



**MEMORANDUM BY THE KENYA CHAMBER OF MINES ON THE  
DRAFT REGULATIONS 2023, PROPOSED BY THE STATE  
DEPARTMENT OF MINING UNDER THE MINING ACT OF 2016.**

**13<sup>TH</sup> SEPTEMBER 2023**

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## **BACKGROUND**

The Kenya Chamber of Mines (KCM) is the main mining industry organization that represents the interests of miners, exploration companies, mineral traders, suppliers and professionals in Kenya; promoting the sustainable growth of the industry for the Kenya's economic transformation. Formed in 2000, KCM is the principal advocate lobby body for mining industry stakeholders in Kenya. KCM participates in structured engagements with government, communicates major policies endorsed by its members and advocates and lobbies for the development of the industry.

The Ministry of Mining, Blue Economy and Maritime Affairs, through the State Department of Mining (SDoM) published a notice in the local dailies inviting mineral sector stakeholders to public participation meetings across the country. The essence of the invitation was to offer an opportunity to current and potential actors in Kenya's mineral sector an opportunity to participate in making informed contributions to a set of regulations proposed by the SDoM so as to enhance / operationalize some of the provisions of the Mining Act 2016. As per the notice, the general public and specifically the stakeholders were guided to either make oral submissions and/or submit memoranda so as to enhance the process of reviewing the proposed regulations.

KCM, in line with the provisions of the guidance by the SDoM and in line with our cardinal role as the lobbying and advocacy body for stakeholders in Kenya's mineral sector development attended all the public participation meetings in Machakos, Eldoret, Mombasa, Kisumu, Narok, Garissa and Embu. The attendance and participation was extremely encouraging and this is an exciting moment for the sector that has been moribund since the "moratorium" effected in November 2019. The sector stakeholders count on the Kenya Kwanza administration to not only lift the "moratorium" but explore the opportunities for a stimulus package that will revamp this sleeping giant that holds the future of an industrialized Kenya with high standards of living for Kenyans. KCM has prepared a summary of the views collected across the country from all clusters and cadres of mineral sector stakeholders. The sector is hopeful that SDoM will consider the input of the sector so that together, we can drive this sector to its full potential.

## **MINING (ROYALTY COLLECTIONS & MANAGEMENT) REGULATIONS 2023**

Having examined the proposed regulations, the Kenya Chamber of Mines (KCM) has noted issues that need further consultations and engagements so as to render the desired value to the people of Kenya, investors and all other stakeholders in Kenya's nascent mineral sector. The members of KCM are of the considered opinion that adequate attention has not been paid in drafting the regulations and hence pose a challenge and stumbling block in tapping into the potential that the sector offers.

In summary, the draft regulations require elaborate attention so as to address the following issues that make them not only untenable but go on to infringe on the rights that Kenyans are guaranteed by the Constitution 2010: lack of clarity for definitions, inconsistencies in value addition, absence of clarity on mineral ores and mineral products, disguised attempt to amend the Mining Act 2016 and finally engagements & visioning by previous administration / regime.

### **Lack of Clarity for Definitions**

The draft regulations have failed to attain the desired level of clarity in respect to definitions. Just as an example, the regulations refer to "*precious metals*" yet do not clarify, for instance for gold, the point at which the royalties are levied / collected; is it at the stage of the ore, leaching, refinery, etc.? The regulations also refer to "*metallic ores*" and this ambiguity exposes the miners and dealers to a window for rent seeking / corruption. For example, at what point will royalties be levied / collected for copper; we have the ore, concentrate, cathode, copper metal, other copper mineral products, etc.?

The regulations make reference to rare earth elements (REE) as minerals and this is far from the truth. REEs are not minerals but elements. The risk in having the regulations as drafted is that there will be zero objectivity in determining the rate per element, besides the competence / capacity issues at the State Department of Mining (SDoM). And what is the threshold for economic viability after all and who authenticates this? The regulations prescribe a royalty rate for soda ash (mineral product) while ignoring trona which is the mineral ore of soda ash; further making the draft regulations irredeemable.

Just for note, dimension stone is not a mineral. And that some stones are cut to specific dimensions (e.g. quartz or agate), will they be categorized as dimension stone? This confusion is indeed a critical risk that must be addressed by way of review of the draft regulations. Glaringly, the draft regulations miss the definition for gemstones, whether precious or non-precious. This situation makes it difficult to ascertain the royalties in an objective manner and hence render these regulations inapplicable as currently presented.

The definition of minerals should be clear, scientific and standard. The draft regulations have mixed minerals and mineral products. Mineral products can't attract royalty but may attract other taxes and levies.

### **Inconsistencies in Value Addition**

The understanding of all the stakeholders in the mineral development in Kenya is that in the Kenya Kwanza administration, value addition for minerals is a critical tenet that offers the economy the much needed jobs as well as equal opportunities to those at the base of the pyramid. As presented, the draft regulations are inconsistent with the Constitution of Kenya 2010 as they discriminate, reflect bias and indeed profile a section of the populace, risking them being disenfranchised. Why does the draft only consider value addition of gemstones and diamonds while ignoring other minerals?

This is discriminatory and unfair and therefore unconstitutional. Indeed, the schedule as currently drafted lacks the value of equity and only emphasizes value addition for gemstones and diamonds, despite there not even being regulations to guide diamond trade and dealings. Our Constitution espouses equity and fair administration actions by all and for all. Any law/regulation that is inconsistent with the Constitution invites itself to the alter of being null and void.

### **Absence of clarity on mineral ores and mineral products**

As currently drafted, the proposed regulations exhibit absence of clarity on what constitutes minerals, mineral ores and mineral products? The proposed regulations have for example prescribed royalty rate for metallic ores and go ahead to ignore mineral products from the same ores. It goes ahead to prescribe royalty rates for soda ash (a mineral product) while ignoring the trona (the mineral ore); the same applies for titanium sands (mineral products) while ignoring the heavy mineral sands, (the mineral ore). At what point(s) will the royalties be levied / collected? And what of clinker or cement making minerals and mineral products? Consider a company trading in carbon dioxide; the draft regulations presuppose a royalty rate whether the gas is in its raw form, valued added for industrial use or food grade. Regulations in this vague state will send the wrong signals to investors and indeed offer zero incentives, making it not tenable to create wealth and employment as envisaged by the Kenya Kwanza administration.

### **Disguised attempt to amend the Mining Act 2016**

The draft regulations in a very peculiar manner attempt to amend the Mining Act 2016 through the backdoor. According to the Mining Act 2016, minerals are regulated as listed therein under the First Schedule and any attempt to introduce any new mineral must be appropriately achieved through an amendment to the law and not otherwise. The draft regulations for example refer to “*dimension stone and cement*” as minerals and this cannot be further from the truth as the two are not minerals. KCM and industry players propose that these two items are expunged from the regulations.

### **Engagements & Visioning by Previous Regimes**

It is prudent that the proposed regulations embrace and consider engagements and visioning by previous regimes, especially at the point of establishing the Ministry of Mining and the efforts put by the administration between years 2013 and 2015.

Of import is the universal wisdom that minerals that directly impact health and livelihoods, especially those likely to cause and push inflationary tendencies will need special consideration when it comes to royalties. This is justified by the fact that keeping vulnerable citizens away from the reach of such minerals and mineral products will have a dire impact on their health, dignity and basic human rights. Such minerals ought to have a flat rate per tone as opposed to having the royalties pegged on a percentage. Examples of such minerals are salt, cement making minerals and general construction minerals.

### **Conclusion & Recommendation**

The proposed regulations as drafted are rejected by the KCM on account of;

- a) Failing the constitutionality test on fairness, equity and transparency.
- b) Lack of clarity on the specific point of levying and collecting royalties for minerals as there are various levels; ore, concentrate, mineral product or mineral products.
- c) Inability to align the proposed regulations to the aspirations of the Kenya Kwanza administration whose manifesto and policy on value addition for wealth and employment creation are candid. The proposed regulations are a disincentive to investments in Kenya's mineral sector.
- d) Attempting to amend the Mining Act through the back door by introducing dimension stone and cement as minerals. The two are not in the schedule of minerals as provided for in the Mining Act 2016.
- e) Ignoring to safeguard minerals critical to health and economy (salt, construction minerals, cement, etc.) from inflationary pressures by proposing royalties in percentage instead of fixed rate per ton.

The proposed regulations on Royalty Collection and Management needs to be redrafted in consideration of above issues raised by KCM if the sector is to be a major contributor to Kenya's GDP. Further information in respect to industry position is contained in a table within this report that presents a summary of the position of industry and offers justification per article or subject of concern / interest.

## **REGULATIONS FOR GEMSTONE IDENTIFICATION & VALUE ADDITION**

Upon review of the draft regulations, the Kenya Chamber of Mines (KCM) and a wide range of stakeholders. The major concerns are in respect to definitions, ambiguity and general lack of direction that ordinarily the regulations are expected to offer in order to operationalize the Mining Act 2016. The key areas of concern to KCM and stakeholders are as hereunder:

### **Cabochons**

The definition is too prescriptive and this comes with the risk of being extremely limiting and hence negating the whole document as proposed. The reality is that there are many other types, variations and cuts for cabochons and hence any piece not cut in a manner other than that captured by the draft regulations invites discussions beyond a level that is objective as would be the intended purpose of the regulations.

### **Cabbing**

The definition is too limiting and an expert opinion is desired to make this acceptable by industry and stakeholders. And can this only be attained through the use of a cabbing machine? Let us seek universally acceptable industry reference for this term to avoid abuse at the point of interpretation.

### **Gemstones**

Attempting to refer to “*crystal in cut and polished form*” completely misses the point as in acceptable trade parlance and hence need for serious review. There needs to be further engagements and reach an amicable agreement on how we shall define gemstones, alive to the fact that we are part of a global ecosystem of miners and mineral dealers.

### **Sawing**

There is need to get the proponents clarify why use of “*electric diamond saw*”. And indeed what is the intention; sawing or slabbing or both? And is this for gemstone, specimen, sample, etc. The regulations envision reduction in size per piece. It's important to state if it is the rough or product.

### **Service**

It is critical that evidence for service delivery is explicitly described to avoid any iota of doubt. What is the evidence that service has been rendered / delivered? Other than the gemstone identification certificate, what else is encompassed in the service. Is the service referred to in the regulations for a single sample, a batch, specimen, lot, etc. weight?

### **Replacement of lost or defaced certificates / duplicate**

What is the provision for replacement of lost / defaced certificate? A duplicate? This needs to be clear in the regulations. As the regulations are couched, there seems to be no clear guidelines on this matter and this is key for mineral dealers.

## **Faceting**

What criteria has been used to classify the gemstones for faceting? What is the authority for reference? How will the top gemstone and semi gemstone be determined? And what are they in real terms? Are these new terms / definitions? Are they aligned to globally acceptable standards or nomenclature?

## **List of eight (8) top gemstones and ten (10) semi gemstones**

This is something that will yield more confusion that render the solution that is intended by the draft regulations. Given that there are hundreds (perhaps thousands) of gemstones, what happens to all the others now that the draft regulations concentrate on only eighteen (18)? What does this mean for the dealers and jewelers?

## **Charges**

It is important that the issue of the weight is rendered clear and not be subject to interpretation by the one to render the service. Is the weight on the rough or the cut stone? What happens to stones that crack or break and end up as waste? Who pays for this? Is there a possibility to detect and compensate in case of negligence by the cutter?

## **Conclusion and Recommendation**

KCM therefore requests that a technical team with actors from the industry rework the draft regulations with a view to making them more transparent and aligned to global trends given that gemstones are luxury items, with universally acceptable standards and Kenya must seek to remain competitive or loose out to alternative source markets. The specific proposals on specific articles and provisions are contained in the table of summary.

KENYA CHAMBER OF MINES



## **REGULATIONS ON MINING PERMITS & LICENSES**

The Kenya Chamber of Mines (KCM) has engaged members and other stakeholders so as to gather their views and input on this set of regulations. There is an obvious concern on the amounts required for the miners and dealers to obtain permits and licenses, especially the inhibiting application fees that are not comparable to application fees payable for any other services by citizens across all other sectors of the economy. This is an aspect that requires to be addressed so that ordinary citizens that wish to invest in the mineral development sector are not discriminated against or denied service of very basic services in the guise of non payment of application fees. Given the large number of graduates that are geologists and mining engineers that are jobless and have the potential to start earning a living in this sector, any unnecessary barriers only further complicate their already desperate unemployed status. Additionally, these barriers of a financial nature and equity, coupled by obvious double taxation, invite elements of the regulations being rendered unconstitutional.

That notwithstanding, KCM and industry players seek to have the following glaring irregularities addressed before the regulations are published in the Kenya Gazette:

### **Mineral Development Levy (MDL)**

While this is a noble initiative and with genuine intentions, the most obvious risk to industry players is that its implementation will amount to double taxation. Who is responsible for paying the levy? The miner or the dealer? And when the said mineral or mineral product changes hands several times, who is legally responsible for the payment? This needs to be made clear at the very early stage so that industry players are clear on their obligation or lack thereof.

### **Regulation 28 (a)**

This is an obvious issue of double taxation and must be treated as such, and without doubt expunged from the draft regulations.

### **Reconstruction of the file**

It is important to make it explicit through a specific provision that a stakeholder can obtain a copy of their entire file or files as may be necessary and a clear charge for this provided for in the schedule. This is missing / not explicit in the draft regulations.

### **Provision of 1% on Gross Sales Value**

This needs further clarity. Will this be premised on the price at the port of exit or the market price? And this applies to domestic sales too: is it the price at the mine or at the market? How will this be objectively determined?

## **Conclusion and Recommendation**

KCM urges the State Department of Mining to consider a critical review of this set of regulations and seek to enhance the same so that the regulations will address present issues and make provision for posterity. Mining is a sector that holds the future of Kenya and especially young Kenyans, hence the regulations ought to be strategic and forward looking.

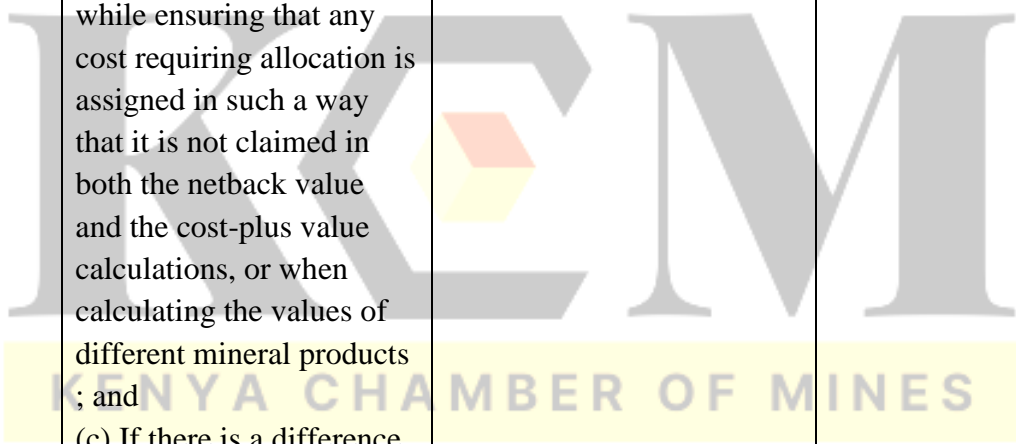


**Table on Summary of Proposal by SDoM, Industry Position & Justification for Industry Position**

<b>Royalty Collection and Management</b>			
<b>Article</b>	<b>Proposal by SDoM</b>	<b>Industry Position</b>	<b>Justification</b>
2	<p>“full market value” of mineral products means—</p> <p>(a) The reference price for a product where there is a reference price for the product,</p> <p>(b) Where a reference price for the product is not available, full market value is worked out by ‘netback’ and ‘cost plus’ calculation; and</p> <p>(c) Where it cannot be worked out in this way, full market value is such amount as the Director of Mines may determine;</p>	<p>Remove/ Delete paragraph (c) of this section</p>	<p>a) Leaving the costing to the director may remove objectivity and lead to subjective judgment in valuation.</p> <p>b) Lack of clear guidelines can make the process less transparent.</p> <p>c) May lead to administrative delays and increased complexity.</p> <p>d) Different Directors might apply varied methods, leading to inconsistencies.</p> <p>e) Disagreements between parties if valuation is contentious.</p> <p>f) May not always accurately reflect market realities.</p>
4	<p>The obligation to pay royalty is guided by the following key principles — (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 salability;</p>	<p>Simplify the royalty calculation methodology by reducing the complexity of the netback, cost plus, and other calculations. Consider using a single, standardized method that is easier for Mineral Licence holders to apply.</p> <p>Royalty should be charged at the mine gate otherwise investment should not be charged any royalty but must be encouraged.</p>	<p>Investment cost on processing and any enhancement to produce saleable mineral should not be subjected to being charged royalty whatsoever.</p> <p>The method of calculating royalty based on the full market value of minerals, considering enhancements for saleability and using various calculation methods (netback, cost plus, etc.), might lead to disagreements</p>

		Industry is concerned that this may not be practical with the ASMs at all.	
5	<p>5. (1) The royalty base shall be determined for each quantity of mineral that is —</p> <p>(a) extracted by virtue of a mineral right within a royalty period, and that is —</p> <p>(i) transported from the mineral right 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.</p> <p>(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.</p> <p>(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.</p> <p>(4) The full market value refers to the reference price of the products, without offset or deduction due to location of the products, insurance,</p>	<p>Make the process of determining the royalty base of a mineral simple by excluding any investment on the mineral once it leaves the miner.</p> <p>Clause 5 significantly over complicates the value / price to which a royalty rate is applied – over complication encourages non-compliance.</p> <p>Have higher royalty rates for the sale of less processed material (eg ore) and to decrease the royalty rate the further down the processing path a sale is made.</p> <p>The process of determining the royalty must be clear and objective to avoid any lacuna that invites subjectivity.</p> <p>Part 6 is grey area that assumes the holder of the Director of Mines is competent to assess and determine such value. This is not only untrue but unrealistic and not fair for business; such authority ought to be vested in a body/team/institution, etc. and not an individual as it invites ambiguity and</p>	<p>Part (1) defeats the purpose for royalty if royalty could be charged on investment cost within the country</p> <p>Part 6 provides for discretionary powers, is counterproductive to the spirit of regulations offering clarity on how processes ought to be.</p>

	<p>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.</p> <p>(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</p>	<p>associated delays for doing business in a competitive manner.</p>	
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	using the information available at his or her disposal.		
6	(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.	This is opens the window for abuse of office / power / authority as exercise of discretionary powers is never objective	Discretionary powers should never be entertained if we have to create institutions and systems that work.
	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 based on the full market value.	This opens the window for royalty to be charged on investment incurred to get the mineral to the point of exit and this is punitive.	Royalty base must exclude realization costs incurred on mineral destined for export, especially if we want to support local / in-country processing.
7	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/exfactory"), the sale	The choice of words here is suspect; "may" instead of "shall". Further probing portends a situation where investments in local mineral value addition will suffer. This is neither aligned to Kenya's Vision 2023 nor the Bottom Up Economic Transformation Agenda (BETA).	All minerals that are value added locally or utilized in our factories should be excluded from royalty payments. The targeted compensation could be obtained by way of PAYE from workers in the processing and manufacturing industries, transportation cost and other associated opportunities that come with industrial growth.

	price at this point may serve as the basis for the royalty calculation;		
10	<p>10. (1) Royalty for 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</p>	<p>(1) Minerals transacting locally either get utilized in-country or they end up being exported. Therefore, charging royalty on local mineral trading only hinders intra country business and adversely affects the GDP.</p> <p>Removal of the penalty on late royalty payments.</p> <p>Local mineral trade and utilization for production of mineral products must be encouraged and promoted</p> <p>This is counterproductive and only complicates local mineral trading, a factor that neither benefits the miners, dealers nor the economy.</p> <p>The provision that royalty be charged on local mineral trade only complicates Kenya's index for ease of doing business and of course cost of doing business.</p>	<p>Royalties payment is a compensation for the people of Kenya for the minerals extracted. Logically, locally mined and used minerals should by principle, never attract royalty.</p> <p>All local mineral and mineral products dealings be excluded from royalty payment as they are already subject to 16% VAT.</p> <p>The penalty is punitive and could see companies accrue huge unnecessary costs.</p> <p>It would be difficult to keep track of those who traded with a particular mineral consignment. Keep the process simple by charging royalty only once and at export point.</p> <p>Mineral royalty should be paid by the exporter and not by any other parties trading locally.</p>

	<p>minerals within a given period, any payment made by one party will be credited in calculating the royalty due from other parties.</p> <p>(7) Sub-regulation (6) does not infringe upon any right of contribution that any party may have against another</p>		<p>Further justification why royalty should be charged at export point only.</p>
<p>11</p>	<p>11 (1) The holder of a mineral right may apply to the Cabinet Secretary for a reduction or suspension of the rate of royalty applicable to the minerals the subject of that right and for similar minerals beyond those specified.</p> <p>(2) Any approved reduction or suspension shall not apply retroactively to minerals won prior to the application.</p> <p>(4) The reduced royalty rate shall revert to the prescribed rate after six months period of reduction.</p> <p>(7) Where suspension of royalty is granted, the holder of the mineral right shall pay the deferred amount of royalty at the end of the six months suspension period. –</p> <p>There is no suspension (8)</p> <p>The deferred amount shall not incur</p>	<p>Clearly define the criteria and evidence required for permit holders to apply for a reduction or suspension of royalty rates. Ensure that the criteria align with both the industry's needs and the government's revenue objectives</p>	<ol style="list-style-type: none"> <li>1. The process of applying for a reduction or suspension of royalty rates, along with the evidence required to demonstrate a significant adverse impact, could be contentious, especially if permit holders disagree with the criteria for granting such reductions.</li> <li>2. The period of 6 months for the suspension/reduction of royalties is too short. This should be revised upwards to 2 or more years</li> <li>3. Payment of royalties accrued during suspension at a deferred date means that the royalties were not suspended but payment deferred to a later date.</li> <li>4. Regulation 8 of this section where royalty payments after a suspension period can accrue interest should be removed as it can have adverse financial impact on the mineral right holder</li> </ol>



	<p>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. – Remove the interest</p>		
13	<p>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.</p> <p>(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.</p> <p>(3) An arrangement of any agreement or action, whether or not it is contractual, unilateral, or voluntary.</p> <p>(4) Parties to an arrangement include every person involved directly or indirectly in creating or affecting the arrangement.</p> <p>(5) This regulation applies to reference prices and costs, including those that</p>	<p>Redraft this clause to appropriately address transfer pricing but so as not to impact legitimate contractual arrangements.</p> <p>Establish transparent guidelines for determining arm's length prices and costs to avoid disputes and ensure fairness in adjusting reference prices and associated costs</p>	<p>In some instances, mining companies enter into agreements to hedge costs and price fluctuations – these are arms length but may be slightly below market value, adjusting the royalty base would see the royalty applied to unrealized revenue - making it even more expensive.</p>

	<p>arise from financing arrangements.</p> <p>(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.</p>		
14	<p>14. (1) Reconciliation payments ensure the collection of unpaid royalty on minerals and mineral products at reconciliation points.</p> <p>(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.</p> <p>(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</p>	<p>2(b) fails to promote local mineral trade environment</p> <p>(4) and (5) the word “sold” may be referring to local sales should be deleted</p>	<p>The stakeholders hold the view that the most urgent and important consideration by the SDoM ought to be getting everyone back to mining and mineral dealership, then enhance the inspectorate so as to ensure we have critical data that will facilitate evidence based decision making at the SDoM.</p> <p>KCM and other key actors are willing to work wit the SDoM to enhance compliance through self regulatory interventions as we all need a vibrant sector.</p>

	<p>following a transfer of mineral rights occurs at the time the Cabinet Secretary approves the transfer.</p>		
15	<p>15. (1) Where a reconciliation report identifies an outstanding royalty, a reconciliation payment equal to the amount of unpaid royalty is due.</p> <p>(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.</p> <p>(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.</p> <p>(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</p>	<p>For smooth applicability, define "Royalty Period"<sup>1</sup>.</p> <p>Establish a clear and efficient mechanism for resolving disputes between mineral right holders and regulatory authorities, ensuring that disagreements are addressed promptly and fairly.</p> <p>Allow some flexibility in the timing of reconciliation reports and payments to account for potential delays in data collection and calculations, without imposing stringent penalties</p>	<p>The royalty Period for which interest on unpaid royalty is based is not defined.</p> <p>It would be important to know the period to enable mining companies to comply.</p> <p>The interest rate charged on reconciliation payments is punitive. More time should be provided to conclude the reconciliation and less interest should be charged. Permit holders might face challenges in gathering accurate data, conducting calculations, and adhering to the prescribed timelines, potentially resulting in disputes with regulatory authorities.</p>

	due on those minerals or mineral products		
16	<p>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.</p> <p>(2) The report shall—</p> <p>(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</p> <p>(b) calculate the remaining unpaid royalty for minerals and their mineral products.</p> <p>(3) The reconciliation payment shall be equal to the total unpaid royalty on those minerals and their mineral products.</p>	<p>Dealership on minerals within the country should be excluded from royalty payments. This then implies that reconciliation is for minerals exported only.</p> <p>Amend this article to exclude local mineral trading.</p>	<p>The focus on the bigger picture for critical mass in regard to volumes traded, jobs created and overall wealth created in – country will have a greater positive impact than the short term view to collect royalties with the risk to losing out to smuggling.</p>
17	<p>17. (1) When a mining permit including artisanal or a mining license holder reconciliation point arises, the holder shall submit a reconciliation report.</p> <p>(2) The report shall detail the minerals and mineral products exported and or sold during the period,</p>	<p>(2) the word “sold” include local transaction.</p> <p>Local sales and trade in mineral products to be excluded from royalty payment</p> <p>Focus on exported minerals only</p>	<p>This needs a clearer review and more sensitization so as to attract the desired level of compliance and the deliver the desired benefits to the exchequer.</p>

	<p>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.</p> <p>(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.</p> <p>(4) The amount of the reconciliation payment shall be equal to the outstanding royalty on those minerals and mineral products.</p> <p>(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 paid a reconciliation payment for the minerals or products.</p>	<p>Deleted the word Extracted and replace with exported</p>	
<p>Appendix 1</p>	<p>Royalty Payment for Cement.<sup>[1]</sup> The royalty rates of 1.6% chargeable in respect of gross sales value of Cement.</p> <p>and 8% for Titanium ,</p> <p>5% Carbon dioxide</p>	<p>1.6% of the gross sale of cement is approx. Kshs. 252 per ton, an increase of 80% in royalty costs.</p> <p>1.5% royalty on naturally mined carbon dioxide or 2.1% at ex-mine gate value for fully refined and</p>	<p>Industry proposes a reduction from 1.6% to 1% or retain the existing rate of Kshs. 140 per ton.</p> <p>8% is presently the highest in the world, reducing Kenya’s attractiveness as a</p>

		<p>processed minerals</p> <p>The mining royalty rate should be 1% of mine gate value (excluding transport costs) for all minerals which are fully processed in Kenya i.e minerals that are 100% value added should attract 1% royalty rate to encourage local value addition, for all minerals. In this manner, there is no discrimination within the minerals.</p> <p>Adopt the royalty schedule that was subject to stakeholder engagement during 2020-2022. These are in line with global norms and allow for a sliding scale of applicable royalty rates based on the level of value addition/processing.</p> <p>Royalty payments should include all minerals whether non renewable or renewable because trona and salt are actually renewable.</p>	<p>Mining jurisdiction.</p> <p>Given that there exists other Carbon dioxide producers who are not under mining sector we are proposing a lower rate for mines Carbon Dioxide.</p> <p>Royalties directly impact the cut-off grade of a mineral resource and high royalties will potentially render viable deposits uneconomic, to the detriment of the national economy.</p> <p>It is far better to impose additional levies on profit rather than directly on revenue.</p>
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**PROPOSED ROYALTY RATES BY PRIVATE SECTOR**

Mineral	Current rate	Proposed rate at respective State of value addition			
		Raw, crushed ore	Ore Concentrate	Semi processed	Processed
Precious metals gold and PGM	5	7	5	3	2
Technology minerals ;- tantalite, columbite, tin, tungsten, lithium, cobalt, niobum	10	10	8	5	2
Rare earth elements	10	10	8	5	2
Radioactive elements	10	10	8	5	2
Metallic ores (copper, zinc, lead, aluminium, Vanadium)	8	7	5	3	1
Other non precious metallic ores	8	10	8	5	2
Titanium mineral sands	10	10	7	5	3
Titanium ore	10	7	5	3	
Zircon sands	10	10	7	5	3
Coal	8	5	3		1
Limestone, Gypsum, dolomite, silica sand, talc	1	3			1
Dimension stones		3		2	1
clays		5			1
diatomite	5	5		4	3
Trona		5		4	3
Carbon dioxide	5	5		4	3
Construction minerals	2	3			1
Fluorspar	5				
Cement manufacturing minerals	KShs.140 per tonne of cement	KShs.140 per tonne of cement			
Salt		KShs.400			KShs.200
Gemstones	5	7	5		1

<b>Diamonds</b>	<b>12</b>	<b>10</b>			<b>1</b>
<b>All other minerals</b>	<b>5</b>	<b>7</b>	<b>5</b>	<b>4</b>	<b>2</b>
<b>JUSTIFICATION</b>	Kenya's rates for internationally readily available minerals should be reviewed in order to make them competitive, and where we have advantage of significant deposits of high value minerals optimal royalty rates should be charged				

**THE MINING (LICENSE AND PERMIT) (AMENDMENT) REGULATIONS, 2023**

<b>Article</b>	<b>Proposal by SDoM</b>	<b>Industry Position</b>	<b>Justification</b>
5	5. Marginal notes: Public access to the Cadastre.	2(a) in the marginal note by adding the words “and perusal of documents” immediately after the words “public access to the Cadastre”;	Renders clarity as desired
5	5(a) access the non-confidential information on mineral rights and dealings in minerals through the Cadastre; and	2(b) in paragraph (a) delete the word “and” appearing after the words “minerals through the Cadastre and;”	Renders clarity as desired
5	5(b) obtain hard copies of any non-confidential information contained in the Cadastre upon the payment of a prescribed fee.	2(c) in paragraph (b) by adding the word “a fee specified in the Second Schedule” immediately after the words “upon the payment”;	The correct addition should be “as specified in the second schedule” after the words “prescribed fee”
5	5(c)	2(d) by inserting the following new paragraph immediately after paragraph (b)— (c) pursuant to section 195 of the Act and upon payment of a fee specified in the Second Schedule be issued an evidentiary certificate.	Renders clarity as desired
9	9(2)The Director of Mines shall issue such replacement or duplicate document within fourteen days of the application.	3. Regulation 9 (2) is amended by inserting the words “upon payment of the fee specified in the Second Schedule”.	Adding the words after “application”



11	11. (1) An application for a mineral right shall be submitted by a registered user by completing the prescribed form, uploading the required documents and payment of the prescribed fee.	4. Regulation 11 (1) is amended by inserting the following words “application fee as specified in the Second Schedule” immediately after the words “payment of the”.	Renders clarity as desired
25		5. The principal Regulations are amended by inserting the following new regulation immediately after regulation 25— Annual rent. Subject to Section 223 (2)(a) of the Act, the holder of a mineral right shall pay annual rent due on the first day of the license year and is payable as specified in the Second Schedule.	Renders clarity as desired
25	25. (1) The Corporation shall be managed by a Board comprising of— (a) a chairman, appointed by the President; (b) the Principal Secretary responsible for mining or a representative ; (c) the Principal Secretary responsible for the National Treasury or a representative; (d) the Principal Secretary responsible for trade or a representative; and (e) three other persons, not being employees of the corporation. (2) The Cabinet Secretary shall make Regulations to prescribe the criteria for the appointment of the	6. The principal Regulations are amended in regulation 25— (a) In sub-regulation (1) by inserting the following words “and upon payment of an application fee as specified in the Second Schedule”; (b) In sub-regulation (2)— i. by deleting the word “and” appearing after the words “in the case of a large scale mineral right”; ii. by inserting the following new paragraphs after sub-regulation (2) (a)— (b) within sixty days of the date of application for a small scale or artisanal mining permit; and (c) upon approval of the application,	This regulation needs further rethinking to offer the required clarity.

	<p>members under paragraphs (a) and (e). (3) An appointment under subsection (1) (a) and (e) shall be by name and by notice in the Gazette. (4) The term of office for members under subsection (1) (a) and (e) shall be for a period of three years and may be renewed for one further final term. (5) A person ceases to be a member, if he or she – (a) resigns, by giving written notice to the Cabinet Secretary; (b) is absent from three consecutive meetings of the Board without the permission of the chairperson; (c) is convicted of an offence and sentenced to imprisonment for a term not exceeding six months ; (d) is adjudged bankrupt; (e) is incapacitated from performing his duties as a member of the Board, by prolonged physical or mental illness. (6) A representative member referred to under subsection (1) (b) (c) and (d) shall, when attending a meeting, be deemed for all purposes to be a member of the Board.</p>	<p>the transferor shall pay the transfer fee as specified in the Second Schedule.</p>	
28	<p>After Regulation 28 7. The principal Regulations are amended by inserting the following new regulation</p>	<p>Instead of adding an additional cost, amend the Mining Act to allow a small percentage of the royalties collected to be allocated to</p>	<p>The idea of mineral development levy is definitely a most welcome idea. This will safeguard the future of the industry. In the</p>

	<p>immediately after regulation 28— 28A. (1) The holder of a mineral right or a mineral dealer shall pay a mineral development levy as specified in the Second Schedule.</p> <p>(2) The purpose of the levy shall be to promote sustainable mineral resource development in Kenya.</p>	<p>“promoting sustainable mineral resource development”</p>	<p>interim, given the unfortunate state of the sector and obvious absence of support for the actors in the sector, industry is of the view that SDoM lobbies to access the 1% from the existing 7o% royalties paid to the National Treasury to help resuscitate the sector and only consider the levy when Kenya has an established mining industry.</p>
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**SECOND SCHEDULE FEES, RENT AND OTHER CHARGES DOCUMENT PERUSAL AND DUPLICATION FEES**

<b>Issue</b>	<b>Proposed Fees</b>	<b>Industry Position</b>	<b>Justification</b>
Perusal of Documents (per hour or part thereof)	Kshs. 2,000	Industry is amenable with this	It is fair value
Duplication of documents a. Copy of License/ Permit document b. Evidentiary Certificates Any other document	Kshs. 2,000 Kes 2,000 per document Kshs. 100 per page	Industry supports this level of fees	It is fair value

**APPLICATION FEES (and renewal thereof)**

**Licences**

Reconnaissance License	Kshs. 20,000	The industry is of the view that while application fees may be something worth consideration in the future,	This is a unnecessary barrier to investors in the mineral sector. It will only lead to increased and sustained
Prospecting License	Kshs. 50,000		

Retention License	Kshs. 50,000	the state of the industry will not accommodate this level of fees being levied on citizens that already pay taxes to keep the civil servants in office. This is repugnant to the tenets of fairness and equity.	informal mining in the country. Since Kenya encourages formal investment in the mineral sector, it would be a step in the right direction if this proposal was deleted
d. Mining License	Kshs. 100,000		
<b>Permits</b>			
Reconnaissance Permit	Kshs. 5,000	The application fees for this category / cadre of miners is a clear departure from the tents that underpin the Bottom Up Economic Transformation Agenda	The initiative to formalize / professionalize the ASM sector requires a give and take approach and hence granting them the headroom to cope on board in the mainstream to play their role in nation building makes economic sense.
Prospecting Permit	Kshs. 7,000		
Mining Permit	Kshs. 7,000		
Artisanal Mining Permit	Kshs. 2,000		
<b>ANNUAL RENT</b>			
<b>Licenses</b>			
Prospecting License	Kshs. 3,000 per km <sup>2</sup> subject to minimum of Kshs. 100,000 per license year	Given the conversion ratio of prospecting to mining, it is punitive to levy such charges on an industry contributes only 1% to the GDP	It would be prudent for Kenya as a nation to open up the space for prospecting and this will set the pipeline for mineral development in the next 5 to 10 years.
Retention License	Kshs. 6,000 per km <sup>2</sup> subject to minimum of Kshs. 500,000 per license year	This is punitive and completely unattractive to investors	The fees needs a thorough review
Mining License	Kshs. 2,500 per Ha subject to minimum of Kshs. 500,000 per license year	This needs to be further refined to reflect the type of mineral.  Mining licences should be charged a minimum of Ksh. 100,000 for a period of at least 5 years , especially for gemstones.	This is a disincentive to industrial miners and mineral processors.  This is to allow for miners to get return on their investments.
<b>Permits</b>			
Prospecting Permit	Kshs. 20,000	Since permits as provided for in the Mining Act 2016 target Kenyans of low	SDoM and the Kenya Kwanza administration must remain focused on
Mining Permit	Kshs. 50,000		

Artisanal Mining Permit	Kshs. 10,000	income and engage in mineral development for purposes of earning a living it is proposed that the charges remain unchanged as contained in Legal Notice No. 187	actualizing BETA and this is an opportunity that will not be realized with the proposed fees.
<b>TRANSFER FEE</b>			
Prospecting License	Kshs. 200,000 per km2 subject to minimum of Kshs. 5,000,000 per license year	It is proposed that transfer of licenses and permits be exempted from any fees	Mining is a capital intensive investment and hence the capital owners require a predictable environment with zero entry and exit barriers.  Kenya has not been able to tap into her natural resources despite being geologically endowed and such fees will make the situation worse.  The exchequer should consider capital gains tax as adequate and this will stimulate a multiplicity of activities.  The main drivers of business seeking to transfer licenses and permits are:- 1. Change of ownership or beneficial owners 2. Need to bring in partnerships that offers skills and technology 3. attracting new and/or additional capital for investment; 4. Investor fatigue due to social license issues or just depletion of working capital;
Mining License	Kshs. 1,000,000		
Prospecting Permit	Kshs. 100,000		
Mining Permit	Kshs. 100,000		
Artisanal Mining Permit	Kshs. 50,000		

			<p>4. Changed investment mind / priorities due to social, political or economic reasons beyond their control.</p> <p>5. Charging a transfer fee does not therefore help achieve these gains.</p>
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**MINERAL DEVELOPMENT LEVY**

All minerals (except Salt)	1% of gross sale value	Mineral Development Levy is a good idea but requires a vibrant and stable sector. Investors in the mineral sector shoulder one of the highest risks in business in Kenya and must be supported so that the sector gets on a growth trajectory.	Industry recommends that the MDL be considered a vote generated from the National Government royalty share (70%) and not directly charged from mineral investors, except for those that export.
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**Proposed Changes to the The Mining (Dealings in Minerals) Regulations, 2017**

Article	Proposed Change	Industry Position	Justification / Remarks
4	4(5) An application shall only be accepted upon payment of the prescribed application fee.	2. The Mining (Dealings in Minerals) Regulations, 2017, in these Regulations referred to as the “principal Regulations” are amended in regulation 4 (5) by inserting the words “as set out in the Third Schedule” immediately after the words “prescribed application fee”.	Industry supports the proposed change
5	5 (2) (e) a certified, signed statement or formal letter of intent from a bank or any financial institution of	3. The principal Regulations are amended in regulation 5— (a) by inserting the word “recognized” between the words “any” and	Industry supports the proposed change

	<p>the funds available to the applicant;</p> <p>(g) the appointed agents of the applicant and their areas of operation if any</p>	<p>“financial” in sub-regulation (2) (e); (b) by deleting sub-regulation (2) (g) and substituting therefore the following new sub-regulation; (g) where applicable, appointed agents of the applicant, their identity card numbers, physical and postal addresses, contacts and their areas of operation.</p>	
7	<p>7. (1) Subject to section 160(1) of the Act, an application for the grant of a mineral dealer's licence for purposes of processing shall be made to the Cabinet Secretary by completing Form DPL1 as out in the Second Schedule.</p>	<p>7. (1) Subject to section 160(1) of the Act, an application for the grant of a mineral dealer's licence for purposes of processing shall be made to the Cabinet Secretary by completing Form DPL1 as out in the Second Schedule.</p>	<p>This is a welcome initiative the jewelers will now have a single license.</p>
	<p>4. The principal Regulations are amended in regulation 7— (a) by inserting the word “set” in between the words “as” and “out” in sub-regulation (1);</p> <p>(b) by deleting sub-regulation (2) (c) (iii) and (iv);</p> <p>(c) by inserting the words “where applicable” immediately after the words “environmental licence” in sub-regulation (2) (j);</p> <p>(d) by deleting sub-regulation (2) (k) and substituting therefore the</p>		

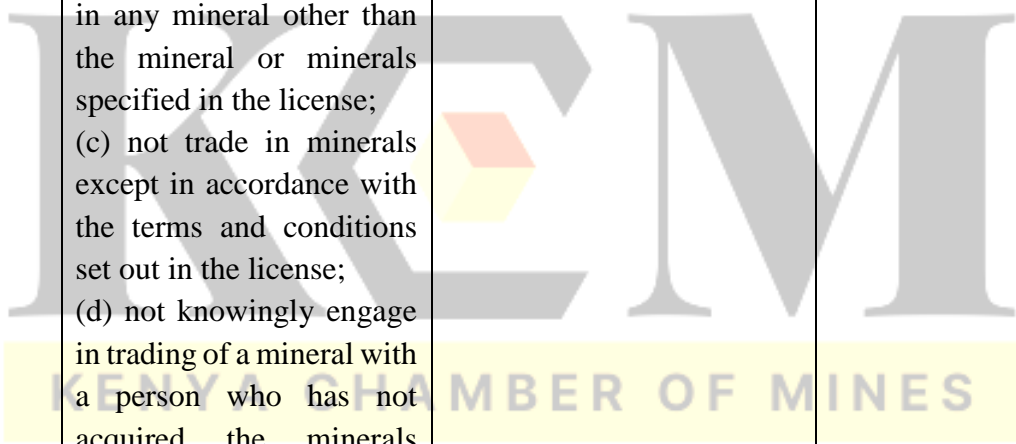
	<p>following new sub-regulation; (k) where applicable, appointed agents of the applicant, their identity card numbers, physical and postal addresses, contacts and their areas of operation; (e) by inserting the word “processing” between the words “dealer’s” and “licence” in sub-regulation (4);</p>		
8	<p>8. A mineral dealer's (processing) licence shall be issued digitally together with a paper copy using Form DPL 2 set out in the Second Schedule</p>	<p>5. The principal Regulations are amended in regulation 8—  (a) by inserting the word “in” between the words “issued” and “Form”; (b) by deleting the words “digitally together with a paper copy using” appearing immediately after the words “shall be issued”.</p>	<p>Digital licensing is a most welcome initiative</p>
6A new	<p>6. The principal Regulations are amended by inserting the following new regulations immediately after regulation 6—</p> <p>6A. (1) Subject to section 160(1) of the Act, an application for the grant of a mineral dealer's (Jewellery) license for purposes of trading shall be made to the Cabinet Secretary by completing Form DJL I as set out in the Second Schedule.</p>	<p>6A(20)(d) should be deleted for there are no particular class of minerals that must be used to make an ornament.</p> <p>6A(3) be amend to provide for continuation of business if no directive is received from CS as though the License was issued.</p> <p>Part6A(4) may not apply to jewelry sector as there is no classification of minerals that must be used in any one jewel.</p>	<p>This requires attention as it will disadvantage the jewelers who sometimes use a ally of material and some of them not minerals in order to produce a single piece.</p> <p>This will help improve service delivery and ensure that business is not unnecessarily disrupted when the CS has not issued the license.</p>



	<p>(2) The application referred to under sub-regulation (1) shall include the following—</p> <p>(a) the full name, nationality and contact of the applicant;</p> <p>(b) the physical address of the place of business of the applicant; (c) in the case of a company—</p> <p>i. the certificate of registration;</p> <p>ii. a current copy of CR12 from the Registrar of Companies;</p> <p>(d) the name of the mineral or class of minerals for which the license is sought;</p> <p>(e) a certified, signed statement or formal letter of intent from a bank or any recognized financial institution of the funds available to the applicant;</p> <p>(f) a description of the knowledge or experience of the applicant in relation to any previous dealings in minerals; and</p> <p>(g) the appointed agents of the applicant, contacts and their areas of operation.</p> <p>(3) The Cabinet Secretary shall notify the applicant of the decision on the application within thirty days of receipt of a complete application.</p> <p>(4) The categories for the different types of minerals</p>		
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	is as set out in the First Schedule.		
6B New	6B. A mineral dealer's (jewellery) license shall be issued digitally together with a paper copy using Form DJL 2 set out in the Second Schedule.	This is welcome, especially by the jewellers	This will help improve service delivery
10A New	<p>The principal Regulations are amended by inserting the following new regulation immediately after regulation 10—</p> <p>10A. (1) A mineral dealer's (jewellery) license confers on the holder the right to trade in the mineral or minerals to which the license relates to and conduct any other ancillary or incidental activity attached to the license.</p> <p>(2) For the purposes of exercising the right conferred under sub regulation (1), the holder may appoint agents to carry out any activity authorized by the license on his or her behalf.</p> <p>(3) The holder of a mineral dealer's (jewellery) license shall notify the Cabinet Secretary of the appointment of an agent and the holder shall be held liable for all acts or activities done or carried out by the agent under the license.</p>	<p>10A (1) Expand rights conferred to include: trade; polish; cut; amount; recycle ornaments; design and re-design ornaments. Remove the restriction on mineral that a licensee could deal in for this is not applicable for jewelry and ornamental works.</p> <p>4(b) may not work for jewelry and ornamental works.</p> <p>4(d) confers the oversight duties to licensee, which may interfere with arm's length principle of doing business.</p> <p>The Government must ensure that it is adequately resourced in its inspectorate</p>	The Industry is willing to work with government to facilitate the sector achieve its objectives in serving Kenyans.

	<p>(4) All agents appointed by a holder of a mineral dealer's license shall be issued with an identity card which shall be carried by the agent in the performance of any activity to which the license relates.</p> <p>(5) The holder of a mineral dealer's license shall—</p> <p>(a) commence or engage in the trading of a mineral in accordance with the terms and conditions of the license within thirty days after the date of the issue of the license; (b) not trade in any mineral other than the mineral or minerals specified in the license;</p> <p>(c) not trade in minerals except in accordance with the terms and conditions set out in the license;</p> <p>(d) not knowingly engage in trading of a mineral with a person who has not acquired the minerals lawfully or is otherwise not lawfully entitled to deal in minerals;</p> <p>(e) pay all taxes, charges or levies that are required under the terms and conditions of the license, the Act or any other written law in Kenya;</p> <p>(f) keep complete and accurate records of all activities conducted under the license at the registered office and submit a true</p>	<p>unit and have proper accountability.</p>	
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	<p>copy to the Cabinet Secretary in the manner as specified in the Act and these Regulations;</p> <p>(g) permit the authorized officer of the Ministry to inspect any documents or records; and</p> <p>(h) submit if any, the sales contract or agreement the holder may sign with a buyer, seller or holder of a mineral right.</p>		
8	<p>8. Regulation 11 is amended— (a) in sub-regulation (1) by adding the word “jewellery” immediately after the word “trading”;</p> <p>(b) in sub-regulation (3) by deleting the expression “Environment and Land Court” and substituting therefore the words “relevant courts”</p>		<p>Industry is keen to have the sector play by the rules of justice and hence unfair to limit the matter only ELC</p>
11	<p>11. (1) A holder of a mineral dealer's license for trading or processing who wishes to renew the license shall, not later than thirty days before the expiry of the license, apply for a renewal by completion-license' Form DL 2 as set out in the Second Schedule.</p> <p>(3) Where the Cabinet Secretary has rejected an application for a mineral</p>	<p>11(1) The right words to add are “in jewellery”</p> <p>11(3) supported</p>	<p>This needs to be very specific so as to support the jewelry sub sector to its former glory.</p>

	dealer's license or a renewal thereof, the affected applicant may apply to the Environment and Land Court for a review of the decision within thirty days from the date of notice of the decision		
9	9. The principal Regulations are amended in regulation 15— (a) in sub-regulation (1)— i. by inserting the word “in” between the words “issued” and “Form”; ii. by deleting the words “digitally together with a paper copy using” appearing immediately after the words “shall be issued”. (b) in sub-regulations (3) (c) and (e) by deleting the word “licence” and substituting therefor the word “permit”.	Provide better clarity.	The amendments are not clear, and thus may lead to further misinterpretation.
15	15. (1) An application for the grant of a mineral dealer's permit shall be made to the Cabinet Secretary by completing Form DPI set out in the second schedule. dealer's pcrmit (2) A mineral dealer's permit shall be issued digitally together with a paper copy, using Form DP 2 as set out in the Second Schedule.		Industry supports the proposal

	<p>(3) A mineral dealer's permit shall specify and have appended to it, by the Mining Cadastre Office -</p> <p>(a) the name, nationality and address of the permit holder; (b) physical address of the place of business; (c) the mineral or minerals in respect of which the license is valid; (d) the type of mineral dealings to be carried out; and (e) the term of the license.</p>		
17	<p>17(4) Where the Cabinet Secretary has rejected an application for a mineral dealer's permit or a renewal thereof, the affected applicant may apply to the Environment and Land Court for a review of the decision within thirty days from the date of notice of the decision</p>	<p>The principal Regulations are amended in regulation 17 (4) by deleting the expression "Environment and Land Court" and substituting therefore the words "relevant courts".</p>	<p>It is not fair to restrict the matter to ELC. It is for the judiciary to determine the most appropriate court to serve justice in such a scenario.</p>
18	<p>18. Except as otherwise provided in the Act or under these Regulations, a person shall not export a mineral unless the person holds a permit granted by the Cabinet Secretary for that purpose</p>	<p>The principal Regulations are amended in regulation 18 by inserting the words "mineral export" in between the words "a" and "permit"</p>	<p>The proposed change by industry will render clarity</p>
19	<p>19. A person shall not be qualified to apply for a permit to export minerals unless the - (a) person is a holder of a mining license, mining permit or a dealer's license granted in</p>	<p>The principal Regulations are amended in regulation 19 (a) by adding the words "(trading, jewellery or processing)" immediately after the words "a holder of</p>	<p>This will allow the jewelers to export and this is good for country being a source country for Tavorite among other gemstones</p>

	accordance with the Act; and	a mining license, mining permit or a dealer's"	
20	20. (1) Subject to section 171(2) of the Act, an application for the grant of an export permit shall be made to the Director of Mines by completing Form EP 1 as set out in the Second Schedule.		This is business friendly and industry supports this provision
<b>Proposed Changes in Fees</b>			
Mineral dealers Processing license (Precious metals and Base metals)	Application Fees	Kshs 50,000/=	The industry players request for the following actions: Further consultations and engagements to come up with fair charges / fees. Industry players request the SDoM to consider first stabilizing the industry and addressing all pending administrative issues, including disputes on mining permits and related issues, then seek to have reasonable fees levied to the bona fide / genuine players.
	License Annual Fees	Kshs 300,000/=	
Mineral dealers Processing license (Gemstone Faceting)	Application Fees	Kshs 5,000/=	There also ought to be engagements with the respective county governments so as to avoid the current impasse where counties feel they are short changed and they are not benefiting from the mines located within their counties.
	License Annual Fees	Kshs 50,000/=	
Mineral Dealers (Trading) License 1 calendar year (term Expires on 31st day of December)	Application Fees	Kshs 5,000/=	Minerals dealers and miners propose that the licenses and
	License Annual Fees (Industrial and Construction minerals)	Kshs 50,000/=	
	License Annual Fees (Precious Stones )	Kshs 20,000/=	

	License Annual Fees (Semi-Precious Stones )	Kshs 20,000/=	permit fees remain constant until such a time as the sector is revamped and profitable.
	License Annual Fees (Base and Rare Metals)	Kshs 20,000/=	
	License Annual Fees (Precious Metals)	Ksh 100,000	
Mineral Dealers permit 1 calendar year (term Expires on 31st day of December)	Application Fees	Kshs 2,000/=	
	Permit Annual Fees (Industrial and Construction minerals)	Kshs 20,000/=	
	Permit Annual Fees (Precious Stones )	Kshs 5,000/=	
	Permit Annual Fees (Semi-Precious Stones )	Kshs 5,000/=	
	Permit Annual Fees (Base and Rare Metals)	Kshs 5,000/=	
	Permit Annual Fees (Precious Metals)	Kshs 5,000/=	
Mineral Dealers (Jewellery') Licence	Application Fees	Kshs 1,000/=	
	License Annual Fees	Kshs 20,000/=	

### Regulations on Royalty Sharing

2	“community” means a group of people living around a mining operations area;	Adopt the definition of “Community” as per the Mining Act 2016.	
4	16.1. Within a period of three months from the end of each financial year, the Accounting Officer shall	Propose for inclusion of a Clause to provide for a mechanism to undertake an audit of the funds sent to the	The funds disbursed to the committee shall be audited and reported upon in accordance



	<p>submit to the Auditor-General with a copy to the National Treasury, the accounts relating to the community projects together with—(a) a statement of the expenditure of the community projects during the financial year; and (b) statement of the assets and liabilities on the last day of that financial year.</p>	<p>community by the Office of the Auditor General.</p>	<p>with the Public Audit Act.</p>
	<p>Distribution by National Treasury. “transfer twenty percent of the amounts to the respective County Revenue Fund Accounts of benefiting Counties in proportions allocated in the schedule in accordance with section 183 (5)(b) of the Act.”</p>	<ol style="list-style-type: none"> <li>1) County management of Disbursements not captured at all.</li> <li>2) No mention of cancellation of Cess by Counties after the 20% royalties remitted.</li> </ol>	<ol style="list-style-type: none"> <li>1) Lack of visibility of funds at County level</li> <li>2) Double taxation through cess at county level should be eliminated</li> </ol>
	<p>Administration of Community Mineral Royalty. There shall be established a Community Mineral Royalty Management Committee for each benefiting community.</p>	<ol style="list-style-type: none"> <li>1) Capping the maximum disbursement to Kshs. 100,000 (One Hundred Thousand) is not viable.</li> <li>2) Community projects requirement to seek approval for projects from the State creates bureaucracy on access of funds.</li> <li>3) Community Mineral Royalty Management Committee has no representation from the organization/mineral rights</li> </ol>	<ol style="list-style-type: none"> <li>1) In comparison to 10% royalty share, this allocation cannot drive community development</li> <li>2) The Community Mineral Royalty Management Committees should be mandated to oversee and be accountable for the utilization of the 10% through Community development programs and submit a report to the state.</li> <li>3) Organization/mineral rights holder need to have</li> </ol>

		holder.	<p>visibility of 10% remittance to justify the royalty share and community engagement.</p> <p>4) The communities in the mining areas want to take ownership and leadership of the Community Mineral Royalty Management Committee with public servants as members and not the ones to control / manage the committee.</p>
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This document captures the deliberations and written memoranda that have been received by KCM in the last two weeks. We are hopeful that the SDoM will consider the input of the stakeholders in the mining sector. We look forward to further engagements during the validation process.

