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Proclamation No. 816/2013
Mining Operations (Amendment) Proclamation ...

PROCLAMATION No.816/2013
A PROCLAMATION TO AMEND THE MINING OPERATIONS PROCLAMATION

WHEREAS, it has become necessary to amend the Mining Operations Proclamation;

NOW, THEREFORE, in accordance with Article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

1. Short Title
This Proclamation may be cited as the “Mining Operations (Amendment) Proclamation No. 816/2013”.

2. Amendment
The Mining Operations Proclamation No. 678/2010 is hereby amended as follows:

1/ sub-article (2) of Article 2 of the Proclamation is deleted and replaced by the following new sub-article (2):

“2) ‘artisanal mining’ means a mining operation carried out by individuals or small and micro enterprises which is mostly of manual nature and does not involve the engagement of employed workers;”
2/ paragraph (a) of sub-article (19) of Article 2 of the Proclamation is deleted and replaced by the following new paragraph (a):

"a) water other than geothermal water that may be used for bathing, recreational and therapeutic purpose or water used for the extraction of any mineral such as brine;"

3/ sub-article (20) of Article 2 of the Proclamation is deleted and replaced by the following new sub-article (20):

"20) "mining license" means large scale, small scale, special small scale or artisanal mining license issued pursuant to this Proclamation;"

4/ the following new sub-article (41), (42), (43) and (44) are added under Article 2 of the Proclamation:

"41) "effective date of a license" means the date where the applicant for a mining license and the Licensing Authority sign a mining agreement or, where it relates to other mining operation license, the date the Licensing Authority sign the authorization letter;"

"42) "extractive industry transparency initiative" means a coalition of government, mining companies and civil societies established to disclose to the public the revenue government received from mining license holders, and the amount of all payments made by the mining license holders to the government;"

"43) "mining development period" means the period between the Licensing Authority and the mining license holder sign a mining agreement and the commencement of the mining, during which the construction and development works required to open the mine, extract, crush,
special small scale mining license; paragraph (c) of sub-article (3) of Article 11 of the Proclamation are deleted and replaced by the following:

"c) a non-citizen of Ethiopia or a group of persons who are not registered as a small and micro-enterprise in accordance with the relevant law where it is for artisanal or special small scale mining.

(4) of sub-article (3) of Article 9 of the proclamation are renumbered as the following new sub-article (5) and (6) respectively.

The following new sub-article (3) and (4) are added under Article 22 of the Proclamation:

"(a) special small scale mining means mining operation of gemstones or placer resources of gold, silver, platinum or tantalum of which the annual run-of-mine does not exceed the limit stated in paragraph (a) of sub-article (3) of this Article, which is carried out by individuals or small and micro-enterprises who were the holders of artisanal mining license and have sufficient financial capacity to employ modern machinery and equipment in such operation."
(2) The renewal of an exploration license may not be allowed:

a) more than twice, in the case of paragraph (a) of sub-article (3) of this Article;

b) more than once, in the case of paragraph (b) of sub-article (3) of this Article.

(3) The holder of a small scale or large scale mining license shall:

a) commence mining within two years from the effective date of the license; and

b) comply with terms and conditions of the license.

(4) The Licensing Authority may, by taking into account the nature of the mineral, the mineral deposit and the mine site and following the criteria determined by regulation, conclude a mining agreement by extending or shortening the period referred to in sub-article (2)(u) of this Article.
The Licensing Authority shall grant an exclusive special small scale mining license where:

a) the proposed work program is approved;

b) the applicant proves that he has financial capacity to conduct the proposed mining operation;

c) the environmental impact assessment has been approved; and

d) the applicant was holder of artisanal mining license that engage in the mining of gemstones or placer gold, silver, platinum or tantalum and is not in contravention of any obligations related to it.

33. Duration and Renewal of Special Small Scale Mining License

1/ Special small scale mining license shall be valid for the period specified in the license; provided however, that such period may not exceed 10 years.

2/ Special small scale mining license may be renewed for a period not exceeding five years each subject to sub-article (3) of this Article.
Special small scale mining license holders shall have the right to renew the license, provided that he has fulfilled the obligations specified in the license, and is not in breach of any provision of this Proclamation, regulations or directives which constitute grounds for suspension or revocation of the license."

An artisanal mining license shall be valid for the period specified in the license, provided however, that such period may not exceed two years.

Artisanal mining license shall not be renewed.

The following new paragraph (m) and (n) are added under sub-article (1) of Article 36 of the Proclamation (as renumbered pursuant to sub-article (9) of this Article):

"m) report to the Licensing Authority the quantity and type of mineral mined each month within 10 days from the end of such month and sell the minerals mined every financial quarter within 30 days from the end of each financial quarter and notify same to the Licensing Authority;

n) in the case of a small scale or large scale mining license holder, be a member of the Ethiopian Extractive Industry Transparency Initiative and to disclose to the public the payments effected to the government."
sub-article (1) of Article 40 of the Proclamation (as renumbered pursuant to sub-article (9) of this Article) is deleted and replaced by the following new sub-article (1):

"1/ Any license, other than reconnaissance and retention may be transferred with prior consent of the Licensing Authority; provided, however, that artisanal or special small scale mining licenses may only be transferred in the case of inheritance."

sub-article (3) of Article 44 (as renumbered pursuant to sub-article (9) of this Article) is deleted and replaced by the following new sub-article (3):

"3/ The holder of a mining license shall have the right to sell locally or export the minerals referred to in sub-article (2) of this Article; provided, however, that the holder of artisanal and special small scale mining license that has engaged in gold or silver mining shall sell the minerals produced to the National Bank of Ethiopia."

Article 51, 52 and 53 of the Proclamation (as renumbered pursuant to sub-article (9) of this Article) are deleted and replaced by the following new Article 51, 52 and 53:

"51. Application for Certificate of Competence for Consultancy or Technical Services"

Any Ethiopian who wishes to engage in providing consultancy service or technical service such as drilling or laboratory service to the mining sector may apply to the Ministry for a certificate of competence by paying the appropriate application fee and completing the appropriate form.
2/ The Ministry shall accept and register the application for certificate of competence if the requirements specified in sub-article (1) of this Article are met.

52. Issuance of Certificate of Competence for Consultancy or Technical Services

1/ The Ministry shall issue a certificate of competence to an applicant where it is satisfied that the applicant has the necessary qualification and experience in the area of consultancy he wishes to engage.

2/ Where the application is submitted to engage in provision of technical services such as drilling or laboratory services, the Ministry shall issue a certificate of competence after confirming that the applicant has the necessary technical staff and equipment for the intended services.

3/ The validity, renewal and revocation of a certificate of competence shall be prescribed by regulation.

53. Rights and Obligation of a Holder of a Certificate of Competence

1/ A holder of a certificate of competence granted in accordance with sub-article (1) or (2) of Article 52 of this Proclamation shall have the right to provide the consultancy or technical service in the area of mining operation as specified in the certificate.

2/ The holder of a certificate of competence shall be required to obtain the necessary business license from the
paragraph (a) of sub-article (1) of Article 54 of this Proclamation (as renumbered pursuant to sub-article (9) of this Article) is deleted and replaced by the following new paragraph (a):

"a) issue artisanal and special small-scale mining license;"

paragraph (a) of sub-article (2) of Article 54 of this Proclamation (as renumbered pursuant to sub-article (9) of this Article) is deleted and replaced by the following new paragraph (a):

"a) issue reconnaissance, exploration, retention and mining licenses other than those to be issued by a Regional State Licensing Authority under paragraph (a) and (b) of sub-article (1) of this Article;"

the following new paragraph (k) is added under sub-article (4) of Article 54 of the Proclamation (as renumbered pursuant to sub-article (9) of this Article):

"k) disclose to the public the revenue collected from mining;"

sub-article (1) of Article 60 of the Proclamation (as renumbered pursuant to sub-article (9) of this Article) is deleted and replaced by the following new sub-article (1):

"Where his mining operation requires the expropriation of land, any licensee shall pay compensation to expropriated land user and property in accordance with the appropriate law issued to compensate such expropriation."
Article 61 of the Proclamation (as renumbered pursuant to sub-article (9) of this Article) is deleted and replaced by the following new Article 61:

"61. Complaint and Appeal as Regards to Compensation

1/ Any complaint or appeal related to compensation shall be determined in accordance with the appropriate law issued to govern expropriation of land holding for public purposes and payment of compensation.

2/ Where it is required to expropriate land for the purpose of mining operation the Licensing Authority shall facilitate the speedy execution of the process in collaboration with the appropriate authority empowered to expropriate land holding for public purposes and payment of compensation."

20/ sub-article (3) of Article 62 of the Proclamation (as renumbered pursuant to sub-article (9) of this Article) is deleted and replaced by the following new sub-article (3):

"3/ Any mining licensee other than an artisanal mining licensee and, as appropriate, an exploration licensee shall participate in community development plan, to be determined by the license area and by agreement, and shall allocate money for such expenses."

21/ sub-article (1) of Article 63 (as renumbered pursuant to sub-article (9) of this Article) is deleted and replaced by the following new sub-article (1):
The holder of special small scale, small scale or large scale mining license shall apply to the Licensing Authority for a mine closure certificate upon:

a) revocation of the license;

b) termination of the mining operations;

c) relinquishment of the whole or any portion of the license area; or

d) abandonment of the mine.

paragraph (a) of sub-article (2) of Article 65 of the Proclamation (as renumbered pursuant to sub-article (9) of this Article) is deleted and replaced by the following new paragraph (a):

"a) precious minerals 7%;"

sub-article (3) of Article 65 of the Proclamation (as renumbered pursuant to sub-article (9) of this Article) is deleted and replaced by the following new sub-article (3):

"3/ The amount of royalty payable by the holders of artisanal, special small scale and small scale mining licenses shall be determined by the laws of the Regional States."

sub-article (3) of Article 66 (as renumbered pursuant to sub-article (9) of this Article) is deleted and replaced by the following new sub-article (3) and (4):

"3/ Where the Licensing Authority deems it appropriate it may cause the reduction, temporary lifting or waiver of the liability to pay royalty of a licensee of an operating mine by recommending and securing approval from the Council of Ministers or the concerned higher regional authority, as the case may be.
The detailed criteria for reducing, temporary lifting or waiver of royalty in accordance with sub-article (3) of this Article shall be determined by regulation.

Sub-article (2) of Article 67 (as renumbered pursuant to sub-article (9) of this Article) is deleted and replaced by the following new sub-article (2):

"2/ income tax to be paid by holders of artisanal, special small scale and small scale mining licenses shall be determined by the laws of the Regional States."

Article 72 of the Proclamation (as renumbered pursuant to sub-article (9) of this Article) is deleted and replaced by the following new Article 72:

"72. Government Participation

1/ Without prejudice to its right to undertake mining operations under Article 8 of this Proclamation, the government shall acquire without cost a participation interest of five percent of any large scale mining investment. An additional equity participation of the government may also be provided by agreement with the licensee, which shall specify the percentage, timing, financing, resulting rights and obligations and other details of such participation.

2/ The rate of government participation interest without cost and concerning additional equity participation in small scale mining shall be determined by laws of Regional States."

Sub-article (2, (3) ) and (5) of Article 75 of the Proclamation (as renumbered pursuant to sub-article (9) of this Article) are deleted and replaced by the following new sub-article (2), (3) and (5):
Any equipment, machinery, vehicles and consumables that any holder of a special small scale, small or large scale mining license or his contractor may import into Ethiopia and required for mining development period in accordance with the mining agreement and the approved work program shall be exempted from customs duties and taxes: provided, however, that the right to import equipment, machinery and vehicles free of customs duties and tax may not be applicable after five years starting from the date of production.

The holder of a small or large scale mining license may, within the period specified in sub-article (2)(a) of Article 30 of this Proclamation, import free of customs duties consumables required to start and sustain commercial production for the first three months.

Except the holder of artisanal mining license or special small scale mining license that produce gold or silver, any holder of mining license shall be entitled to export free of customs duties and taxes minerals produced according to the license.

28/ sub-article (2) of Article 78 (as renumbered pursuant to sub-article (9) of this Article) is deleted and replaced by the following new sub article (2):

"2. In the event that agreement cannot be reached through negotiations, the case shall be settled by arbitration in accordance with the procedures specified in the agreement. An arbitral award shall be binding upon the parties."
sub-article (1) of Article 83 (as renumbered pursuant to sub-article (9) of this Article) is deleted and replaced by the following new sub-article (1):

"Any mining license or mining agreement issued or concluded prior to the coming into effect of this Proclamation shall continue in force for the remaining period of its validity in accordance with the law in force at the time of issuance of the license or conclusion of the agreement; provided, however, that the renewal of the license or agreement, upon expiry of its current term, shall be made in accordance with the provisions of this Proclamation."

3. **Effective Date**

This Proclamation shall enter into force on the date of publication in the Federal Negarit Gazette.

Done at Addis Ababa, this 19th day of March, 2014.

MULATU TESHOME (DR.)

PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA