



# Kenya

As the race to secure critical minerals for the energy transition tightens, Kenya is intent on capitalising its mineral resources to create socioeconomic benefits, including infrastructure investments, employment generation, and fiscal revenue. Over the last few months, the country has made great effort to create a conducive environment for domestic and foreign investors and position itself as a suitable strategic partner in the global minerals supply chain.

## Partial Lifting of Moratorium

The Government imposed a moratorium in December 2019 restricting the processing and issuance of mining licenses as well as renewal applications. According to the Cabinet Secretary for Mining, Blue Economy and Maritime Affairs, the moratorium was to safeguard Kenya's interests in mining and to enable the Government review existing licences/permits and operations, revise the legal instruments governing the sector and map the country's mineral resources.

During the pendency of the moratorium the Government, substantially completed the National Airborne Geophysical Survey (NAGS) which had begun in April 2021. The preliminary report of the NAGS showed 970 minerals spread across the country including copper, graphite, manganese, iron ore, coltan, thorium, nickel, cobalt and rare earth elements. The Government is currently conducting ground truthing and confirmatory field work to validate the survey.

On 03 October 2023, the Government lifted the moratorium on all construction and industrial minerals. All other minerals have been classified as *strategic minerals*. Rights over these will be processed on a case-by-case basis and they will be exploited in conjunction with the National Mining Corporation (the investment arm of the government in respect of minerals).

## Mining Amendment Bill

Key stakeholders in Kenya's private sector have been advocating for the amendment of the Mining Act 2016 (the Act) and its regulations to attract investment in the mineral sector by being more competitive, predictable and fair to investors. In 2022 the private sector proposed various Amendments to the Act with the key ones touching on: limiting the broad discretionary powers of the Cabinet Secretary; reviewing the mandatory 10% government equity stake in a mining licensee and mandatory listing of 20% of a mining company's equity and introducing a time limit for parliamentary ratification of mineral agreements.

In September 2023, a Mining (Amendment) Bill was tabled in Parliament by the National Assembly's Environment, Forestry, and Mining Committee. The amendments in the Bill are primarily to elevate the role of the Cabinet Secretary to provision of policy direction and to leave administration work to a proposed 'Mineral Regulatory Authority'. The Bill also proposes the establishment of a 'Mining Rights Tribunal' to resolve disputes relating to mineral rights.

The proposed amendments to the Act by the private sector do not feature in this Bill. They could be incorporated later when the Bill is circulated for public participation.

## Mining Regulations

The State Department of Mining has also developed Bills and several Regulations in 2023 that were sent out for public comments in September 2023. These include the:

- i. **Gold Processing Bill** – provides for the licensing of exploration and exploitation of gold as well as establishes the legal and institutional framework for the collection, purification, smelting, fabrication, homogenization, sampling, registration. Monitoring and transportation of gold and gold products
- ii. **Draft Mining (Licence & Permit) (Amendment) Regulations 2023** – introduce annual rent and a transfer fee for licenses/permits as well as a mineral development levy
- iii. **Draft Mining (Royalty Collection and Management) Regulations 2023** – outlines: how the royalty bases and royalty payable for different minerals will be determined; the applicable royalty rates and the due dates for payment of royalty
- iv. **Draft Mining (Mineral Royalty Sharing) Regulations 2023** – provide the framework for receiving and allocating mineral royalties among the National Government, county governments and benefiting Communities.

Kenya joins the bandwagon of countries reforming their extractives sector and updating their mining laws to expedite mine development with a view to meet the rising demand for key minerals is rising exponentially. The raft of legal reforms are necessary and are hoped to assist the country achieve the best socio-economic outcomes from the mining sector.

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