regulations, unless the context otherwise requires—
- No. 12 of 2016 “Act” means the Mining Act, 2016;
- “acquire” means to acquire by sale, barter, import, holding on deposit as a pledge or security, receipt as a gift, or receipt under any other supply or disposition, whether for consideration or otherwise;
- “arm’s - length value” has the meaning assigned to it under the Act;
- “assurance of royalty by reconciliation” means the system of reporting the royalty liability and making reconciliation payments at reconciliation points;
- “cost plus value” means the value of a mineral product that includes all the costs of producing it as a mineral product;
- “dealing right” means a mineral dealer’s licence, a diamond dealer’s licence or a mineral dealer’s permit;
- “deferred royalty” means a royalty amount put on hold, in part or whole, for periods and conditions as shall be agreed between the Cabinet Secretary and the holder when royalty suspension is granted;
- “disposal” means sale, barter, export, deposit as a pledge or security, donation as a gift, or other supply or disposition, whether with or without consideration and includes loss by theft or misappropriation, and ‘disposed of’ has the corresponding meaning;

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“full market value” of mineral products means—

- (a) the reference price for a product where there is a reference price for the product,
- (b) where a reference price for the product is not available, full market value is worked out by ‘netback’ and ‘cost plus’ calculation; and
- (c) where it cannot be worked out in this way, full market value is such amount as the Director of Mines may determine;

‘holder’ has the meaning assigned to it in the Act;

‘marketable form’ refer to a state or condition in which a mineral or mineral product can be easily or readily sold or traded in the market.

“netback value” of a mineral product is worked out by deducting from the reference price of a mineral product, the costs of producing the end product;

“reconciliation point” means the specific time when a holder of a dealing right, mining permit, mining license, artisanal mining permit, or a mineral right transferor, is required to reconcile and pay any outstanding royalty amounts;

“reconciliation report” means a reconciliation analysis between minerals and mineral products and royalty paid, calculated at the time of the date of the report or, if earlier, the date the report was due, showing —

- (a) royalty paid on reported minerals and their mineral products; and
- (b) unpaid royalty on minerals and their mineral products;

‘reduction of royalty’ means a reduction of royalty rate for a specified mineral for periods and conditions as shall be prescribed by the Cabinet Secretary;

“reference price” means the price of a mineral, or of a mineral product —

- (a) in a market with a significant number of sellers, a

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significant number of buyers, and an openly quoted price;

(b) that, if it is adjusted, is adjusted according to objective criteria (such as grade or quality);

(c) that is applicable to the time or the period in relation to which it is to be used; and

(d) that is arrived at on arm's length terms;

“royalty base” means the total to which the royalty rate for a mineral is applied in order to determine the amount of royalty due;

“royalty rate” means the percentage rate or unit-based rate applied to the royalty base of a mineral to determine the amount of royalty due; and

“Unit-based royalty rate” means a flat rate charge on a unit weight or volume or on such other measure of a mineral.

Application.

3. These Regulations shall apply to holders of mineral rights, mineral dealings or a mineral right transferor.

Principles
pertaining to
royalty payment.

4. The obligation to pay royalty shall be guided by the following principles —

(a) the aim of royalties is to provide monetary compensation to the people of Kenya, as owners of the minerals for the extraction of mineral resources;

(b) royalties should be based on the full market value of the mineral in its most processed, marketable form, taking into account all enhancements made to increase its saleability;

(c) the basic rate to share is the full gross value from the mineral extracted, thus disallowing deductions or offsets in computing the value to which each royalty rate applies, except for specific deductions or offsets delineated in these Regulations or in the Act;

(d) ensuring safeguards at appropriate and convenient points including periodic reconciliation from dealers, periodic reconciliation for export of any minerals or mineral products, and reconciliation on transfer of mineral rights to ensure recovery of all royalties due.

Determination
of Royalty base.

5. (1) The royalty base shall be determined for each quantity of mineral that is —

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(a) extracted by virtue of a mineral right within a royalty period, and that is —

(i) transported from the licence or permit area during that royalty period if it was not previously accounted for in a royalty base calculation; or

(ii) has not been previously moved, but is subject to mineral dealings during that royalty period, and was not previously included in a royalty base calculation.

(2) The value of the royalty base for a mineral is the full market value of all mineral products capable of being produced from the mineral that are saleable.

(3) The royalty base's value for a particular mineral shall equate to the full market value of all products that can be sold and produced from that mineral.

(4) The full market value refers to the reference price of the products, without offset or deduction due to location of the products, insurance, transport or any other factors.

(5) If no reference price is available for a mineral product, the full market value is determined by —

(a) subtracting the cost of producing end-products (netback value) from the reference price of commercially producible end-products from the mineral; and

(b) Incorporating all costs associated with producing the mineral product (cost-plus value) into the value of the mineral product, while ensuring that any cost requiring allocation is assigned in such a way that it is not claimed in both the netback value and the cost-plus value calculations, or when calculating the values of different mineral products ; and

(c) If there is a difference between the netback value and the cost-plus value, taking the average of the two.

(6) Where there is insufficient information to enable the Director of Mines to determine the royalty base for the holder of a mineral right for a royalty period according to sub-regulation (5), the Director of Mines shall determine the royalty base using the information available at his or her disposal.

Royalty base for export minerals.

6. The royalty base for minerals for export shall be the value of the mineral at the port of exit, that is the Free on Board value

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based on the full market value.

Royalty base for minerals consumed in Kenya.

7. Where the Director of Mines is satisfied that a mineral won by virtue of a particular mineral right is to be used or consumed exclusively within Kenya, the Director may permit the method to calculate the royalty base may be adjusted as follows—

(a) for minerals transported from the area of the mineral right and sold directly at the extraction site ("mine gate/ex-factory"), the sale price at this point may serve as the basis for the royalty calculation;

(b) using the sale price at which the mineral is delivered, if it is sold at delivery after being moved away from the area of the mineral right no deductions or offsets are allowed."

Royalty rates

8. The specific royalty rates for various identified minerals are set out in the First Schedule.

Determining royalty payable.

9. The royalty due is calculated by applying the appropriate royalty rate to the appropriately determined royalty base.

Due dates for payment of royalty.

10. (1) Royalty for locally sold or exported minerals shall be paid within one hundred and twenty days, commencing from the final day of the month in which the transaction took place.

(2) Despite sub-regulation (1), royalty payments can be made at any point before the specified due date.

(3) A penalty equivalent to the prevailing Central Bank of Kenya interest rate shall be imposed on compounding basis to any royalty paid after the due date.

(4) If royalty has already been paid for the same minerals in a different royalty period, the amount paid shall be credited against the liability for royalty due for those minerals.

(5) The credited royalty for a particular royalty period will only be acknowledged up to the amount that can be verified by the Director of Mines as having been actually paid for those minerals.

(6) In cases where multiple parties are liable for royalty for the same minerals within a given period, any payment made by one party will be credited in calculating the royalty due from other parties.

(7) Sub-regulation (6) does not infringe upon any right of contribution that any party may have against another.

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Reduction or
suspension of
payment.

11. (1) The holder of a mineral right may apply to the Cabinet Secretary for a reduction of royalty rate or temporary suspension of royalty payment applicable to the minerals subject of that right.

(2) An application for a reduction of royalty rate or temporary suspension of royalty payment shall not exceed 6 months.

(3) Any approved reduction of royalty rate or suspension of royalty payment shall not apply retroactively to minerals won prior to the application.

(4) An application for a reduction of royalty rate or suspension of royalty payment may only be made if all reports and statements in relation to mining operations have been submitted as required under the Act.

(5) The Cabinet Secretary shall not reduce the royalty rates by more than 50% of the rates as set out in the first schedule.

(6) The reduced royalty rate shall revert to the prescribed rate at the end of the six months period of reduction.

(7) If a reduction in royalty is granted, the holder of the mineral right will not be liable to pay the difference between the reduced and standard royalty rates.

(8) Where suspension of royalty payment is granted, the holder of the mineral right shall pay the deferred amount of royalty at the end of the six months suspension period.

(9) The deferred amount shall not incur interest for the first six months following the suspension period's end, but thereafter shall accrue interest at the prevailing Central Bank of Kenya rate.

(10) A Mineral right holder who is not compliant with the provisions of the Act or relevant regulations shall not be eligible for grant of a reduction of royalty rate or temporary suspension of royalty payment.

(11) A mineral right holder seeking a suspension of royalty payment or reduction of royalty rate must provide evidence, including financial statements, audited accounts, and any other information requested by the Cabinet Secretary, to demonstrate that the adjusted rate will alleviate a temporary but significant adverse impact on the mineral right holder.

(12) In addition to evidence in sub regulation (9), a mineral right holder applying for suspension of payment of royalty shall provide a payment plan detailing how the deferred royalty amount will be paid at the end of suspension period.

(13) The Cabinet Secretary shall, on the advice of the Mineral Rights Board, approve or reject an application for a reduction

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of the rate or temporary suspension of royalty payment within the 90 days from the date of submission of a completed application.

(14) Notwithstanding sub-regulation (11), upon grant of a reduced royalty rate or suspension of royalty payments shall only be effective three months after the date of the application.

Royalty on samples.

12. (1) Samples of minerals removed for testing are subject to royalty, if their total value exceeds the maximum permitted value for samples as set out in subsection (4).

(2) Samples of minerals won and removed for metallurgical testing are subject to royalty, if their total value exceeds a maximum permitted value for samples as set out in sub-regulation (5).

(3) The market value of the sample shall be calculated based on; quantity, composition, and prevailing market price.

(4) In determining whether the value of samples exceeds the maximum permitted value, the average grade and quantity of valuable minerals in the samples extracted within a quarter shall be used.

(5) The maximum permitted value of samples accumulated per consignment is two hundred thousand Kenya shillings.

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Arm's length consideration.

13. (1) If the reference price used to decide the full market value of a mineral product results from an arrangement where parties are not dealing at arm's length, and this leads to a lower price, it shall be adjusted to reflect what the price would have been under an arm's length transaction.

(2) If associated costs arising under an arrangement decrease the apparent market value of a mineral product, those costs shall be adjusted to reflect what they would have been under an arm's length sale.

(3) Any agreement or action, whether or not it is contractual, unilateral, or voluntary.

(4) Parties to an arrangement include every person involved directly or indirectly in creating or affecting the arrangement.

(5) This regulation applies to reference prices and costs, including those that arise from financing arrangements.

(6) The Director of Mines may require any party to provide information to determine whether reference prices under an arrangement are consistent with an arm's length transaction.

Royalty assurance through reconciliation.

14. (1) Reconciliation payments ensure the collection of unpaid royalty on minerals and mineral products at reconciliation points.

(2) For holders of dealing rights, reconciliation points —

(a) each time an export is made where the holder has applied for a permit to export a mineral product; or

(b) within fourteen days for aggregated domestic sales made within the previous month.

(3) The due date for royalty coincides with the reconciliation point, and late payments accrue monthly penalties from the start of the month when the royalty reconciliation payment remains unpaid.

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(4) A reconciliation point for a mining permit or licence holder comes ninety days after the last day of the month in which a mineral or mineral product was sold or exported.

(5) A reconciliation point for an artisanal mining permit holder occurs ninety days after the last day of the month in which a mineral or mineral product was sold or exported.

(6) A reconciliation point following a transfer of mineral rights occurs at the time the Cabinet Secretary approves the transfer.

Reconciliation
payment.

15. (1) Where a reconciliation report identifies an outstanding royalty, a reconciliation payment equal to the amount of unpaid royalty is due.

(2) For every royalty period in which the reconciliation payment is unpaid or partly unpaid, interest accrues at the current Central Bank of Kenya interest rate per month on the unpaid reconciliation payment amount.

(3) If a reconciliation payment has already been made for minerals in respect of another reconciliation point, that payment will be credited against any reconciliation payment due at the later reconciliation point.

(4) If a person is due to make a reconciliation payment for minerals or mineral products but has transferred them to another person who holds a dealer's right before the reconciliation point, the reconciliation payment due from the first person is reduced by the amount due on those minerals or mineral products.

Dealer
Reconciliation.

16. (1) When a dealing right reconciliation point arises, the holder of the dealing right shall make a reconciliation report in respect of the minerals and mineral products that the dealer holds or has held during the reconciliation period.

(2) The report shall—

- (a) set out the amount of minerals and mineral products acquired by the holder during the period, minus the amount for which royalties have already been paid or which were exported or sold to another dealer; and
- (b) calculate the remaining unpaid royalty for minerals and their mineral products.

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(3) The reconciliation payment shall be equal to the total unpaid royalty on those minerals and their mineral products.

(4) If a dealer makes a reconciliation payment, they can recover that amount from the holder of the mineral rights who should have paid the royalty at the time the reconciliation payment was made.

Reconciliation by a holder of a mining permit or licence holder.

17. (1) When a mining permit including artisanal or a mining licence holder reconciliation point arises, the holder shall submit a reconciliation report.

(2) The report shall detail the minerals and mineral products exported and or sold during the period, offset against royalty payments made in respect of the minerals and mineral products by the mineral right holder, and any other previous reconciliation payments made.

(3) The holder must make a reconciliation payment for all minerals and mineral products for which no royalty payments have been made, and for which no previous reconciliation payment has been recorded.

(4) The amount of the reconciliation payment shall be equal to the outstanding royalty on those minerals and mineral products.

(5) If a holder makes a reconciliation payment, they can recover that amount from the original holder of the mineral right who should have paid the royalty or from any dealer who should have paid a reconciliation payment for those minerals or products.

Transferor's reconciliation of mineral rights.

18. (1) When a mineral right transfer reconciliation point arises, the transferor of the mineral right shall submit a reconciliation report in respect of the royalty due in relation to that mineral right as if the royalty period had ended at the time of the transfer.

(2) For all minerals for which a royalty or a reconciliation payment cannot be shown to have been made, the transferor shall make a reconciliation payment.

(3) The transfer shall not be registered until the payment is made.

(4) The reconciliation payment shall be equal to the royalty that would otherwise be payable for the minerals to the date of the transfer, at the end of the royalty period.

19. The following legal notices are hereby **revoked**:

(1) Legal Notice No. 187 of 2015 Mining (Prescription of Royalties on Minerals) Regulations, 2013

Commented [MOU1]: Refine this provision

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- (2) Legal Notice No.220 of 2013 Mining (Prescription of Royalty Rates for Fluorspar Products) Regulations,2013
- (3) Legal Notice No. 221 of 2013 Mining (Prescription of Royalty Rates for Magadi Soda Products) Regulations, 2013
- (4) 222 of 2013 The Mining (Prescription of Cement Minerals Levy) Regulations, 2013
- (5) Legal Notice No. 40 of 2015. The Mining (Prescription of Royalty Rates for Diatomite) Regulations, 2015

SCHEDULE

ROYALTY RATES

1. The royalty rates chargeable in respect of gross value of the extracted minerals are as follows—

Royalty on Extracted minerals.	
Royalty Rate (%)	Gross value of extracted Minerals for—
3%	Precious metals (Gold and platinoid group metals);
8%	Rare earth elements and Radioactive minerals;
5%	(a) for metallic ores (copper, zinc, lead, aluminium, vanadium, manganese); (b) other metallic ores (c) titanium minerals sand, titanium ores and Zircon;
7%	Coal
3%	Limestone, gypsum, dolomite, silica sand, talc;
3%	dimension stones and other construction minerals, clays
3%	carbon dioxide;
4%	diatomite; fluorspar
3%	Soda Ash
2%	Clinker
6%	rough gemstones
1%	cut gemstones;
6%	rough diamonds
3%	cut diamonds
1.6%	cement;
1.6%	salt
4%	all other minerals

Made on2023

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Cabinet Secretary for Mining, Blue Economy and Maritime Affairs.