



KENYA'S EVOLVING MINING REGIME – LICENSING, BENEFICIATION AND INVESTOR CONSIDERATIONS

(a) Overview

Kenya's extractive industries sector is undergoing significant legal, regulatory and institutional transformation as the government intensifies efforts to position the country as a leading regional hub for mineral exploration, extraction, processing, beneficiation and cross-border mineral trade.

The sector continues to attract increasing investor attention driven by increased global demand for critical and strategic energy transition minerals required for renewable energy technologies, electric mobility infrastructure, electronics manufacturing and industrial development.

The government of Kenya continues to strengthen oversight over mineral rights administration, mineral dealership licensing, environmental governance, royalty compliance, export controls, local participation requirements, beneficiation obligations and responsible mineral sourcing frameworks.

The Mining Act, 2016 and its attendant regulations have led to a modernised legal and institutional framework intended to improve transparency in mineral rights allocation, formalise artisanal and small-scale mining (ASM) activities, encourage local beneficiation and downstream industrialisation, strengthen environmental and social governance (ESG) obligations, enhance community participation and benefit-sharing, improve revenue administration

and royalty collection, digitise licensing and compliance administration and promote sustainable and responsible mineral resource development.

The implementation of Kenya's Online Mining Cadastre Portal and increased regulatory supervision by the Ministry of Mining, Blue Economy and Maritime Affairs have significantly altered the operational landscape for mining companies, mineral dealers, exporters, processors, refiners and foreign investors operating within Kenya's extractive industries value chain.

Against this backdrop, investors and operators have no choice but to adopt integrated legal, regulatory, ESG, tax, operational, financing and governance strategies to ensure compliance, commercial sustainability, project financing and long-term operational resilience.

(b) Constitutional and Statutory Framework

Kenya's mineral resources are constitutionally classified as public land vested in the National Government in trust for the people of Kenya pursuant to Article 62 of the Constitution of Kenya, 2010.

The mining sector is principally governed by:

- the Constitution of Kenya, 2010;
- the Mining Act, 2016;
- Mining Regulations issued under the Mining Act;



- the Environmental Management and Co-ordination Act (EMCA);
- the Land Act and Land Registration Act;
- occupational health and safety legislation;
- tax and customs legislation;
- investment and corporate regulatory laws; and
- environmental, labour, immigration, anti-corruption and international trade compliance frameworks.

The Mining Act, 2016 represented a substantial departure from Kenya's previous mining regime and introduced significant institutional reforms aimed at modernising sector governance, strengthening regulatory transparency and improving investor confidence.

Key institutional bodies established or strengthened under the framework include:

(i) Mineral Rights Board (MRB)

The MRB advises the Cabinet Secretary on the grant, renewal, suspension, revocation, transfer and assignment of mineral rights, declaration of strategic minerals, royalty determination and administration, mineral agreements, dispute resolution matters and sectoral policy implementation.

(ii) Directorate of Mines

The Directorate oversees licensing administration, operational compliance, inspections and enforcement, mineral trade oversight, mine safety, export approvals and regulatory supervision of mining operations.

(iii) Directorate of Geological Survey

The Directorate is responsible for geological mapping, mineral data collection, geoscientific research, maintenance of geological databases and technical support for mineral exploration activities.

(iv) National Mining Corporation (NAMICO)

NAMICO plays a strategic role in state participation in mining projects, commercial mineral development initiatives, investment partnerships and value-addition and beneficiation projects.

(v) Online Mining Cadastre System

Kenya's digital cadastre system has significantly modernised mineral rights administration, licence applications and renewals, concession mapping, mineral rights transparency, compliance monitoring and regulatory reporting.

The increasing digitisation of licensing and reporting obligations continues to strengthen transparency, operational accountability and investor visibility within the sector.

(c) Kenya's Mineral Rights Regime

Kenya's legal and regulatory framework recognises a structured system of mineral rights intended to accommodate varying scales and phases of mineral exploration, prospecting, extraction, processing and mining investment activities. The framework seeks to balance responsible resource development, investor protection, environmental sustainability, community participation, national economic interests and long-term resource governance objectives.

The principal categories of mineral rights recognised under Kenyan law include:

- i. Reconnaissance Licences;
- ii. Prospecting Licences;
- iii. Retention Licences;
- iv. Mining Licences;
- v. Reconnaissance Permits;
- vi. Prospecting Permits;
- vii. Mining Permits; and
- viii. Artisanal Mining Permits.

These mineral rights differ in terms of operational scope, exclusivity, duration, reporting obligations, environmental compliance requirements, investment thresholds and commercial rights granted to licence or permit holders.

(i) Reconnaissance Licences

Reconnaissance licences generally support preliminary and non-invasive exploration activities aimed at identifying areas with potential mineral occurrence and geological interest. These licences are typically utilised during the early stages of mineral exploration and may support activities such as geophysical surveys, aerial mapping, geochemical investigations, remote sensing and desktop geological assessments.

Reconnaissance activities ordinarily do not authorise drilling, excavation, bulk sampling or commercial extraction activities. Their principal objective is to facilitate early-stage geological assessment, data acquisition and investment screening prior to more detailed prospecting and exploration programmes.

(ii) Prospecting Licences

Prospecting licences grant holders exclusive rights to undertake more advanced exploration and evaluation activities within designated licence areas. These licences are intended to enable investors and operators to determine the existence, quality, quantity and commercial viability of mineral deposits through detailed geological and technical investigations.

Prospecting operations may involve drilling programmes, trenching and sampling, geological mapping, feasibility assessments, resource estimation studies and technical or economic evaluation of mineral deposits. Prospecting licence holders are



ordinarily required to comply with approved work programmes, expenditure commitments, environmental safeguards, technical reporting obligations and ongoing regulatory supervision by the Directorate of Mines and other competent regulatory authorities.

(iii) Retention Licences

Retention licences may be granted where commercially viable mineral deposits have been identified but immediate development is temporarily unfeasible due to technical, market, financial, infrastructure or economic constraints.

These licences allow investors and operators to preserve rights over proven mineral deposits pending improved commercial conditions, infrastructure availability, financing arrangements or technological developments necessary for project implementation.

(iv) Mining Licences

Mining licences authorise full-scale mineral extraction, commercial production and mining operations and are subject to extensive technical, financial, environmental, operational and social regulatory requirements.

Applications for mining licences typically require submission of feasibility studies, environmental and social impact assessments, mine development plans, mine closure and rehabilitation plans, occupational health and safety systems, community engagement frameworks, land access arrangements, financial capability assessments, technical capability evaluations and local content proposals.

Mining licence holders are also subject to continuing obligations relating to production reporting, royalty payments, environmental management, mine rehabilitation, operational audits, community engagement, occupational health and safety compliance, ESG governance and regulatory inspections.

(v) Reconnaissance Permits

Reconnaissance permits are generally utilised for smaller-scale or lower-threshold preliminary exploration activities that may not require the broader scope or investment commitments associated with full reconnaissance licences.

Permit holders remain subject to applicable environmental, safety and reporting obligations under the mining regulatory framework.

(vi) Prospecting Permits

Prospecting permits support smaller-scale prospecting activities and are particularly relevant for emerging operators, small-scale investors and certain local

mining activities where the proposed exploration programme does not require the broader commercial scope associated with large-scale prospecting licences.

Permit holders may nevertheless be required to undertake environmental safeguards, technical reporting and operational compliance measures depending on the scale of the activities being conducted.

(vii) Mining Permits

Mining permits are generally applicable to smaller-scale extraction activities and operations falling below the thresholds applicable to large-scale mining licence projects.

Mining permit holders are ordinarily required to comply with operational safety standards, environmental management obligations, reporting requirements and applicable royalty or fiscal obligations.

(viii) Artisanal Mining Permits

Kenya's legal framework formally recognises artisanal and small-scale mining (ASM) as an important component of the country's extractive industries ecosystem.

The Government continues to pursue progressive formalisation of ASM activities in order to improve safety standards, strengthen environmental protection, reduce illicit mineral trade, improve mineral traceability, enhance government revenue collection and improve socio-economic outcomes within mining communities.

Certain categories of small-scale mineral rights and permits may be reserved for Kenyan citizens or entities meeting prescribed local ownership thresholds, reflecting broader policy objectives aimed at promoting local participation and inclusive economic development.

(d) Strategic Investor Considerations

Investors seeking to acquire, finance or participate in mineral rights projects in Kenya should undertake robust legal, technical, environmental and regulatory due diligence in relation to:

- validity of existing mineral rights;
- concession boundaries and mapping;
- competing claims and encumbrances;
- environmental liabilities;
- community and land access issues;
- royalty and fiscal obligations;
- local content requirements;
- infrastructure constraints;
- ESG exposure; and
- restrictions relating to transfer, assignment or change of control.



Careful structuring of mineral rights acquisitions, joint ventures, farm-in arrangements, project development frameworks and investment vehicles remains essential in mitigating operational, regulatory and commercial risk within Kenya's rapidly evolving mining and extractive industries sector.

Mineral Dealership and Mineral Trading Framework

Kenya's mining framework separately regulates mineral dealing, processing, refining, exportation and mineral trading activities.

The law recognises several dealership categories that govern the buying, selling, processing, exportation and beneficiation of minerals.

Mineral Dealer's Trading Licence (MDTL)

The MDTL permits holders to buy, sell, aggregate and export specified minerals. However, the licence generally does not authorise mineral processing or refining activities.

Mineral Dealer's Processing Licence (MDPL)

The MDPL permits holders to process minerals, refine minerals, cut and polish gemstones, beneficiate minerals, export processed minerals and undertake value-addition activities.

The growing policy emphasis on beneficiation and downstream processing is expected to increase the strategic importance of MDPL structures.

Mineral Dealer's Permit (MDP)

The MDP permits local trading activities within Kenya but generally does not authorise export activities.

The permit is particularly relevant for domestic mineral aggregation, local supply chains, artisanal mineral purchasing and local mineral trade operations.

(e) Strategic Shift Toward Beneficiation and Value Addition

One of the most significant policy developments within Kenya's mining sector is the Government's increasing emphasis on local beneficiation, mineral processing and downstream industrialisation.

Historically, many African jurisdictions exported raw minerals with limited local processing, resulting in reduced domestic value capture and limited industrial spill-over benefits. Kenya's evolving policy direction reflects a broader continental movement toward increasing domestic participation in mineral value chains and promoting industrial transformation through local processing and manufacturing.

The Government is increasingly encouraging investors to establish local processing facilities capable of supporting refining operations, mineral upgrading, gemstone cutting and polishing, battery mineral processing, industrial manufacturing and export-oriented value-addition initiatives.

This policy direction is intended to create employment opportunities, improve technology transfer, strengthen local supply chains, increase export earnings and expand the contribution of the mining sector to national economic development.

International markets are also increasingly prioritising secure, traceable and sustainable supply chains for critical minerals and industrial inputs required for renewable energy technologies, electric mobility infrastructure, electronics manufacturing and strategic industrial applications.

As a result, countries with commercially viable mineral deposits are under increasing pressure to move beyond simple extraction models toward more integrated industrial ecosystems.

For investors, this transition creates both opportunities and regulatory considerations. Companies seeking to participate in Kenya's mining sector may increasingly be expected to demonstrate how proposed projects will contribute to local industrial development, technology transfer, employment creation, skills development, infrastructure growth and long-term economic participation.

This evolving framework presents substantial opportunities for mineral processors, industrial manufacturers, gemstone polishing operations, refining facilities, battery mineral investors, critical mineral supply-chain participants and infrastructure-linked industrial projects.

(f) Licensing Procedures and Regulatory Approvals

Applications for mineral rights and dealership licences are administered through Kenya's Online Mining Cadastre System.

Depending on the licence category, applicants may be required to provide incorporation documents, beneficial ownership information, tax compliance certificates, technical capability statements, audited financial information, proof of funding capacity, concession maps and coordinates, environmental rehabilitation proposals, health and safety frameworks, community engagement plans, local content proposals, environmental licences, feasibility studies, land access documentation and mine closure plans.



The approval process may involve technical review by the Directorate of Mines, stakeholder consultations, environmental review processes, site inspections, gazettelement procedures, Mineral Rights Board review and approval by the Cabinet Secretary.

Foreign investors should also carefully consider investment structuring, immigration and work permit requirements, tax structuring, customs compliance, transfer pricing considerations, local ownership restrictions, beneficial ownership disclosures and anti-corruption compliance obligations.

(g) ESG, Sustainability and Responsible Mining Obligations

Environmental, Social and Governance (ESG) considerations have become central to mining project approvals, financing, operations and long-term sustainability within Kenya's extractive industries sector.

Investors, regulators, lenders, commodity purchasers, development finance institutions and host communities increasingly expect mining operators to demonstrate responsible, transparent and sustainable practices throughout the project lifecycle.

Mining projects are now assessed not only on economic viability, but also on environmental impact, community relations, governance standards, rehabilitation planning and broader contribution to sustainable development objectives.

Environmental obligations increasingly include climate resilience, biodiversity conservation, water resource management, pollution control, land rehabilitation, waste management and ecosystem protection. Social considerations continue to expand in relation to community participation, stakeholder engagement, labour practices, human rights protections and local economic participation. Governance obligations similarly emphasise anti-corruption compliance, beneficial ownership disclosure, operational transparency, ethical sourcing standards, sanctions compliance and board-level ESG oversight.

International lenders and strategic investors increasingly require alignment with internationally recognised standards such as the IFC Performance Standards, Equator Principles, OECD Due Diligence Guidance and international responsible mineral sourcing frameworks.

Failure to adequately manage ESG risks may expose projects to regulatory sanctions, financing challenges, reputational damage, operational disruptions,

community disputes and international supply-chain restrictions.

(h) Royalties, Taxation and Regulatory Compliance

Mining operators and mineral dealers are subject to multiple fiscal and compliance obligations, including royalties, corporate income tax, customs duties, VAT obligations, withholding taxes, transfer pricing rules, export documentation requirements, anti-money laundering obligations and transaction reporting requirements.

Licence holders are generally required to maintain auditable operational records, submit periodic reports and returns, permit inspections, maintain compliant operational premises, transact only in authorised minerals, comply with export controls and maintain valid licences and permits.

Dealer licences and permits are generally subject to annual renewal requirements.

Failure to comply with regulatory obligations may result in licence suspension, licence revocation, penalties, seizure of minerals, operational restrictions, export limitations and criminal enforcement proceedings.

(i) Cross-Border Transactions and International Investment Considerations

Kenya's mining sector continues to attract increasing cross-border investment interest from multinational mining companies, commodity traders, strategic mineral investors, development finance institutions, infrastructure investors, private equity funds and industrial manufacturers.

Cross-border transactions may involve joint ventures, farm-in arrangements, concession acquisitions, offtake agreements, project financing structures, Engineering, Procurement and Construction (EPC) and infrastructure contracts, royalty financing, streaming agreements, regional export arrangements and international arbitration frameworks.

Investors should therefore carefully assess title validity, concession risks, ESG liabilities, political and regulatory risks, land access constraints, dispute exposure, local content obligations, tax exposure, sanctions compliance and anti-corruption obligations.

Robust legal due diligence and transaction structuring remain critical in mitigating investment risk.

(j) Practical Implications for Investors and Operators

Kenya's mining and mineral trade framework reflects a broader transition toward increased regulatory



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formalisation, enhanced compliance oversight, digital licensing administration, ESG-centred governance, local beneficiation, community participation, transparency in mineral trade and sustainable resource development.

Successful participation within Kenya's extractive industries sector will increasingly require robust regulatory compliance systems, sophisticated ESG governance frameworks, effective stakeholder management, transparent operational controls, compliant mineral sourcing frameworks, strategic tax and investment structuring, proactive dispute management, strong community engagement, international compliance alignment and integrated legal and commercial advisory support.

How CM Advocates LLP Can Assist

CM Advocates LLP provides integrated legal, regulatory, transactional, ESG and dispute resolution advisory services across the mining, extractive industries, infrastructure and natural resources sectors.

The Firm advises local and international clients on mineral rights acquisitions and transfers, mining licence applications and renewals, dealership licensing and compliance, mineral processing and beneficiation projects, ESG and sustainability frameworks, environmental and regulatory approvals, project structuring and investment vehicles, joint ventures and strategic partnerships, project finance and bankability advisory, tax and royalty advisory, local content compliance, community development frameworks,

infrastructure and logistics arrangements, cross-border investment transactions, mining disputes and arbitration, regulatory investigations and enforcement matters and anti-corruption and compliance advisory.

The Firm also supports clients in relation to legal due diligence, concession reviews, operational governance, stakeholder engagement, government relations strategy, transaction documentation and long-term project development and risk management.

Key Takeaways

Investors, operators, dealers and processors should prioritise:

- a. early-stage legal and regulatory due diligence;
- b. proper mineral rights and dealership structuring;
- c. ESG and sustainability integration;
- d. community and stakeholder engagement;
- e. transparent royalty and tax compliance systems;
- f. beneficiation and value-addition strategy;
- g. international compliance alignment;
- h. robust operational governance; and
- i. ongoing regulatory monitoring.

As Kenya continues to modernise its extractive industries framework, sophisticated legal and strategic advisory support will remain essential in navigating licensing, investment structuring, compliance management, operational governance and sustainable project development.

For Further Information

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