



**MEMORANDUM BY THE KENYA CHAMBER OF MINES ON THE DRAFT REGULATIONS  
2023 – 2024 , PROPOSED BY THE STATE DEPARTMENT OF MINING UNDER THE  
MINING ACT OF 2016.**

**02<sup>TH</sup> FEBRUARY 2024**

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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 mining sector operates within a dynamic regulatory environment, where stakeholder engagement plays a pivotal role in shaping policies and regulations. In August 2023, the Ministry of Mining, Blue Economy, and Maritime Affairs proposed draft regulations aimed at governing various aspects of the mining industry. These regulations underwent a rigorous consultation process, during which stakeholders from diverse backgrounds provided valuable insights and recommendations.

The following document presents a comprehensive analysis of stakeholder proposals and opinions in response to the draft regulations introduced by the Ministry of Mining, Blue Economy, and Maritime Affairs in August 2023. Our primary objective is to critically assess the integration of stakeholder input into the final set of regulations released in January 2024. In this endeavor, we delve into the diverse perspectives provided by stakeholders within the mining sector, ranging from industry experts to environmental advocates and community representatives. Through an open consultation process, these stakeholders offered invaluable insights that have played a pivotal role in shaping the regulatory landscape.

Utilizing a matrix format, our analysis categorizes stakeholder proposals alongside the corresponding provisions in the January 2024 regulations. This structured approach aims to illuminate the extent of alignment or disparity between stakeholder input and the final regulatory framework. As we embark on this exploration, our focus extends beyond merely evaluating the incorporation of stakeholder opinions; we aim to identify any noteworthy discrepancies and offer constructive recommendations for enhancing future stakeholder engagement in the policymaking process.

It is essential to note that this analysis is conducted independently and is intended to serve as a valuable resource for policymakers, industry participants, and the public, shedding light on the intricate relationship between stakeholder input and the regulatory landscape in the mining sector.

## 1. ROYALTY COLLECTION AND MANAGEMENT REGULATIONS , 2023

Article	Proposal by SDoM – August 2023	Industry Position	Current Proposal – January 2024	Concerns
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>	Remove/ Delete paragraph (c) of this section	<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><b>No recommendations adopted</b></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	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	Simplify the royalty calculation methodology by reducing the complexity of the netback, cost plus,	(b) royalties should be based on the full market value of the mineral in its most processed, marketable form, taking into	<p><b>No recommendations adopted</b></p> <p>Investment cost on processing and any enhancement to produce saleable mineral should not be</p>

	<p>processed, marketable form, taking into account all enhancements made to increase its salability;</p>	<p>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>Industry is concerned that this may not be practical with the ASMs at all.</p>	<p>account all enhancements made to increase its saleability;</p>	<p>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>
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 — (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</p>	<p>Part (1) defeats the purpose for royalty if royalty could be charged on investment cost within the country</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>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 licence or permit area during that royalty period if it was not previously accounted for in a royalty base</p>	<p><b>No recommendation were adopted</b></p>

	<p>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, transport or any other factors.</p>		<p>calculation; or</p> <p>(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, transport or any other factors.</p>	
5	5. (5) If no reference price is available for a mineral product, the full market value is determined by	Clause 5 significantly over complicates the value / price to which a royalty rate is applied –	(5) If no reference price is available for a mineral product, the	No recommendations were adopted

<p>— (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>over complication encourages non-compliance The process of determining the royalty must be clear and objective to avoid any lacuna that invites subjectivity.</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>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>	
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5	<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 using the information available at his or her disposal.</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 associated delays for doing business in a competitive manner.</p> <p>This opens the window for abuse of office / power / authority as exercise of discretionary powers is never objective</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 using the information available at his or her disposal.</p>	<p><b><i>No recommendations were adopted</i></b></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>Discretionary powers should never be entertained if we have to create institutions and systems that work.</p>
6	<p>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.</p>	<p>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.</p> <p>Royalty base must exclude realization costs incurred on</p>	<p>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.</p>	<p>No recommendations were adopted</p>



		mineral destined for export, especially if we want to support local / in-country processing.		
7	<p>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—</p> <p>(a) For minerals transported from the area of the mineral right and sold directly at the extraction site ("mine gate/exfactory"), the sale price at this point may serve as the basis for the royalty calculation;</p> <p>(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."</p>	<p>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).</p> <p>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.</p>	<p>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 price at this point may serve as the basis</p> <p>for the royalty calculation;</p> <p>(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."</p>	No recommendations were adopted

10	<p>10. (1) Royalty <b>for sold or exported minerals</b> shall be paid within one hundred and twenty days, commencing from the final day of the month in which the transaction took place.</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>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>10. (1) Royalty <b>for locally sold or exported minerals</b> shall be paid within one hundred and twenty days, commencing from the final day of the month in which the transaction took place.</p>	<p>No recommendations were adopted and “locally” was added before sold or exported minerals</p>
10	<p>(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.</p>	<p>Removal of the penalty on late royalty payments.</p> <p>The penalty is punitive and could see companies accrue huge unnecessary costs.</p>	<p>(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.</p>	<p>No recommendations were adopted</p>

10	<p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(7) Sub-regulation (6) does not infringe upon any right of contribution that any party may have against another</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>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>(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.</p> <p>(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.</p> <p>(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.</p> <p>(7) Sub-regulation (6) does not infringe upon any right of contribution that any party may have against another.</p>	No recommendations were adopted
11	11 (1) The holder of a mineral right may apply to the Cabinet Secretary for a reduction or	Clearly define the criteria and evidence required for permit holders to apply for a reduction or suspension of royalty rates.	11. (1) The holder of a mineral right may apply to the Cabinet Secretary for a reduction of	

	<p>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>Ensure that the criteria align with both the industry's needs and the government's revenue objectives.</p> <p>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.</p>	<p>royalty rate or temporary suspension of royalty payment applicable to the minerals subject of that right.</p> <p>(2) An application for a reduction of royalty rate or temporary suspension of royalty payment shall not exceed 6 months.</p>	
<b>11</b>			<p><b>(3) Any approved reduction of royalty rate or suspension of royalty payment shall not apply retroactively to minerals won prior to the application.</b></p>	<b>Newly added clause</b>
	<p>(3) An application for a reduction or suspension may only be made if all reports and statements in relation to mining operations have been submitted as required under the Act.</p>		<p>(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</p>	No changes to the clause.

			required under the Act.	
			<b>(5) The Cabinet Secretary shall not reduce the royalty rates by more than 50% of the rates as set out in the first schedule.</b>	<b>Newly added clause</b>
<b>Article</b>	<b>Proposal by SDoM – August 2023</b>	<b>Industry Position</b>	<b>Current Proposal – January 2024</b>	<b>Concerns</b>
11	(4) The reduced royalty rate shall revert to the prescribed rate after six months period of reduction.	The period of 6 months for the suspension/reduction of royalties is too short. This should be revised upwards to 2 or more years	(6) The reduced royalty rate shall revert to the prescribed rate at the end of the six months period of reduction.	No recommendations were adopted
	(5) 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.	Payment of royalties accrued during suspension at a deferred date means that the royalties were not suspended but payment deferred to a later date.	(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.	No recommendations were adopted
	(6) A reduction or suspension of a royalty rate shall only begin three months after date of the application.			<b>Clause is omitted in new regulations</b>
	(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	Regulation 7 - 8 of this section where royalty payments after a suspension period can accrue interest should be removed as it can have adverse financial	(8) Where suspension of royalty payment is granted, the holder of the mineral right shall pay the deferred amount of royalty at	No recommendations were adopted

	<p>months suspension period. – There is no suspension.</p> <p>(8) 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. – Remove the interest</p>	<p>impact on the mineral right holder</p>	<p>the end of the six months suspension period.</p> <p>(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.</p>	
			<p>(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.</p>	<p><b>Newly Introduced Clause</b></p>
	<p>(9) <b>An applicant</b> seeking a suspension or reduction of royalty must provide evidence, such as financial statements, audited accounts, and any other information requested by the Cabinet Secretary, to demonstrate that the adjusted rate will alleviate</p>		<p>11) <b>A mineral right holder</b> 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</p>	<p>Clause has been amended</p>

	a temporary but significant adverse impact on the applicant.		demonstrate that the adjusted rate will alleviate a temporary but significant adverse impact on the mineral right holder.	
	(10) In addition to evidence in sub regulation (9), <b>an applicant</b> for suspension of royalty shall provide a payment plan detailing how the deferred royalty amount will be paid at the end of suspension period.		(12) In addition to evidence in sub regulation (9), <b>a mineral right holder applying</b> 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.	The clause has been amended
	(11) The <b>Cabinet Secretary shall consider an application</b> for a reduction or suspension of the rate applicable to the minerals based on evidence provided in support of the application		(13) <b>The Cabinet Secretary shall, on the advice of the Mineral Rights Board,</b> approve or reject an application for a reduction of the rate or temporary suspension of royalty payment within the 90 days from the date of submission of a completed application.	The clause has been amended
			(14) Notwithstanding sub-regulation (11), upon grant of a reduced royalty rate or suspension of royalty payments shall only be effective three	Addition of a new clause

			months after the date of the application.	
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</p>	<p>Redraft this clause to appropriately address transfer pricing but so as not to impact legitimate contractual arrangements.</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>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>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>	<b>No recommendations were adopted</b>



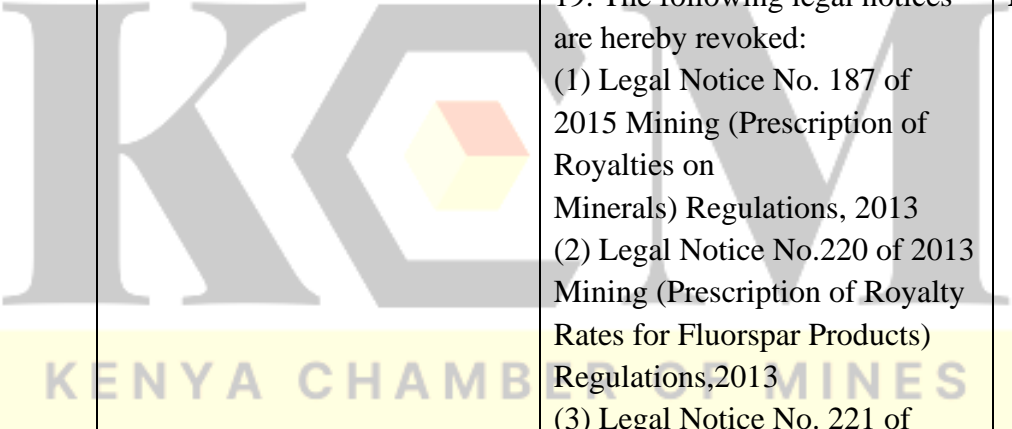
	<p>directly or indirectly in creating or affecting the arrangement</p> <p>(5) This regulation applies to reference prices and costs, including those that arise from financing arrangements.</p> <p>(6) The Director of Mines may require any party to provide information to determine whether reference prices under an arrangement are consistent with an arm's length transaction.</p>		<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 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</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>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</p>	<p><b>No recommendations were adopted</b></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>(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 following a transfer of mineral rights occurs at the time the Cabinet Secretary approves the transfer.</p>		<p>(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 following a transfer of mineral rights occurs at the time the Cabinet Secretary approves the transfer.</p>	<p>KCM and other key actors are willing to work with the SDoM to enhance compliance through self-regulatory interventions as we all need a vibrant sector.</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</p>	<p>For smooth applicability, define “Royalty Period”<sup>1</sup>. The royalty Period for which interest on unpaid royalty is based is not defined.</p> <p>Establish a clear and efficient mechanism for resolving</p>	<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</p>	<p><b>No recommendations were adopted</b></p>

<p>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 due on those minerals or mineral products</p>	<p>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 interest rate charged on reconciliation payments is punitive. More time should be provided to conclude the reconciliation and less interest should be charged.</p> <p>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>	<p>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 due on those minerals or mineral products</p>	
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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— (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.</p> <p>(3) The reconciliation payment shall be equal to the total unpaid royalty on those minerals and their mineral products.</p> <p>(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</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>	<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— (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.</p> <p>(3) The reconciliation payment shall be equal to the total unpaid royalty on those minerals and their mineral products.</p> <p>(4) If a dealer makes a reconciliation payment, they can recover that amount from the holder of the mineral rights who</p>	<p><b>No recommendations were adopted</b></p>
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	time the reconciliation payment was made.		should have paid the royalty at the time the reconciliation payment was made.	
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, 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</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>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, 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</p>	No recommendations were adopted

	<p>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>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>KENYA CHAMBER OF MINES</p>	<p>19. The following legal notices are hereby revoked:</p> <p>(1) Legal Notice No. 187 of 2015 Mining (Prescription of Royalties on Minerals) Regulations, 2013</p> <p>(2) Legal Notice No.220 of 2013 Mining (Prescription of Royalty Rates for Fluorspar Products) Regulations,2013</p> <p>(3) Legal Notice No. 221 of 2013 Mining (Prescription of Royalty Rates for Magadi Soda Products) Regulations, 2013</p>	<p><b>New clause</b></p>

			(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	
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**ROYALTY RATES SCHEDULE : Gross Value of the Extracted Minerals**

Mineral	Proposed Rate – August 2023	Proposed Rate – Jan 2024	Industry Recommendation	Concerns
Precious metals (Gold and platinum group metals)	5%	3%		
Rare earth elements and Radioactive minerals;	8%	8%		
(A) for metallic ores (copper, zinc, lead, aluminium, Vanadium, manganese);	8%	5%		
(b) other metallic ores				
(c) titanium minerals sand, titanium ores and zircon;				
Coal	7%	7%		
Limestone, gypsum, dolomite, silica sand, talc;	3%	3%		
Dimension stones and other construction minerals, clays	3%	3%		
Carbon dioxide;	5%	3%		
Diatomite; fluorspar	5%	4%		
Soda ash	5%	3%		
Clinker		2%		
Rough gemstones	6%	6%		
Cut gemstones;	1%	1%		

Rough diamonds	6%	6%		
Cut diamonds	3%	3%		
Cement;	1.6%	1.6%		
Salt	1.6%	1.6%		
All other minerals				

<b>PROPOSED ROYALTY RATES BY PRIVATE SECTOR</b>					
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 ton of cement	KShs.140 per tonne of cement			



<b>Salt</b>		<b>KShs.400</b>			<b>KShs.200</b>
<b>Gemstones</b>	<b>5</b>	<b>7</b>	<b>5</b>		<b>1</b>
<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>

### **JUSTIFICATION**

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



## 2. THE MINING (LICENSE AND PERMIT) (AMENDMENT) REGULATIONS, 2023

Article	Proposal by SDoM- August 2023	Industry Position
1	These Regulations may be cited as the Mining (Licence and Permits) (Amendment) Regulations, 2023.	
2	<p>The Mining (Licence and Permit) Regulations, 2017 in these Regulations referred to as the “principal Regulations” are amended in regulation 5—</p> <p>(a)in the marginal note by adding the words “and perusal of documents” immediately after the words “public access to the Cadastre”;</p> <p>(b)in paragraph (a) delete the word “and” appearing after the words “minerals through the Cadastre and;”</p> <p>(c)in paragraph (b) by adding the word “a fee specified in the Second Schedule” immediately after the words “upon the payment”;</p> <p>(d)by inserting the following new paragraph immediately after paragraph (b)—</p> <p>(c) pursuant to section 195 of the Act and upon payment of a fee specified in the Second Schedule be issued an evidentiary certificate.</p>	
3	3. Regulation 9 (2) is amended by inserting the words “upon payment of the fee specified in the Second Schedule”.	
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”.	
5	The principal Regulations are amended by inserting the following new regulation immediately after regulation 25—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	
6	The principal Regulations are amended in regulation 25—	

	<p>(a) In sub-regulation (1) by inserting the following words “and upon payment of an application fee as specified in the Second Schedule”;</p> <p>(b)In sub-regulation (2)—</p> <p>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)—</p> <p>(b)within sixty days of the date of application for a small scale or artisanal mining permit; and</p> <p>(c)upon approval of the application, the transferor shall pay the transfer fee as specified in the Second Schedule.</p>	
7	<p>The principal Regulations are amended by inserting the following new regulation immediately after regulation 28—</p> <p>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>	
8	<p>The principal Regulations are amended by inserting a Second Schedule immediately after the Schedule.</p>	

<b>SECOND SCHEDULE FEES, RENT AND OTHER CHARGES DOCUMENT PERUSAL AND DUPLICATION FEES</b>				
<b>Issue</b>	<b>Proposed Fees – August 2023</b>	<b>Industry Position</b>	<b>Proposed Fees – August 2023</b>	<b>Concerns</b>
Perusal of Documents (per hour or part thereof)	Kshs. 2,000	Industry is amenable with this		No changes
<b>Duplication of documents</b>				
a. Copy of License/Permit document	Kshs. 2,000	Industry supports this level of fees	Kshs. 2,000	No changes
b. Evidentiary Certificates	Kes 2,000 per document	Industry supports this level of fees	Kshs 2,000 per document	No changes
c. Any other document	Kshs. 100 per page	Industry supports this level of fees	Kshs. 100 per page	No changes
<b>APPLICATION FEES (and renewal thereof)</b>				
<b>Licences</b>				
Reconnaissance License	Kshs. 20,000	The industry is of the view that while application fees may be something worth consideration in the future, 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.	Ksh. 50,000	<b>Notable increase in the cost of application fees. Up to 100% in some instances</b> This is a unnecessary barrier to investors in the mineral sector. It will only lead to increased and sustained 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
Prospecting License	Kshs. 50,000		Ksh. 500,000	
Retention License	Kshs. 50,000		Ksh. 500,000	
d. Mining License	Kshs. 100,000		Ksh. 500,000	

<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	Kshs. 5,000	<b>No changes made</b> 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		Kshs. 7,000	
Mining Permit	Kshs. 7,000		Kshs. 7,000	
Artisanal Mining Permit	Kshs. 2,000		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	Kshs. 3,000 per km <sup>2</sup> subject to minimum of Kshs. 500,000 per license year	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	Kshs. 6,000 per km <sup>2</sup> subject to minimum of Kshs. 500,000 per license year	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	Kshs. 2,500 per Ha subject to minimum of Kshs. 500,000 per license year	This is a disincentive to industrial miners and mineral processors.  This is to allow for miners to get return on their investments.

		5 years, especially for gemstones.		
<b>Permits</b>				
Prospecting Permit	Kshs. 20,000	Since permits as provided for in the Mining Act 2016 target Kenyans of low 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		SDoM and the Kenya Kwanza administration must remain focused on actualizing BETA and this is an opportunity that will not be realized with the proposed fees.
Mining Permit	Kshs. 50,000			
Artisanal Mining Permit	Kshs. 10,000			
<b>TRANSFER FEE</b>				
Prospecting License	Kshs. 200,000 per km <sup>2</sup> subject to minimum of Kshs. 5,000,000 <b>per license year</b>	It was proposed that transfer of licenses and permits be exempted from any fees  Kenya has not been able to tap into her natural resources despite being geologically endowed and such fees will make the situation worse.	Kshs. 50,000 per km <sup>2</sup> subject to minimum of Kshs.5,000,000	
Mining License	Kshs. 1,000,000		Kshs. 1,000,000	
Prospecting Permit	Kshs. 100,000		Kshs. 100,000	
Mining Permit	Kshs. 100,000		Kshs. 100,000	
Artisanal Mining Permit	Kshs. 50,000		Kshs. 50,000	
<b>Justification :</b> Mining is a capital intensive investment and hence the capital owners require a predictable environment with zero entry and exit barriers. 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
  5. Changed investment mind / priorities due to social, political or economic reasons beyond their control.
- Charging a transfer fee does not therefore help achieve these gains.

**MINERAL DEVELOPMENT LEVY**

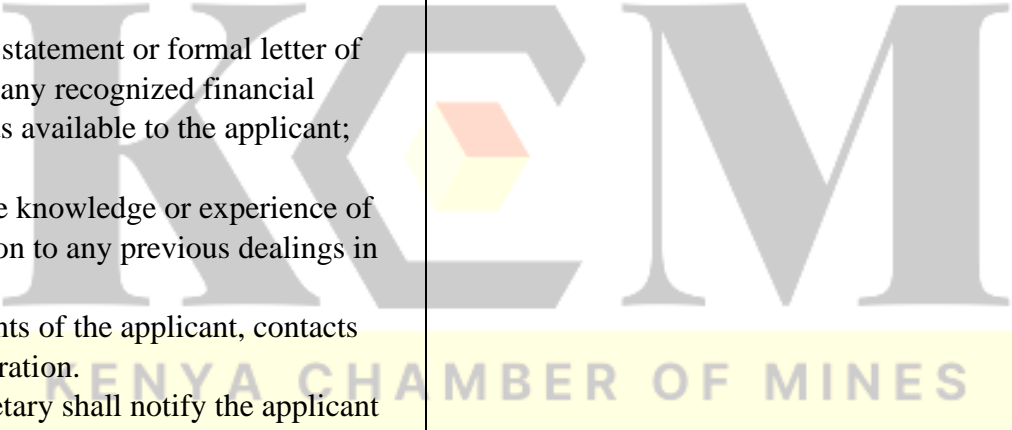
<b>Issue</b>	<b>Proposed Fees – August 2023</b>	<b>Industry Position</b>	<b>Proposed Fees – August 2023</b>	<b>Concerns</b>
All minerals (except Salt)	1% of gross sale value	Mineral Development Levy is a good idea but requires a vibrant and stable sector. Investors in the mineral sector shoulder one of the highest risks in business in Kenya and must be supported so that the sector gets on a growth trajectory.	1% of gross sale value	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.
Salt	0.5 % of gross value		0.5 % of gross value	
Cement	0.5 % of gross value		0.5 % of gross value	



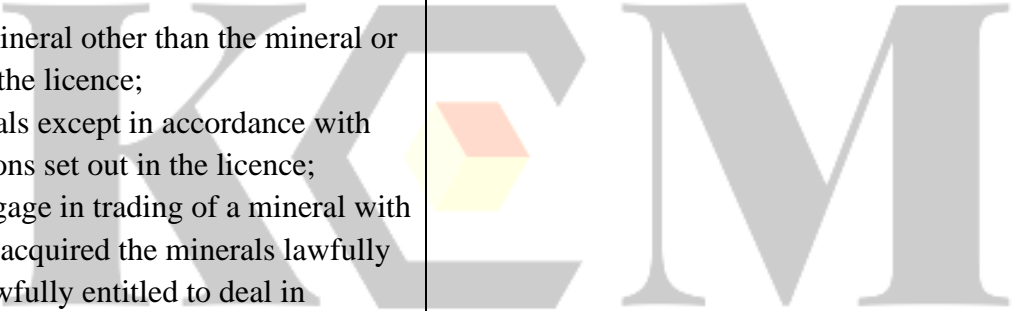
### 3. DEALINGS IN MINERALS AMENDMENT REGULATIONS, 2023

Article	Proposed Amendments – August 2023	Proposed Amendments – January 2024	Industry Position
3	The principal Regulations are amended in regulation 5— (a) by inserting the word “recognized” between the words “any” and “financial” <b>in sub-regulation (2) (e)</b> ;	The principal Regulations are amended in regulation 5— regulation 5 of L.N. 88 of 2017. (a)by inserting the word “recognized” between the words “any” and “financial”;	
4	(c) by inserting the words “where applicable” immediately after the words “environmental licence” <b>in sub-regulation (2) (j)</b> ;	(c) by inserting the words “where applicable” immediately after the words “environmental licence”	
4	e) by inserting the word “processing” between the words “dealer’s” and “licence” in sub-regulation (4);	(e)by inserting the word “processing” between the words “dealer’s” and “licence”;	
6	The principal Regulations are amended by inserting the following new regulations immediately after regulation 6—  <i>Application for mineral dealer’s (jewellery) licence</i>  6A. (1) Subject to section 160(1) of the Act, an application for the grant of a mineral dealer's (Jewellery) licence for purposes of trading shall be made to the Cabinet Secretary by completing Form DJL I as set out in the Second Schedule. (2) The application referred to under sub-regulation (1) shall include the following— (a) the full name, nationality and contact of the applicant;	6. Regulation 11 is amended— regulation 11 of L.N. 88 of 2017. (a) in sub-regulation (1) by adding the word “jewellery” immediately after the words “a mineral dealer’s licence for trading”; (b) in sub-regulation (3) by deleting the expression “Environment and Land Court” and substituting therefor the words “relevant courts”	



<p>(b) the physical address of the place of business of the applicant;</p> <p>(c) in the case of a company—</p> <ol style="list-style-type: none"> <li>i. the certificate of registration; The Mining (Dealings in Minerals) (Amendment) Regulations, 2023</li> <li>ii. a current copy of CR12 from the Registrar of Companies;</li> </ol> <p>(d) the name of the mineral or class of minerals for which the licence 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 is as set out in the First Schedule.</p> <p><i>Insertion of a new regulation in L.N. 88 of 2017.</i> <i>Form of a mineral dealer's (jewellery) licence</i></p>		
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	<p>6B. A mineral dealer's (jewellery) licence shall be issued digitally together with a paper copy using Form DJL 2 set out in the Second Schedule.</p>		
7	<p>7. The principal Regulations are amended by inserting the following new regulation immediately after regulation 10—</p> <p><i>Rights and obligations of a holder of a mineral dealer's (jewellery) licence.</i></p> <p>10A. (1) A mineral dealer's (jewellery) licence confers on the holder the right to trade in the mineral or minerals to which the licence relates to and conduct any other ancillary or incidental activity attached to the licence.</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 authorised by the licence on his or her behalf.</p> <p>(3) The holder of a mineral dealer's (jewellery) licence shall notify the Cabinet Secretary of the appointment of an agent and</p> <p>The Mining (Dealings in Minerals) (Amendment) Regulations, 2023</p> <p>the holder shall be held liable for all acts or activities done or carried out by the agent under the licence.</p>	<p>7. The principal Regulations are amended in regulation 15—</p> <p>(a)in sub-regulation (1)—</p> <p>i.by inserting the word “in” between the words “issued” and “Form”;</p> <p>ii.by deleting the words “digitally together with a paper copy using” appearing immediately after the words “shall be issued”.</p> <p>(b)in sub-regulations (3) (c) and (e) by deleting the word “licence” and substituting therefor the word “permit”.</p>	

<p>(4) All agents appointed by a holder of a mineral dealer's licence shall be issued with an identity card which shall be carried by the agent in the performance of any activity to which the licence relates.</p> <p>(5) The holder of a mineral dealer's licence shall—</p> <p>(a) commence or engage in the trading of a mineral in accordance with the terms and conditions of the licence within thirty days after the date of the issue of the licence;</p> <p>‘</p> <p>(b) not trade in any mineral other than the mineral or minerals specified in the licence;</p> <p>(c) not trade in minerals except in accordance with the terms and conditions set out in the licence;</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 licence, the Act or any other written law in Kenya;</p> <p>(f) keep complete and accurate records of all activities conducted under the licence at the registered office and submit a true copy to the Cabinet Secretary in the manner as specified in the Act and these Regulations;</p>	 <p>KENYA CHAMBER OF MINES</p>	
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	<p>(g) permit the authorised 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>		
<b>8</b>	<p>8. Regulation 11 is amended—</p> <p>(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><b>6.</b> The principal Regulations are amended in regulation 17 (4) by deleting the expression “Environment and Land Court” and substituting therefor the words “relevant courts”.</p>	
	<p><b>9.</b> The principal Regulations are amended in regulation 15—</p> <p>(a) in sub-regulation (1)—</p> <p><b>i.</b> by inserting the word “in” between the words “issued” and “Form”;</p> <p><b>ii.</b> by deleting the words “digitally together with a paper copy using” appearing immediately after the words “shall be issued”.</p> <p>(b) in sub-regulations (3) (c) and (e) by deleting the word “licence” and substituting therefor the word “permit”.</p>	<p><b>7.</b> The principal Regulations are amended in regulation 15—</p> <p>(a) in sub-regulation (1)—</p> <p><b>i.</b> by inserting the word “in” between the words “issued” and “Form”;</p> <p><b>ii.</b> by deleting the words “digitally together with a paper copy using” appearing immediately after the words “shall be issued”.</p> <p>(b) in sub-regulations (3) (c) and (e) by deleting the word “licence” and substituting therefor the word “permit”.</p>	
	<p><b>10.</b> The principal Regulations are amended in regulation 17 (4) by deleting the expression</p>	<p><b>8.</b> The principal Regulations are amended in regulation 17 (4) by deleting the expression “Environment and Land Court” and</p>	

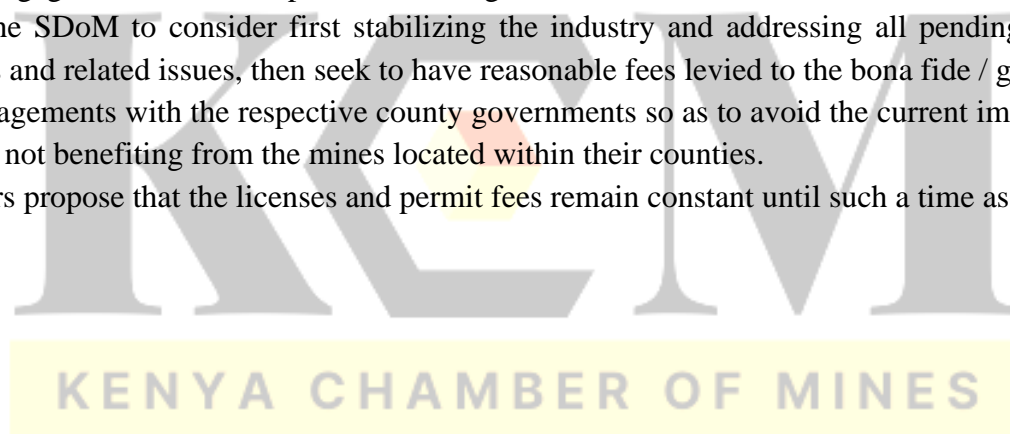
	“Environment and Land Court” and substituting therefor the words “relevant courts”.	substituting therefor the words “relevant courts”.	
	<b>11.</b> The principal Regulations are amended in regulation 18 by inserting the words “mineral export” in between the words “a” and “permit”.	<b>9.</b> The principal Regulations are amended in regulation 18 by inserting the words “mineral export” in between the words “a” and “permit”.	
	<b>12.</b> The principal Regulations are amended in regulation 19 (a) by adding the words “(trading, jewellery or processing)” immediately after the words “a holder of a mining licence, mining permit or a dealer’s”	<b>10.</b> The principal Regulations are amended in regulation 19 (a) by adding the words “(trading, jewellery or processing)” immediately after the words “a holder of a mining licence, mining permit or a dealer’s”	
	<b>13.</b> The principal Regulations are amended in regulation 20 (1) by adding the words “and pay a fee specified in the Third Schedule” immediately after the words “as set out in the Second Schedule”.	<b>11.</b> The principal Regulations are amended in regulation 20 (1) by adding the words “and pay a fee specified in the Third Schedule” immediately after the words “as set out in the Second Schedule”.	
	<b>14.</b> The principal Regulations are amended in the Schedule by inserting a Third Schedule immediately after the Second Schedule	<b>12.</b> The principal Regulations are amended in the Schedule by inserting a Third Schedule immediately after the Second Schedule	

Issue	Proposed Fees – August 2023	Proposed Fees – August 2023	Concerns
<b>Mineral dealers Processing license (Precious metals and Base metals)</b>			
Application Fees	Kshs 50,000/=	Ksh. 100,000	
License Annual Fees	Kshs 300,000/=	Ksh. 500,000(annually)	
<b>Mineral dealers Processing license (Gemstone Faceting)</b>			
Application Fees	Kshs 5,000/=	Kshs 5,000/=	
License Annual Fees	Kshs 50,000/=	Kshs 50,000/= (Annually)	
<b>Mineral Dealers (Trading) License 1 calendar year (term Expires on 31st day of December)</b>			
Application Fees	Kshs 5,000/=	<b>Ksh. 5,000</b>	
License Annual Fees (Industrial and Construction minerals)	Kshs 50,000/=	Kshs 50,000/= (Annually)	
License Annual Fees (Precious Stones )	Kshs 20,000/=	Kshs 20,000/= (Annually)	
License Annual Fees (Semi-Precious Stones )	Kshs 20,000/=	Kshs 20,000/= (Annually)	
License Annual Fees (Base and Rare Metals)	Kshs 20,000/=	Ksh. 500,000 (Annually)	Notable Increase
License Annual Fees (Precious Metals)	Ksh 100,000	Ksh 200,000 (Annually)	Notable Increase
<b>Mineral Dealers permit 1 calendar year (term Expires on 31st day of December)</b>			
Application Fees	Kshs 2,000/=	<b>Ksh. 2,000</b>	
Permit Annual Fees (Industrial and Construction minerals)	Kshs 20,000/=	Kshs 20,000/= (Annually)	
Permit Annual Fees (Precious Stones )	Kshs 5,000/=	Kshs 5,000/= (Annually)	
Permit Annual Fees (Semi-Precious Stones )	Kshs 5,000/=	Kshs 5,000/=(Annually)	
Permit Annual Fees (Base and Rare Metals)	Kshs 5,000/=	Kshs 5,000/=(Annually)	

Permit Annual Fees (Precious Metals)	Kshs 5,000/=	Kshs 5,000/=(Annually)	
<b>Mineral Dealers (Jewellery’) License</b>			
Application Fees	Kshs 1,000/=	Kshs 1,000/= ( Annually)	
License Annual Fees	Kshs 20,000/=	Kshs 20,000/= ( Annually)	
<b>Mineral Export Permit</b>			
Processing fee(was Ksh. 2,000 originally)	Not Included	Ksh. 5,000	

**The industry players request for the following actions:**

1. Further consultations and engagements to come up with fair charges / fees.
2. 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.
3. 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.
4. Minerals dealers and miners propose that the licenses and permit fees remain constant until such a time as the sector is revamped and profitable.



#### 4. MINE SUPPORT SERVICES AMENDMENT REGULATIONS 2023

Article	Proposed Amendments	Industry Position
2	<p>2. The Mining (Mine Support Services) Regulations, 2017 in these Regulations referred to as the “principal Regulations” is amended in regulation 4—</p> <p>(a) by inserting the word “First” immediately after the words “by completing Form MS1 in the” in sub-regulation (2);</p> <p>(b) in sub-regulation (3)—</p> <p>i. by deleting the word “prescribed”; and</p> <p>ii. by inserting the following words “the fee specified in the Second Schedule” immediately after the words “upon payment</p>	<p>Industry raises no objections to the recent amendments, as they contribute elucidation and primarily pertain to matters of terminological precision."</p>
3	<p>Regulation 6 (1) of the principal Regulations is amended by inserting the following new sub-regulation (1)—</p> <p>1A. The issuance of the licence under sub-regulation (1) shall be upon payment of an annual fee as specified in the Second Schedule</p>	
4	<p>4. Regulation 8 is amended—</p> <p>(a) by inserting the following words “or transferred” immediately after the words “A licence may be assigned”;</p> <p>(b) by inserting the following new sub-regulations—</p> <p>(1) An application for assignment or transfer of a licence under this regulation shall be made online by completing Form MS5 in the First Schedule</p> <p>(2) The application referred under sub-regulation (1) shall be registered by the Cadastre only when complete and upon payment of the fee specified in the Second Schedule.</p>	



5	5. Regulation 9 is amended in sub-regulation (3) (c) by inserting the following words “fee specified in the Second Schedule” immediately after the words “paying the”	
6	Regulation 11 is amended in sub-regulation (2) by inserting the word “First” immediately after the words “set out in Form MS4 in the”	
7	The principal Regulations are amended in regulation 13 by inserting the following expression “,1999” immediately after the words “under the Environmental Coordination and Management Act”.	
8	The principal Regulations are amended in the Schedule by deleting the word SCHEDULE and substituting therefore the words “First Schedule”.	
9	The Schedule to the principal Regulations is amended by inserting the following new form after Form MS4.	
10	The principal Regulations are amended by inserting the following Schedules immediately after the First Schedule.	
	First Schedule Form : <b>Application for Transfer of Mine Support Services Licence</b>	

## SECOND SCHEDULE

FEES	Proposed Rate	Previous Rate	Industry Position
Application fee and renewal thereof	Kshs. 5,000		
Annual Fee	Kshs. 50,000		
Transfer Fee	Kshs. 50,000		

## 5. GEMSTONE IDENTIFICATION AND VALUE ADDITION FEES REGULATIONS

Article	Proposed amendments – August 2023	Industry Position	Proposed Amendments – January 2024	Concerns
3	In these Regulations, unless the context otherwise requires– “cabochon” means a smoothly rounded polished gemstone with a domed top and a flat curved base that is low grade and cannot be faceted;	The definition is too prescriptive and this comes with the risk of being extremely limiting and hence negating the whole document as proposed.	“cabochon” A cabochon is a gemstone that has been shaped and polished rather than faceted. It has a smooth domed top surface and a flat base;	Recommended changes were made
	“cabbing” is a process of polishing gemstones to form a rounded polished gemstone with a domed top and a flat curved surface;	The definition is too limiting and an expert opinion is desired to make this acceptable by industry and stakeholders	“cabbing” Cabbing is the process of making cabochons or "çabs". It is the process of polishing gemstones to have a flat curved base and a domed top;	
	“gemstone” means a piece of mineral crystal which, in cut and polished form, is used to make jewellery or other adornments;	Attempting to refer to “ <i>crystal in cut and polished form</i> ” completely misses the point as in acceptable trade parlance and hence need for serious review.	“gemstone” means a mineral, rock or organic matter, in cut and polished form, used to make jewellery or other adornments;	
	“sawing” is a process of reducing or splitting a mineral sample using an electric diamond saw to manageable sizes;	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.	“sawing” is a process of reducing or splitting a mineral sample using an electric diamond saw to manageable sizes;	No recommendations were adopted

5			The Mining (Gemstone Identification and Value Addition) (Fees) Regulations, 2023 is revoked.	
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<b>Identification</b>			
<b>Amendment</b>	<b>Description</b>	<b>Cost in Ksh</b>	<b>Industry Position</b>
<b>August - 2023</b>	Identification Certificate. Gives complete Lab report on the gemstone characteristics	1,500	
<b>January 2024</b>	Conducting tests on gemstone's physical and optical properties. It also involves manual observation based on expertise, knowledge and experience	1,000	
<b>SAWING</b>			
<b>August - 2023</b>	Reduction in size per piece	100	
<b>January 2024</b>	Cutting or splitting size per piece	100	

**SCHEDULE: FEES FOR GEMSTONE IDENTIFICATION AND VALUE ADDITION**

<b>FACETING</b>			
<b>Proposed Regulation – August 2023</b>		<b>Proposed Regulation – January 2024</b>	<b>INDUSTRY POSITION</b>
<b>Category 1 Top Gemstone</b>		<b>Category 1 Precious Gemstone( including all precious gemstones as defined in the first schedule of the mining act) and the following additional gemstones not defined in the first schedule )</b>	
1. Corundum 2. Tsavorite 3. Tanzanite / Zoisite 4. Spinel 5. Emerald 6. Zircon 7. Demantoid 8. Alexandrite		1. Tanzanite/ Zoisite 2. Spinel 3. Emerald 4. Zircon 5. Demantoid 6. Alexandrite	
<b>CARAT WEIGHT</b>	<b>Proposed Regulation – August 2023</b>	<b>Proposed Regulation – January 2024</b>	
0.1 - 2.9	<b>500</b>	<b>500</b>	
3.0 – 4.0	<b>1,000</b>	<b>1,000</b>	
Above 4	<b>1,000</b>	<b>2,000</b>	
<b>CATEGORY 2 ( Semi- Gemstones</b>		<b>Category 2</b>	
1. Aquamarine 2. Tourmaline 3. Rhodlite 4. Pyrope 5. Quartz 6. Spessarite	7. Malaya – garnet 8. Iolite 9. Hessonite 10. Change Colour Garnet	All semi – precious gemstones as defined by the first schedule of the mining act	

CARAT WEIGHT	Proposed Regulation – August 2023	Proposed Regulation – January 2024	INDUSTRY POSITION
0.1 – 3.9	300ksh per piece	300ksh per piece	
4.0 and above	500ksh per piece	500ksh per piece	
Special stones > 5 ct	1,000ksh per piece	1,000ksh per piece	

DESCRIPITON	Proposed Regulation – August 2023	Proposed Regulation – January 2024	INDUSTRY POSITION
<b>Tumbling:</b> Bulk material for bead work, Cabochon material in kilograms	2,500 KSH per kg	2,500 KSH per kg	
<b>Cabbing:</b> Cabochon material using a cabbing Machine per piece	500Ksh. Per piece	300Ksh. Per piece	
<b>Hiring of safe deposit Box :</b> Safe deposit boxes to be hired for safe storage of gemstones	N/A	1,000 per box per month	
<b>Sealing :</b> Sealing of gemstones for security purposes. Sealing shall be mandatory for all gemstones	N/A	No charge	