

SPECIAL ISSUE

Kenya Gazette Supplement No. 78

(Legislative Supplement No. 38)

NATIONAL COUNCIL FOR
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19th May, 2017

THE MINING ACT

(No. 12 of 2016)

THE MINING (EMPLOYMENT AND TRAINING) REGULATIONS,
2017

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SCHEDULE

THE MINING ACT

(No. 12 of 2016)

IN EXERCISE of the powers conferred by sections 46 (3) and 223(1) of the Mining Act, 2016, the Cabinet Secretary for Mining makes the following Regulations—

THE MINING (EMPLOYMENT AND TRAINING) REGULATIONS,
2017

1. These Regulations may be cited as the Mining (Employment and Training) Regulations, 2017. Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“Act” means the Mining Act, 2016;

No. 12 of 2016

“mining industry value chain” means the processes involved in the mining industry which include but are not limited to exploration, development, production, refining, smelting and marketing of minerals;

“technical” with respect to the recruitment of an employee includes engineers, technicians and geoscientists; and

“unskilled” means any labour that requires relatively little or no training or experience to perform a specific work or task.

3. The purpose of these Regulations is to—

Purpose of Regulations.

- (a) promote job creation through the use of local expertise in the mining industry, the entire mining value chain and to retain the requisite skills within the country;
- (b) develop local capacities in the mining industry value chain through education, skills and technology transfer, research and development; and
- (c) achieve the minimum local employment level and in-country spend across the entire mining industry value chain.

4. These Regulations shall apply to all applicants and holders, of any licence for—

Application of Regulations.

- (a) reconnaissance, prospecting and mining;
- (b) cutting, polishing, processing, refining and smelting of a mineral;
- (c) a large-scale mineral right which is valid after the coming into force of the Act and these Regulations; and
- (d) mine support services.

5. (1) An application for any licence shall not be granted by the Cabinet Secretary unless the applicant has submitted a plan outlining the proposals for the employment and training of Kenyans.

Requirements for employment and training.

(2) Where an experienced expatriate is needed, a plan for the progressive replacement of the expatriate by a Kenyan shall be required.

(3) Without limiting the scope of sub regulation (1), the plan shall contain the following—

- (a) the specification of the skills needed;

- (b) the number of Kenyans the applicant plans to employ;
- (c) the recruitment of any expatriate if required and the replacement of the person with a Kenyan;
- (d) particulars on the employment of marginalised groups including women, persons with disability, minorities and persons from the communities where mineral activities or mining operations are to be undertaken; and
- (e) the proposed expenditure that will be incurred under the plan.

(4) Where an applicant intends to recruit an expatriate for its proposed activities or operations, the particulars to be submitted shall include—

- (a) a detailed curriculum vitae of the person;
- (b) the position to be filled by the person and the job description;
- (c) a statement as to why the work cannot be done or the position occupied by a Kenyan;
- (d) the conditions of service of the expatriate including the term of the contract, remuneration, allowances and other benefits; and
- (e) a statement of how the applicant intends to train a Kenyan to replace the expatriate within a specified timeframe.

(5) The particulars required under sub regulation (4) shall be submitted to the Cabinet Secretary together with Form ET1 as set out in the Schedule.

(6) The approved plan shall form part of the conditions or obligations of the licence.

(7) The Cabinet Secretary shall not approve an application to recruit an expatriate unless he or she is satisfied that a Kenyan does not possess the requisite qualifications, skills and experience to occupy the position for which the expatriate is to be recruited.

(8) A holder of a mineral right shall not submit an application to the Department of Immigration Services for a work permit for an expatriate unless a recommendation has been obtained from the Cabinet Secretary or an authorised officer.

(9) A recommendation from the Cabinet Secretary shall not preclude compliance with the immigration laws of Kenya.

(10) For the purposes of making any decision under sub regulation (7), the Cabinet Secretary may, amongst other things, request a holder of a mineral right to—

- (a) advertise for a particular job which no Kenyan was deemed suitable or qualified to occupy; or
- (b) recruit from the pool of specialists or database that shall be established by the Director of Mines under regulation 8.

(11) An expatriate shall not be employed in an unskilled or clerical position.

6. (1) Every holder of a licence shall, within ninety days of the coming into force of these Regulations, submit to the Cabinet Secretary, an employment, training and succession plan which corresponds with the work programme or programme of mining operations that accompanied the application made by the holder for the grant of the licence.

Submission of
employment,
training and
succession plan.

(2) The holder of any mineral right in respect of a large-scale operation which is valid after coming into force of the Act, shall be required, not later than eighteen months to update its employment and training plan in order to comply with these Regulations.

(3) For the purposes of sub regulation (1), an employment and training plan shall include the—

- (a) number of employees including expatriates;
- (b) number of employees that are Kenyans;
- (c) number of employees in the executive, managerial, technical, supervisory and unskilled categories and the number of employees in each category that are Kenyans; and
- (d) details of on-going and planned recruitment and training programmes for Kenyans.

(4) Where the holder of a licence has employed expatriates, the following particulars shall be provided to the Director of Mines —

- (a) the number of employees who are expatriates and their percentage relative to the total number of employees;
- (b) a detailed curriculum vitae of each expatriate;
- (c) the position held and the job description;
- (d) the conditions of service of the expatriate specifying the term of the contract, remuneration, allowances and other benefits;
- (e) copy of the work permit issued by the Department of Immigration Services;
- (f) a detailed training programme with specific training requirements, timelines and costs for the replacement of an expatriate by a Kenyan.

(5) A holder of a licence shall comply with the relevant labour, employment, social security laws and any regulations made under such laws of Kenya.

(6) A holder of a licence shall provide to the Director of Mines, a half yearly report on the employment and training activities not later than thirty days after the end of the reporting period.

(7) The report shall state the number of new employees who are Kenyans and were engaged during the respective period and their qualifications and job descriptions.

7. (1) A holder of a licence shall employ only Kenyans at junior and middle level positions.

Middle and junior level positions.

(2) Subject to sub regulation (1), a junior or middle level position includes the position of foreman, supervisor or any other corresponding position or grade.

(3) The Director of Mines may approve the recruitment of an expatriate upon justification by a holder of a licence that no Kenyan has the requisite qualifications, skills or experience to occupy a particular junior or middle level position.

8. (1) The Director of Mines shall establish and maintain a database of Kenyans with the relevant training, skills and experience including specialists or experts across the mining industry value chain.

Obligation to establish a database of experts.

(2) The Director of Mines shall ensure dissemination of the information on the database through the website of the Ministry, in the local media and such other effective means as may be available from time to time.

9. (1) The Director of Mines in consultation with the mining industry, universities, research and training institutions shall develop guidelines for applicable areas of training, research and development.

Promotion of research and development.

(2) A holder of a mining licence shall, within one year of the commencement of mining operations, submit a programme to the Director of Mines for the promotion of education, research and development based on the guidelines provided under sub regulation (1).

(3) A holder of a mining lease or special mining lease which is valid after coming into force of the Act shall comply with this regulation within eighteen months after coming into force of these Regulations.

10. (1) A holder of a licence shall, not later than thirty days after the end of the year, submit to the Director of Mines, an annual performance report covering all the activities related to employment, training, research and development.

Reporting requirements.

(2) The report shall be in such a format as the Director of Mines may direct.

11. (1) The Director of Mines shall, within thirty days of receipt of the report, assess and review the report to ensure compliance with the Mining Act and these Regulations.

Assessment of
performance
report.

(2) For the purposes of assessment and verification of the report, a holder of a licence shall allow the Director of Mines or any authorised officer access to their facilities, personnel, documents and any other information as the Director of Mines may request.

SCHEDULE

FORM ET 1

(r.5(5))

EXPATRIATE RECRUITMENT APPLICATION FORM

1. PARTICULARS OF THE HOLDER OR APPLICANT FOR A LICENCE

Name of holder or applicant for a licence	
Type of licence held by the holder or applied for	
Licence/application number	
Date of issue and expiry of the licence in case of a holder	
Registered Address	
Telephone number land line	
Telephone number mobile	
Email	

2. PERSONAL PARTICULARS OF EXPATRIATE

Full Name	
Position	
Duration of Employment	
Nationality	
Special Skills or Expertise	
Passport No.(Attach biodata page)	
Address	
Email	
Telephone Number	

3. PERSONAL PARTICULARS OF KENYAN COUNTERPART

Full Name	
Qualification (Attach CV)	
Present Position	
Expected Takeover Date	

Address	
Email	
Telephone Number	

4. PARTICULARS OF PLANNED PROGRAMME FOR KENYAN COUNTERPART

Planned Training Programme	Timelines	Training Cost

I certify that all of the statements made in this application are true, complete and are made in good faith. I understand that falsifying, misrepresenting or intentionally withholding information will be grounds for rejection of the application or cancellation if the application has been approved.

Name of applicant/holder: _____

Name of authorised person: _____

Title or Position: _____

Signature of authorised person: _____

Date: _____

Telephone number: _____

Mobile Number : _____

Email: _____

DOCUMENTS SUBMITTED BY APPLICANT (check all boxes)

Application is complete (*all the following are attached*):

- Detailed curriculum vitae of the expatriate.
- Personal particulars of the expatriate including the attachment and full details of passport data
- Position to be filled and job description of the person
- The conditions of service of the expatriate including the term of the contract, remuneration, allowances and other benefits;
- Proof of payment of application fee.
- A statement of how the applicant intends to train a Kenyan to replace the person within a specified timeframe and training cost.
- Curriculum vitae and personal particulars of a Kenyan counterpart if he or she is already employed by the applicant/holder.

Dated the 9th May, 2017.

DAN KAZUNGU,
Cabinet Secretary, Ministry of Mining.