

LEGAL NOTICE No.

THE MINING ACT
(20xx)

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THE MINING ACT
(20xx)

IN EXERCISE of the powers conferred by Articles 116, 117, 118 and 119 of the Mining Act, 20xx, the Minister makes the following Regulations:

MINING (ROYALTY) REGULATIONS, 2019

Citation 1. These regulations may be cited as the Mining (Royalty) Regulations, 2019.

Interpretation 2. In these Regulations, unless the context otherwise requires-

“Act” means the Mining Act, 20xx.

“Acquired” means acquisition by sale, barter, import, holding on deposit as a pledge or security, receipt as a gift, or receipt under any other supply or disposition, whether for consideration or otherwise.

“Area of a mineral right” means mining area, permit area, exploration area, reconnaissance area, or retention area under the Act, according to the mineral right in the particular case.

“Arm’s length amount” has the meaning given in the Act.

“Assurance of royalty by reconciliation” means the system of reporting the royalty liability and making reconciliation payments at reconciliation points.

“Cost plus value” of a mineral product is the value that includes all the costs of producing it as a mineral product

“Dealing right” means a mineral dealer’s licence or a mineral dealer’s export/import permit.

“Deferred royalty” means putting on hold, in part or whole, royalty payments for periods and conditions as shall be agreed between the Minister and the holder when royalty suspension is granted.

“Disposal” means sale, barter, export, deposit as a pledge or security, donation as a gift, or other supply or disposition, whether with or without consideration (and includes loss by theft or misappropriation), and ‘disposed of’ has the corresponding meaning.

“Full market value” of mineral products is the reference price for a product where there is a reference price for the product; where a reference price for the product is not available, full market value is worked out by ‘netback’ and ‘cost plus’ calculation; and where it cannot be worked out in this way is such amount as the Director of Mines determines.

“holder” has the meaning as defined in the Act

“Mineral” has the meaning given by the Act.

“Mineral product” has the meaning given by the Act.

“Netback value” of a mineral ore is worked out by deducting from the reference price of a mineral product the costs of producing the mineral product.

“Reconciliation point” means the period within which it is incumbent on a holder of either a dealing right, mining licence, artisanal mining permit or a transferor of a mineral right to reconcile royalty liability and make reconciliation payments for unpaid royalty.

“Reconciliation report” means a reconciliation analysis between minerals and mineral products and royalty paid, showing:

- (a) what reported minerals and their mineral products have had royalty paid; and
- (b) what minerals and their mineral products royalty are unpaid,

calculated at the time of the date of the report or, if earlier, the date the report was due.

“Reduction of royalty” means a reduction of royalty rate for a specified mineral for periods and conditions as shall be prescribed by the Minister.

“Reference price” means the price of a mineral, or of a mineral product:

- (a) in a market with a significant number of sellers, a significant number of buyers, and an openly quoted price;
- (b) that, if it is adjusted, is adjusted according to objective criteria (such as grade or quality);
- (c) that is applicable to the time or the period in relation to which it is to be used; and
- (d) that is arrived at on arm’s length terms.

“Royalty base” means the total value to which the royalty rate for a mineral is applied in order to determine the amount of royalty due.

“Royalty rate” means the percentage rate or unit-based rate applied to the royalty base to determine the amount of royalty due.

“Unit-based royalty rate” means a flat rate charge on a unit weight or volume or on such other measure of a mineral.

Application. 3. These Regulations shall apply to holders of mineral rights and dealers’ licences or permits.

Obligation to pay royalty 4. The obligation to pay royalty is guided by the following;

(1) The purpose of mineral royalties is to provide monetary compensation to the people of Somaliland, as owner of the minerals until they are won, for the loss of Somaliland’s non-renewable asset.

(2) Mineral royalties shall be based on the full market value of the mineral and which shall take into account all enhancements to make the mineral most saleable.

(3) Mineral royalties shall be applied at a basic rate to share in the full gross value from the minerals won, and therefore shall make no deductions or offsets from in working out the value to which each rate of royalty applies (except for any specific deductions or offsets provided in these regulations or in the Act).

(4) To ensure the recovery of all royalties due, these regulations include safeguards at appropriate and convenient points including periodic reconciliation from dealers, periodic reconciliation for export of any minerals or mineral products, and reconciliation on transfer of mineral rights. These safeguards do not apply additional royalties but make up shortfalls if royalty due is unpaid or cannot be shown to have been paid.

Royalty base 5. (1) The royalty base is the value to which the royalty rate is applied, in order to determine the amount of royalty payable.

(2) The royalty base is worked out for each quantity of mineral that is won by virtue of a mineral right, within a royalty period, and that is:

(a) moved away from the area of the mineral right during that royalty period if it was not previously included in working out a royalty base; or

(b) not previously moved which is the subject of mineral dealings during that royalty period and was not previously included in working out a royalty base.

(3) The value of the royalty base for a mineral is the full market value the mineral that is saleable.

(4) The royalty base is the aggregate over the royalty period of the full market value of the mineral for each sales order.

(5) The full market value is the reference price of such minerals, without offset or deduction, whether on account of location of the products, insurance, transport or otherwise.

(6) If there is no reference price for a mineral then its full market value is determined by:

(a) deducting from the reference price of end-products commercially capable of being produced from the mineral, the cost of producing those end-products ('netback value'); and

(b) including in the value of the mineral all the costs of producing it as a mineral ('cost plus value'), with any cost requiring allocation to be so allocated that no amount is claimed both in working out netback value and in working out cost plus value, or in working out the values of different mineral products, and

(c) averaging the netback value and the cost-plus value if they differ.

(7) Where the full 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 (6) is not available, the Director of Mines shall determine the royalty base to be used according to the information at his or her disposal.

**Royalty base
for export
minerals**

6. The royalty base for minerals for export shall be the value of the mineral at the port of exit, that is the Freight on Board (FOB) value based on the full market value.

**Royalty base
for minerals
consumed in
Somaliland**

7. Where the Director of Mines is satisfied that a mineral won by virtue of a particular mineral right is to be used or consumed only within Somaliland, the Director may allow the royalty base for the mineral to be worked out in this way:

(a) using the sale price at the point of sale, if the mineral is sold at the mine gate, that is, when the mineral is moved away from the area of the mineral right;

(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, less the cost of transportation and insurance from that area to where the mineral is delivered.

(c) for high-volume, low-value construction and industrial minerals and salt, unit-based rates shall apply, and no deductions or offsets are allowed.

The Mining (Royalty) Regulations, 2019

The royalty rate

8. (1) The royalty rate for a mineral is a percentage or unit-based rate applied to the royalty base for that mineral or mineral product in order to determine the amount of royalty due.

(2) The royalty rates shall be the percentages or unit-based rates as prescribed by the Minister for mineral classes won by virtue of a mineral right.

Due dates for payment of royalty

9. (1) With respect to the sale or export of each mineral by mineral right holders -excluding artisanal miners- in a calendar month, royalty is due three calendar months from the last date of that month.

(2) Notwithstanding sub-regulation (1), royalty is payable at any time before the end of the due date.

(3) For every month after the prescribed due date of the royalty that the royalty remains unpaid, a penalty shall be charged:

(a) where royalty is still unpaid one calendar month after the due date, the right holder shall be considered to be in default and a one-month notice shall be issued

(b) if royalty is still unpaid after expiry of the one-month notice the Minister shall suspend the licence or permit

(c) in the event that the due royalty is still unpaid two months after the issue of the Notice, the Minister shall revoke the licence or permit as the case may be and may prohibit the disposal of any mineral or mineral product from the mining area concerned, or from any other mining area held by that mineral right holder

(4) Where royalty is due for minerals for a royalty period both from one person and from any other person, and one person pays any part of the royalty, credit shall be given for that payment in working out the royalty due for the minerals from any other person for that period.

Reduction or suspension of royalty rate

10. (1) The holder of a mineral right may apply to the Minister for a reduction or suspension of the rate of royalty applicable to minerals under that right and for similar minerals besides those specified in that right.

(2) No reduction or suspension shall apply to minerals won before the application is made.

(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 and Regulations.

(4) (a) the reduced royalty rate shall revert to the prescribed rate at the end of period of reduction.

(b) no holder shall be required to pay the difference between the reduced and the prescribed royalty rates where reduction of royalty is granted.

(5) Where suspension of royalty is granted, the deferred amount of royalty is due from the holder of the mineral right at the end of the period for which it is deferred.

(6) The deferred amount shall not incur penalties during the deferral period.

(7)(1) Where a suspension or reduction of royalty is sought, the applicant shall provide evidence showing that the reduced royalty rate will mitigate a temporary but material adverse impact on the applicant.

(2) Notwithstanding sub-regulation (1) an applicant for suspension of royalty must;

(a) provide a payment plan that the deferred amount of royalty will be paid at the end of the period of suspension;

(b) demonstrate that any economic advantage to the applicant will not be unfair to other producers of minerals of the same kind operating under any other mineral right in Somaliland.

(8) The approval by the Minister for a reduction or suspension shall be based on evidence provided in support of the application and such approval shall not be against the long-term interest of Somaliland.

Royalty on samples

11. The Minister shall from time to time prescribe the conditions for royalty exemption for mineral samples.

Arm's length consideration

12. (1) The reference price used to decide the full market value of a mineral, and thereby to determine the royalty base for that mineral, shall be increased to an arm's length amount where the reference price arises under an arrangement and the amount of the reference price is less than it would have been had all parties been dealing with each other on an arm's length basis in relation to the arrangement and the reference price under it.

(2) Where the reference price arises under an arrangement, any associated costs which decreased the apparent market value of a mineral product shall be adjusted to restore the true market value to that of an arm's length sale.

(3) An arrangement includes any understanding or action, whether contractual or not, unilateral or not, and voluntary or not for all parties, and also includes action by only one party.

(4) Parties to an arrangement include every person who brings about the arrangement or action under it whether directly or indirectly, or who is able to affect the terms of the arrangement whether they do so or not, and whether they could affect those terms directly or indirectly.

(5) For the avoidance of doubt, reference prices and costs arising from financing arrangements are subject to this section.

(6) (1) The Director of Mines may, by notice require any party to provide information for the purpose of checking whether reference prices under the terms of an arrangement are other than they would have been had all parties been dealing with each other at arm's length.

(2) If a party fails within the time specified in the notice to provide the required information that would allow the arm's length amount to be determined, no information or evidence relating to this from that party shall be admitted in any review or any appeal proceedings unless the Director of Mines waives objection to the information or evidence being admissible.

**Assurance of
royalty by
reconciliation –**

13. (1) Reconciliation payments assure recovery of unpaid royalty on minerals and mineral products at reconciliation points. These points are the dealing right reconciliation point, the mining licence reconciliation point, the artisanal mining permit reconciliation point and the mineral right transfer reconciliation point.

(2) (a) a dealing right reconciliation point arises at every export where the holder of the dealing right has applied for a permit to export a mineral product.

(b) a dealing right reconciliation point arises within fourteen days for aggregated domestic sales made within the previous month.

(c) royalty due date is the reconciliation point and late payment monthly penalty accrues at the beginning of the month the royalty reconciliation payment is unpaid.

(3) A mining licence holder reconciliation point arises at the end of three calendar months from the last date of the month in which a mineral or mineral was sold or exported.

(4) (a) A mineral right transfer reconciliation point arises at the time of approval of the transfer by the Minister.

(b) royalty due date is the reconciliation point.

(5) Where a correct reconciliation report would identify that a royalty is outstanding, a reconciliation payment equal to the amount of unpaid royalty is due from, and must be paid by, the

person who is required to make the reconciliation report at the time the reconciliation report is required.

(6) For every royalty period in which the reconciliation payment is due and unpaid or partly unpaid, penalties on the unpaid amount of the reconciliation payment shall accrue and shall be payable by the person from whom the reconciliation payment was due as prescribed.

(7) Where a reconciliation payment has already been made for minerals in respect of another reconciliation point, that reconciliation payment shall be credited against any reconciliation payment otherwise due at the later reconciliation point.

**Assurance of
royalty by
reconciliation by
dealers**

14. (1) When a dealing right reconciliation point arises, the holder of the dealing right must make a reconciliation report in respect of the minerals and mineral products the dealer then holds or has held during the reconciliation period.

(2) The report shall set out the amount of minerals and mineral products acquired by the holder during the period, offset against the minerals and mineral products for which royalty has been paid by the time of the report, or which were exported or sold to another holder of a dealing right by the holder during the period, and shall calculate the royalty outstanding in respect of the remaining minerals and their mineral products.

(3) The amount of the reconciliation payment shall be equal to the outstanding royalty on those minerals and their mineral products.

(4) A reconciliation payment made by the holder of a dealing right shall be recoverable from any holder of the mineral rights who was liable to pay that part of the unpaid royalty for them when the reconciliation payment was made.

**Assurance of
royalty by
reconciliation by
a holder of a
Mining Licence**

15. (1) When a mining licence holder reconciliation point arises, the holder shall submit a reconciliation report detailing 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.

(2) For all minerals and mineral products for which royalty cannot be shown to have been paid, and for which no previous reconciliation payment can be shown to have been paid, the holder shall make a reconciliation payment.

(3) The amount of the reconciliation payment shall be equal to the outstanding royalty on those minerals and mineral products.

**Assurance of
royalty by
reconciliation –
transferors of
mineral rights**

16. (1) At the time of a mineral right transfer, the transferor of the mineral right shall submit a reconciliation report in respect of the royalty due in relation to that mineral right as if the royalty period had ended at the time of the transfer.

(2) For all minerals for which a royalty or a reconciliation payment cannot be shown to have been made, the transferor shall make a reconciliation payment, and the transfer shall not be registered until the payment is made.

(3) The amount of the reconciliation payment shall be equal to the royalty that would otherwise be payable for the minerals to the date of the transfer, at the end of the royalty period.

Dated2019

Minister for Energy and Minerals

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