

SPECIAL ISSUE

Kenya Gazette Supplement No. 132 (National Assembly Bills No. 46)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2023

NAIROBI, 11th August, 2023

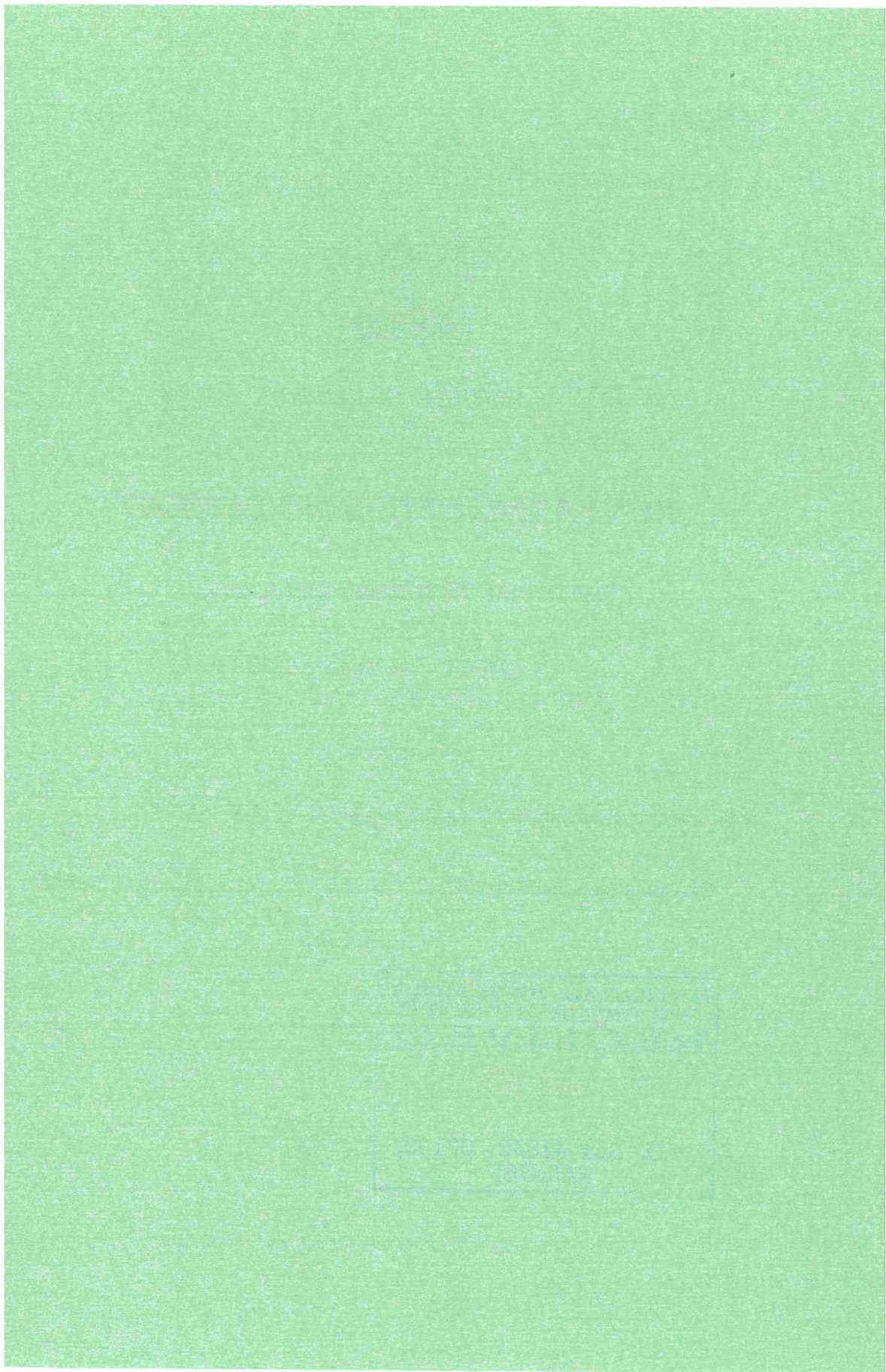
CONTENT

Bill for Introduction into the National Assembly —

PAGE

The Gold Processing Bill, 2023 1419





THE GOLD PROCESSING BILL, 2023
ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Object of the Act.
- 4—Guiding principles.

PART II— THE GOLD PROCESSING CORPORATION

- 5— Exploration and exploitation.
- 6— Establishment of the Corporation.
- 7—Headquarters of the Corporation.
- 8—Functions of the Corporation.
- 9—Powers of the Corporation.
- 10—Delegation by the Corporation.
- 11—Board of the Corporation.
- 12—Vacation of office.
- 13—Term of office.
- 14—Conduct of business and affairs of the Board.
- 15—Remuneration.
- 16—Director-General.
- 17—Qualification of the Director-General.
- 18—Functions of the Director-General.
- 19—Removal of the Director-General.
- 20—Staff.
- 21—Experts.
- 22—Common seal.
- 23—Protection from personal liability.
- 24—Liability for damages.

PART III — FINANCIAL PROVISIONS

25—Funds of the Corporation.

26—Financial year.

27—Annual estimates.

28—Accounts and Audit.

PART IV — PROCESSING LICENCE

29—Application for processing licence.

30—Restrictions in respect of processing licences.

31—Consideration of applications.

32—Application by holder of processing licence.

33—Notice of refusal

34—Form of processing licence.

35—Term of processing licence.

36—Rights conferred by processing licence.

37—Obligations under processing licence.

38—Record-Keeping and reporting requirements.

39—Amendment of programme of processing operations.

40—Cessation, suspension, or curtailment of production in respect of processing licences.

41—Renewal of processing licence.

42—Application for renewal of processing licence.

43—Term of renewal.

PART V — MISCELLANEOUS PROVISIONS

44—Annual Report.

45—Request for Information.

46—Limitation of the right to access information.

47—Offences and Penalties.

PART VI — REGULATIONS

48—Regulations.

**SCHEDULE—CONDUCT OF
BUSINESS AND
AFFAIRS OF THE
BOARD**

THE GOLD PROCESSING BILL, 2023**A Bill for**

AN ACT of Parliament to provide for the establishment, composition, functions and management of the Gold Processing Corporation; provide for the application, cancellation and renewal of a gold processing licence; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Gold Processing Act, 2022.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation.

“Corporation” means the Gold Processing Corporation established by section 6;

“Board” means the Board of the Corporation provided for in section 11;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to mining; and

“gold processing” means collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold:

3. The object of this Act is to—

Object of the Act.

(a) establish a legal framework for collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold;

(b) provide for licensing of exploration and exploitation of gold; and

(c) establish an institutional framework for collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold.

4. (1) The Corporation shall operate subject to the provisions of the Mining Act and the Standards Act when performing functions or exercising powers under this Act.

Guiding principles.
No. 12 of 2016.
Cap. 496.

(2) This Act shall prevail in the case of any inconsistency between this Act and any other legislation, on the matters relating to collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold.

5. (1) A person shall not engage in the exploration and exploitation operations of gold without obtaining a permit in accordance with this Act.

Exploration and exploitation.

(2) A person who wishes to undertake exploration and exploitation of gold shall apply to the Cabinet Secretary for a permit for the exploration and exploitation operations of gold.

(3) An application under this section shall be done in the prescribed form as shall be specified in the Regulations.

(4) A person who engages in exploration and exploitation of gold without a permit commits an offence and shall upon conviction be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years, or to both.

(5) The Cabinet Secretary may, in consultation with the Corporation, make regulations for the better carrying into effect the provisions of this section.

PART II – THE GOLD PROCESSING CORPORATION

6. (1) There is established a corporation to be known as the Gold Processing Corporation.

Establishment of the Corporation.

(2) The Corporation shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing money or making investments;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper performance of its

functions under this Act, which may lawfully be done or performed by a body corporate.

7. (1) The headquarters of the Corporation shall be in Nairobi.

Headquarters of the Corporation.

(2) The Corporation may establish offices in other counties.

8. The functions of the Corporation shall be—

Functions of the Corporation.

- (a) to collect, sample, purify, smelt, fabricate, homogenize, sample, register, refine, monitor and transport gold or products of gold;
- (b) to develop, maintain and regulate national standards that comply with international standards for collecting, sampling, purifying, smelting, fabricating, homogenizing, refining, registering, monitoring and transporting of gold or products of gold;
- (c) to maintain a database for collecting, sampling, purifying, smelting, fabricating, homogenizing, refining, registering, monitoring and transporting of gold or products of gold;
- (d) to regulate national standards for operating a gold refinery;
- (e) to facilitate international accreditation for operating a gold refinery;
- (f) to regulate registration and licensing of operating a gold refinery;
- (g) to regulate the registration and licensing of laboratory that analyses, tests and grades the properties of gold for purposes of collecting, sampling, purifying, smelting, fabricating, homogenizing, refining, registering, monitoring and transporting of gold or products of gold;
- (h) to facilitate international accreditation for a laboratory that that analyses, tests and grades the properties of gold for purposes of collecting, sampling, purifying, smelting, fabricating, homogenizing, refining, registering, monitoring and transporting of gold or products of gold;

- (i) to undertake research on matters relating to gold and gold processing including collecting, sampling, purifying, smelting, fabricating, homogenizing, refining, registering, monitoring and transporting of gold or products of gold; and
- (j) to perform such other functions as may be necessary for the exercise of its powers and functions under this Act.

9. The Corporation shall have all the powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Corporation shall have the power to—

Powers of the Corporation.

- (a) manage, control and administer its assets in such a manner and for such purposes as best promotes the purpose for which the Corporation is established;
- (b) open such bank accounts for its funds as may be necessary;
- (c) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Corporation;
- (d) subject to approval of the Cabinet Secretary for the time being responsible for matters relating to finance, invest any of the Corporation's funds not immediately required for the purposes of this Act, as it may determine;
- (e) receive gifts, grants, donations or endowments made to the Corporation and make disbursements therefrom;
- (f) enter into association with such other bodies or organisations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Corporation is established; and
- (g) undertake any activity necessary for the fulfilment of any of its functions.

10. The Corporation may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions under this Act.

Delegation by the Corporation.

11. (1) The management of the Corporation shall vest in a Board which shall comprise of—

- (a) a chairperson appointed by the President;
- (b) the Principal Secretary responsible for mining or a representative appointed in writing;
- (c) the Principal Secretary responsible for National Treasury or a representative appointed in writing;
- (d) the Principal Secretary responsible for lands or a representative appointed in writing;
- (e) the Principal Secretary responsible for environment or a representative appointed in writing;
- (f) the Attorney General or a representative appointed in writing;
- (g) two persons, not being public officers, appointed by the Cabinet Secretary representing persons dealing with matters relating to processing of gold in the private sector;
- (h) one person with relevant qualifications or experience in matters relating to mining, geology, geophysics or engineering, nominated in writing by the Council of Governors; and
- (i) the Director-General of the Corporation, who shall be an *ex officio* member of the Board.

(2) A person shall be qualified for appointment as Chairperson or member under sub-section (1)(g) if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree in geology, geophysics, mining, engineering, economics, business administration or law from a recognized university; and
- (c) has experience in the mining sector of not less than ten years in the case of the chairperson and five years in the case of any other member.

(4) A person shall not be qualified for appointment as Chairperson or member of the Board under sub-section (1)(g) if the person—

- (a) is a State or public officer;
- (b) is a member of a governing body of a political party;
- (c) is an undischarged bankrupt; or
- (d) has been removed from public office for contravening the Constitution or any other law.

12. (1) A member of the Board, other than an *ex-officio* member, shall cease to be a member of the Board if such person—

Vacation of office.

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) is adjudged bankrupt;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (d) is absent from three consecutive meetings of the Board without good cause;
- (e) resigns in writing by a notice addressed to the Cabinet Secretary;
- (f) dies; or
- (g) is removed in accordance with the provisions of the Constitution.

(2) The Board shall be properly constituted notwithstanding a vacancy in its membership.

13. The Chairperson and members appointed under section 10 (h) shall hold office for a term of five years renewable for one further term only.

Term of office.

14. The Board shall conduct its affairs in accordance with the provisions of the Schedule, but subject thereto, the Board may regulate its own procedure.

Conduct of business and affairs of the Board.

15. The members of the Board shall be paid such remuneration, allowances and disbursements for expenses as may be approved by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

Remuneration.

16. (1) There shall be a Director-General who shall be the Chief Executive Officer of the Corporation and the

Director-General.

Secretary to the Board appointed by the Board through a competitive recruitment process.

(2) The Director-General shall be an *ex officio* member of the Board but shall have no right to vote.

17. (1) A person shall qualify for appointment as the Director-General if that person—

Qualification of the Director-General.

- (a) is a citizen of Kenya;
- (b) holds a masters' degree in in geology, geophysics, mining, engineering, economics, business administration or law; and
- (c) has the relevant expertise qualification and experience in management in geology, geophysics and mining of not less than ten years.

(2) The Director-General shall hold office on such terms and conditions of employment as the Board may determine.

18. The Director-General shall be responsible for the—

Functions of the Director-General.

- (a) day-to-day operations of the Corporation;
- (b) administration, organisation and control of the staff of the Corporation;
- (c) management of funds, property and affairs of the Corporation;
- (d) implementation of the policies and programmes of the Corporation;
- (e) development of an operations plan for achieving the Corporation's objectives; and
- (f) performance of any other duty necessary for the implementation of this Act as may be assigned to the Director-General by the Board.

19. (1) The Board may remove the Director-General from office in accordance with the terms and conditions of service on grounds of—

Removal of the Director-General.

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;

- (c) incompetence or neglect of duty; or
- (d) any other ground that would justify the removal from office under the terms and conditions of service.

(2) Before removal under subsection (1), the Director-General shall be—

- (a) informed in writing of the reasons for the intended removal; and
- (b) given an opportunity to put in a defence against the allegations.

20. The Board may appoint such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Corporation under this Act, upon such terms and conditions of service as the Board may determine in consultation with the Salaries and Remuneration Commission.

Staff.

21. The Corporation may engage the services of such experts in respect of any of its functions in which they are considered to have special competence.

Experts.

22. (1) The common seal of the Corporation shall be kept in the custody of the Director-General or of such other person as the Board may direct, and shall not be used except on the order of the Board.

Common seal.

(2) The affixing of the common seal of the Corporation shall be authenticated by the signature of the Chairperson and the Secretary.

(3) The Board shall in the absence of either the Chairperson or the Director-General, in any particular matter, nominate one member of the Board to authenticate the seal of the Board on behalf of either the Chairperson or the Director-General.

(4) The common seal of the Corporation when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization by the Corporation under this section shall be presumed to have been duly given.

23. (1) No matter done by a member of the Corporation or by any officer, member of staff, or agent of the Corporation shall, if the matter or thing is done *bona fide* for the purpose of executing the functions, powers or duties of the Corporation under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable in an action, claim or demand whatsoever.

Protection from personal liability.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the Corporation, shall, if the court holds that such act was done *bona fide*, be paid out of the funds of the Corporation, unless such expenses are recovered by him or her in such suit or prosecution.

24. The provisions of section 22 shall not relieve the Corporation of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

Liability for damages.

PART III – FINANCIAL PROVISIONS

25. The Funds of the Corporation shall consist of—

Funds of the Corporation.

- (a) such moneys as may be appropriated by the National Assembly for the purposes of the Corporation;
- (b) gifts, grants, donations or endowments as may be given to the Corporation;
- (c) monies that may accrue to or vest in the Corporation in the course of the exercise of its functions under this Act;
- (d) fees for services rendered by the Corporation; and
- (e) monies from any other lawful source provided for the Corporation.

26. The financial year of the Corporation shall be the period of twelve months ending on the thirtieth of June in each year.

Financial year.

27. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of revenue and expenditure of the Corporation for that year.

Annual estimates.

(2) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the Cabinet Secretary for approval.

(3) No expenditure shall be incurred for the purposes of the Corporation except in accordance with the annual estimates approved under subsection (2), or in pursuance of an authorization of the Board given with the prior written approval of the Cabinet Secretary.

28. (1) The Board shall cause to be kept proper books and records of accounts of the income, expenditure, assets and liabilities of the Corporation.

Accounts and Audit.

(2) Within the period of three months after the end of each financial year, the Board shall submit to the Auditor-General, the accounts of the Corporation in respect of that year together with—

- (a) a statement of income and expenditure during the year; and
- (b) a balance sheet of the Corporation on the last day of that year.

(3) The accounts of the Corporation shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2015.

No. 34 of 2015.

PART IV—PROCESSING LICENCE

29. (1) A person or a company may apply for a processing licence in the prescribed form and accompanied by the prescribed fee.

Application for processing licence.

(2) An application for a processing licence under subsection (1) shall be in the prescribed form and addressed to the Cabinet Secretary and shall provide information on—

- (a) the area in respect of which the licence is sought;
- (b) a proposed programme of processing operations that outlines the refinery forecasts and operation plans;

- (c) a feasibility study;
- (d) a statement regarding the gold in the area of land over which the licence is sought, including details of all known gold as well as probable gold reserves;
- (e) a statement of the financial and technical resources available to the applicant to carry out the proposed processing operations and to comply with the conditions of the licence;
- (f) a plan giving particulars of the applicant's proposals with respect to the employment and training of Kenyan citizens;
- (g) a plan giving particulars of the applicant's proposals with respect to the procurement of local goods and services;
- (h) proof of submission and approval of an environmental and social impact assessment report and environmental management plan for the term of the processing licence to the National Environment Management Authority; and
- (i) a plan giving particulars of the applicant's proposals with respect to social responsible investments for the local community.

30. The Cabinet Secretary shall not grant a processing licence in respect of land which is the subject of a processing licence or reconnaissance licence, a retention licence unless the applicant is the holder of that licence.

Restrictions in respect of processing licences.

31. The Cabinet Secretary, on recommendation of the Corporation, may grant a processing licence if satisfied that—

Consideration of applications.

- (a) the area of land over which the processing licence is sought is reasonable having regard to the applicant's proposed programme of processing operations;
- (b) the applicant has adequate financial resources, technical competence and processing industry experience to carry out the proposed programme of processing operations;

- (c) the applicant has obtained an approved environmental impact assessment licence, a social heritage assessment and environmental management plan in respect of the applicant's proposed processing operations;
- (d) the applicant's proposal with respect to the procurement of local goods and services is acceptable;
- (e) the applicant's proposal with respect to employment and training of Kenyan citizens is acceptable;
- (f) the project is feasible based on the feasibility study; and
- (g) the applicant's proposal with respect to engaging in community investments is socially responsible.

32. The Cabinet Secretary shall grant a processing licence to an applicant where the applicant has satisfied the requirements prescribed by this Act for the grant of a processing licence.

Application by holder of processing licence.

33. The Cabinet Secretary shall not reject an application for a processing licence unless —

Notice of refusal.

- (a) the Cabinet Secretary has given the applicant a notice of the intention to reject the application stating the grounds for rejecting the application;
- (b) the Cabinet Secretary has specified in the notice a period within which the applicant may make appropriate proposals to remedy the grounds stated in the notice of intention to reject the application; and
- (c) the Applicant has failed, within the specified period, to make appropriate proposals.

34. A processing licence shall contain the following information in addition to any other information provided for under this Act—

Form of processing licence.

- (a) the name and address of the holder;
- (b) the date of grant and expiry of the licence;
- (c) the area in respect of which the licence issued;

- (d) the approved programme for processing operations;
- (e) the approved plan for the procurement of local goods and services;
- (f) the conditions subject to which the licence is issued;
- (h) the approved plan to employ and train citizens of Kenya;
- (i) the details of the approved environmental impact assessment report, social heritage impact assessment and environmental management plan; and
- (j) such other information as the Cabinet Secretary may consider necessary.

35. The term of a processing licence shall be for a period not less than twenty five years.

Term of
processing
licence.

36. (1) The holder of a processing licence shall enjoy the exclusive right to carry out processing operations in respect of the gold or the gold deposit specified in the licence within the area specified subject to the provisions of this Act and the terms and conditions set out in the licence.

Rights conferred
by processing
licence.

(2) In the exercise of the rights referred to in subsection (1), the holder of a processing licence may —

- (a) enter the area of land specified in the licence and take all reasonable measures on or under the surface of the land to carry out processing operations; or
- (b) erect equipment, plant and buildings necessary to mine the specified gold and to transport, dress or treat the golds so recovered.

(3) A person appointed by the holder of a processing licence to act as an agent of the holder may exercise the rights of the licensee under the licence, subject to any limitations on the powers of the agent contained in the instrument of appointment.

37. The holder of a processing licence shall —

- (a) commence processing operations within six months of the grant of the licence, or as may be

Obligations under
processing
licence.

specified in the approved program for processing operations or in any relevant gold agreement;

- (b) conduct processing operations in compliance with the approved programme for processing operations;
- (c) comply with the terms and conditions of the approved environmental impact assessment licence, social heritage assessment and environmental management plan relating to the operations to be carried out under the processing licence;
- (d) demarcate the processing area in the prescribed manner;
- (e) comply with the conditions of the licence, any applicable gold agreement and any directions issued by the Cabinet Secretary or an authorized officer in accordance with this Act;
- (f) provide the government with the right of first refusal of processed gold at market price;
- (g) submit to the Cabinet Secretary up to date quarterly returns of gold processing;
- (h) stack or dump any gold or waste products in the manner provided for in the licence or as otherwise prescribed, having regard to good processing industry practice;
- (i) carry out processing and processing activities in accordance with international best practice and the prescribed guidelines; and
- (i) sign a community development agreement with the community where processing operations are to be carried out in such a manner as shall be prescribed in Regulations.

38. (1) The holder of a processing licence shall keep a complete and accurate record of the processing operations in the prescribed form at the registered office.

Record-keeping
and reporting
requirements.

(2) For the purpose of subsection (1) records shall include—

- (a) copies of all maps, geological reports, sample analysis, aerial photographs, cores, logs and tests and other data obtained and compiled by the licence holder;
- (b) financial statements and such other books of account as the Cabinet Secretary may prescribe; and
- (c) such other reports and information as may be prescribed or otherwise determined by the Cabinet Secretary.

39. (1) Subject to the terms and conditions of the licence, the holder of a processing licence shall notify the Cabinet Secretary of any proposed amendment to the approved programme for processing operations.

Amendment of programme of processing operations.

(2) Unless the Cabinet Secretary rejects the proposed amendment, the amendment shall take effect three months after the date of notification under subsection (1).

(3) A proposed amendment which is likely to substantially alter the approved programme of processing operations shall not take effect unless expressly approved by the Cabinet Secretary.

40. (1) The holder of a processing licence shall give the Cabinet Secretary a notice of any intention to cease or suspend or curtail processing operations carried on pursuant to the processing licence.

Cessation, suspension, or curtailment of production in respect of processing licences.

(2) For the purposes of subsection (1), the holder shall give notice of at least —

- (a) six months, for cessation of processing operation;
- (b) three months, for suspension of processing operations; or
- (c) one month, for curtailment in production.

(3) A notice given under this section shall include a statement that sets out the technical and economic basis for the proposed cessation, suspension or curtailment of production.

(4) Upon receipt of a notice given in accordance with this section, the Cabinet Secretary shall investigate the circumstances leading to the proposed cessation,

suspension or curtailment of processing and if the Cabinet Secretary is satisfied, the cessation, suspension or curtailment of processing should be granted.

(5) The Cabinet Secretary may approve the cessation, or suspension of processing operations or curtailment of production proposed by the licence holder subject to the holder complying with such conditions as the Cabinet Secretary may determine.

(6) The Cabinet Secretary shall prescribe the period within which a suspension allowed under this section may be acceptable.

(7) Where the holder is unable to give the required notice as provided under subsection (1) and the holder suspends or curtails processing from a refinery, the holder shall, within three days of the suspension or curtailment, notify the Cabinet Secretary.

(8) The Cabinet Secretary shall make Regulations to provide for the conditions to manage a refinery and the licence area where a cessation notification has been approved.

41. (1) The holder of a processing licence may apply to the Cabinet Secretary for the renewal of the licence.

Renewal of processing licence.

(2) An application under subsection (1) shall be made in the prescribed form and be accompanied by the prescribed fee in respect of all or part of the licence area.

(3) An application for the renewal of a processing licence shall be made at least one year before the expiry of the licence.

42. An application for the renewal of a processing licence shall contain the information or be accompanied by the following documents—

Application for renewal of processing licence.

- (a) a proposed programme of processing operations to be carried out during the term of renewal;
- (b) a plan of the area in respect of which renewal of the processing licence is sought;
- (c) an approved environmental impact assessment licence, social heritage assessment, environmental management plan in respect of the applicant's proposals, where required under the

Environmental Management and Coordination Act and Community Development Agreement; and

- (d) such additional information as the Cabinet Secretary may prescribe.

43. The term of renewal of a processing licence shall not exceed fifteen years. Term of renewal.

PART V – MISCELLANEOUS PROVISIONS

44. (1) The Board shall, not more than three months after the end of each financial year, prepare a report setting out the operations of the Corporation for the preceding year. Annual Report.

(2) The Cabinet Secretary shall, within thirty days of receipt of the annual report, submit the report to Parliament and the county assemblies.

(3) Parliament or a county assembly may at any time require the Corporation to submit a report on a particular issue.

45. Any person may request for information from the Corporation and such request for information— Request for information.

- (a) shall be addressed to the Chief Executive Officer;
- (b) may be subject to the payment of the prescribed fee; and
- (c) may be subject to confidentiality requirements of the Corporation.

46. (1) The right of access to information guaranteed under Article 35 of the Constitution is hereby limited under Article 24 of the Constitution to the nature and extent specified in subsection (2). Limitation of the right to access information.

(2) The Corporation may decline to give information to an applicant where in its opinion the divulging of the information would compromise the integrity of the Corporation.

47. A person who— Offences and penalties.

- (a) without lawful excuse ignores or fails to obey any instruction issued by a member of the Board or an employee or agent of the Corporation in the exercise of the powers or the performance of functions of the Corporation under this Act;

- (b) wilfully obstructs a member of the Board or an employee or agent of the Corporation in the discharge of their lawful duties; or
- (c) misrepresents, knowingly submits false or misleading information to a member of the Board or an employee or agent of the Corporation in exercise of the powers or the performance of the functions of the Corporation under this Act,

commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a period not exceeding five years or to both.

PART VI—REGULATIONS

48. (1) The Cabinet Secretary may in consultation with the Cabinet Secretary responsible for mining, the Cabinet Secretary responsible for standards, and the Corporation, make regulations for the better carrying into effect the functions of the Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

- (a) collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting gold or products of gold;
- (b) regulating national standards for collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold;
- (c) maintaining a database for collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold;
- (d) operating and maintaining a national laboratory to analyse, test and grade the properties of gold including the standard of gold;
- (e) application for a processing licence;
- (f) restrictions in respect of processing licences;
- (g) consideration of applications for a processing licence;

- (h) application by holder of a processing licence;
- (i) notice of refusal of a processing licence;
- (j) form of processing licence;
- (k) term of processing licence;
- (l) rights conferred by processing licence;
- (m) obligations under processing licence;
- (n) record-keeping and reporting requirements;
- (o) amendment of programme of processing operations;
- (p) cessation, suspension, or curtailment of production in respect of processing licences;
- (q) renewal of a processing licence;
- (r) application for renewal of processing licence; and
- (s) term of renewal of a processing licence.

(3) For the purpose of Article 94(6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect the provisions of this Act;
- (b) the Corporation of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;
- (c) the principles and standards applicable to the rules made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

Cap. 2.

No. 23 of 2013.

PART VII—CONSEQUENTIAL AMENDMENTS

49. The Mining Act is amended by deleting section 3 and inserting the following new section—

Act not to apply to gold, petroleum and hydrocarbon gases.

3. Save to the extent provided for in this Act, this Act shall not apply to—

Amendment of section 2 of No. 12 of 2016.

- (a) matters relating to petroleum and hydrocarbon gases; and
- (b) matters relating to the exploration, exploitation and processing of gold.

50. The Mining Act is amended in the First Schedule by deleting the word “Gold” appearing in Part C.

Amendment of
the First Schedule
of No. 12 of 2016.

SCHEDULE s. 14

CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. (1) The Board shall meet not less than four times in every financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.

Meetings.

(2) A meeting of the Board shall be held on such date and at such time as the Chairperson shall appoint.

(3) Unless the majority of the membership of the Board otherwise agree, at least fourteen days notice of every meeting shall be given to every member.

(4) The Chairperson shall on the written application of at least one-third of the members, convene a special meeting of the Board.

(5) The quorum for the conduct of the business of the Board shall be one half of all the members.

(6) The Chairperson shall, when present, preside at every meeting of the Board but the members present shall elect one member to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(7) Unless an unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(8) Subject to subparagraph (5), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

2. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

Disclosure of
interest by Board
members.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

3. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board.

Execution of
instruments.

4. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

Minutes.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide for the establishment, composition, functions and management of the Gold Processing Corporation. The Bill seeks to establish a legal and institutional framework for collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold.

Part I (Clauses 1-2) of the Bill contains provisions relating to preliminary provisions including the short title, interpretation, object of the Act and guiding principles.

Part II (Clauses 5-23) of the Bill contains the provisions of the Gold Processing Corporation including establishment of the Corporation; headquarters of the Corporation; functions of the Corporation; powers of the Corporation; delegation by the Corporation; Board of the Corporation; vacation of office; term of office; conduct of business and affairs of the Board; remuneration; Director-General; qualification of the Director-General; functions of the Director-General; removal of the Director-General; staff; experts; common seal; protection from personal liability; and liability for damages.

Part III (Clauses 24-27) of the Bill contains provisions relating to financial provisions including the funds, the financial year, the annual estimates, accounts and audit of the Corporation.

Part IV (Clauses 28-42) of the Bill contains provisions relating to application for processing licence; restrictions in respect of processing licences; consideration of applications; application by holder of processing licence; notice of refusal; form of processing licence; term of processing licence; rights conferred by processing licence; obligations under processing licence; record-keeping and reporting requirements; amendment of programme of processing operations; cessation, suspension, or curtailment of production in respect of processing licences; renewal of processing licence; application for renewal of processing licence; and term of renewal

Part V (Clause 42-47) of the Bill contains provisions on miscellaneous provisions including annual report; request for information; limitation of the right to access information; and, offences and penalties

Part VI (Clause 47) of the Bill contains provisions on regulations.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill delegates legislative powers to the Cabinet Secretary. It does not limit fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill concerns county governments in terms of Article 109(5) of the Constitution as it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Paragraph 10 of Part 2 of the Fourth Schedule to the Constitution provides that the implementation of specific national government policies on natural resources and environment conservation is a function of the county governments.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill will occasion additional expenditure of public funds to be provided for through the annual estimates.

Dated the 7th August, 2023.

BERNARD MASAKA SHINALI,
Member of Parliament.

