

## The Mining Act, 2016 Act No 12 of 2016

*Date of Assent 6<sup>th</sup> May 2016, Date of commencement, 27<sup>th</sup> May, 2016*

<b>Reform Issues</b>	<p><b>Section 124 (1) of the Mining Act introduces a new restriction by providing artisanal mining rights shall only be granted to applicants that are Kenyan citizens in the case of individuals and for companies, only those that have a least 60% of their shareholding held by Kenyans.</b></p> <p>Section 124 (1) provides          “a person shall not be granted or entitled to hold or acquire an artisanal mining permit or a mining permit under this part unless that person is          (a) a citizen of Kenya;          (b) a body corporate where no less than sixty percent of the shareholding is held by citizens of Kenya.</p> <p>Section 164 (1) of the Mining Act provides that an applicant for a mineral dealer permit should have 60% of shareholding held by Kenyans.</p> <p>Section 164 (1) provides          “A mineral dealer’s permit shall be issued to citizens of Kenya, or in the case of a body corporate where sixty percent of the shareholding is held by citizens of Kenya.</p>
<b>Proposed Reform</b>	<ul style="list-style-type: none"> <li>• It is proposed that the section 124 (1) be amended to make the citizens of the other EAC Partner States, and corporate bodies in which citizens of the other EAC Partner States hold at least 60% of the shareholding, eligible for grant of artisanal mining rights</li> <li>• It is proposed that Section 164 (1) be amended to make the citizens of the other EAC Partner States and corporate bodies in which citizens of the other EAC Partner have sixty percent of the shareholding, eligible for the grant of a mineral dealer permit.</li> </ul>
<b>Justification</b>	<ul style="list-style-type: none"> <li>• The Provisions are inconsistent with Article 24 of the CMP which requires Partner States to remove restrictions on the free movement of capital.</li> <li>• Kenya does not have allowable restrictions to capital in the EAC Common Market Protocol Schedule on the Removal of Restrictions on the Free Movement of Capital.</li> <li>• Justifications to restrict free movement of capital under Article 25 of the CMP can only be done for prudential supervision, public policy, money laundering and financial sanctions agreed on by the EAC Partner States.</li> <li>• In any case, justifying the restrictions under Article 25 of the CMP, require that Kenya notifies the EAC Secretariat and the other Partner States on the restriction and furnish proof that the restriction was appropriate, reasonable and justifiable.</li> </ul>
<b>Expected Outcome</b>	<p>Amending Sections 124 (1) and 164 (1) of the Mining Act, 2016</p> <ul style="list-style-type: none"> <li>• Assure Kenya’s compliance with the EAC Common Market Protocol</li> <li>• Increase new FDI from the other EAC Partner States.</li> </ul>