

LEGAL NOTICE NO. 20

THE ENVIRONMENTAL MANAGEMENT AND CO-
ORDINATION ACT

(Cap. 387)

THE ENVIRONMENTAL MANAGEMENT AND CO-
ORDINATION (DEPOSIT BONDS) REGULATIONS, 2025

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THE ENVIRONMENTAL MANAGEMENT AND CO-
ORDINATION ACT

(Cap. 387)

IN EXERCISE of the powers conferred by section 147(1) of the Environmental Management and Co-ordination Act, the Cabinet Secretary for Environment, Climate Change and Forestry, on the recommendation of the National Environment Management Authority and on consultation with the lead agencies, makes the following Regulations—

THE ENVIRONMENTAL MANAGEMENT AND CO-
ORDINATION (DEPOSIT BONDS) REGULATIONS, 2025

PART I—PRELIMINARY PROVISIONS

1. These Regulations may be cited as the Environmental Management and Co-ordination (Deposit Bonds) Regulations, 2025. Citation.
2. In these Regulations, unless the context otherwise requires— Interpretation.
 - “abandoned land” means a degraded environment where the perpetrator is not identifiable;
 - “affected media” means land, water, air, or any other natural resource that has been polluted, contaminated or degraded;
 - “applicant” means any person who submits a Deposit Bond Assessment Report to the Authority for consideration and approval;
 - “bond discharge certificate” means an authorisation issued by the Authority certifying that the remediation works have met all completion criteria, specifications and standards for the refund of a deposit bond;
 - “Committee” means the Technical Advisory Committee established under regulation 18;
 - “competent expert” means a multi-skilled team having knowledge in environmental valuation, law or actuary and led by an environmental assessment expert or firm licensed by the Authority;
 - “environmental emergency” means the sudden onset of disasters, accidents or unexpected condition or situation resulting from technological or human-induced factors, or a combination of both, that in the reasonable opinion of the Authority, materially or adversely, or is likely to materially or adversely cause severe damage to all or to a significant part thereof, or which presents a physical threat to persons or property or the environment;
 - “facility” means a place where any of the activities set out in the First Schedule is undertaken;
 - “good environmental practice” means a sustainable or environmentally responsible practice that is undertaken in accordance with the provisions of the Act or any other existing law;
 - “industrial plant” means any plant undertaking manufacturing, engineering or trade activities as set out in the First Schedule;

“notice of confiscation” means a notice issued by the Authority for the purposes of confiscation of a deposit bond;

“operator” means a registered proprietor of the any of the activities set out in the First Schedule;

“proponent” means a person proposing or executing any project, programme or undertaking set out in the First Schedule;

“Register” means a Deposit Bond Register maintained under these Regulations; and

“remediation” means rehabilitation, clean-up, restoration, post-care, maintenance and compatible after-use activities.

3. These Regulations shall apply to activities, industrial plants and undertakings set out in the First Schedule which have or are likely to have adverse effects on the environment. Application.

4. The purpose of these Regulations is to prescribe the procedure for managing a deposit bond. Purpose of the Regulations.

PART II—MANAGEMENT OF DEPOSIT BONDS

5. (1) The Director-General shall be responsible for the management of deposit bonds. Management of deposit bonds.

(2) The Director-General shall, with respect to the management of deposit bonds—

- (a) prepare and maintain a register of activities, industrial plants and undertakings that require deposit bonds;
- (b) review the terms of reference developed by the competent experts in carrying out a deposit bond assessment;
- (c) review the Deposit Bond Assessment Report to determine the adequacy and reliability of deposit bonds payable to the Restoration Fund;
- (d) issue approvals on Deposit Bonds Assessment Reports and notices of the deposit bonds payable to the persons liable to pay the deposit bond;
- (e) make recommendations to the Cabinet Secretary on the prescription of payments of deposit bonds by the Cabinet Secretary responsible for finance, pursuant to section 28(2) of the Act;
- (f) undertake a joint inspection and monitoring with the relevant county government or lead agency to determine compliance with good environmental practices in line with the approval on terms and conditions based on the Deposit Bond Assessment Report;
- (g) receive periodic status reports of any on-going remediation work from the operators;
- (h) prepare annual reports on deposit bonds received, refunded, confiscated, status of sites remediated and matters which

have been determined or are pending before the Tribunal;
and

- (i) undertake any other activity, as may be conferred on it under the Act or any other law.

6. Pursuant to section 28(1) of the Act, the Authority shall keep and maintain a Deposit Bonds Register of activities, industrial plants or undertakings which are likely to have adverse effect on public health and the environment.

Maintenance of Register.

7. The Register referred to under regulation 6 shall contain the following particulars—

Contents of Register.

- (a) name of the facility;
- (b) location of the facility;
- (c) name and address of the contact person;
- (d) the activity being undertaken at the facility;
- (e) Integrated Environmental Assessment licence number and, where relevant, Environmental Audit reference number;
- (f) initial deposit bond payable;
- (g) adjusted deposit bond payable; and
- (h) any other relevant information.

8. (1) Each project proponent shall ensure that a Deposit Bond Assessment Report is prepared on the any project set out in the First Schedule likely to have significant adverse effects on the environment when operated in a manner that is not in conformity with good environmental practices

Determination of a Deposit Bond for facilities in operation.

(2) The Deposit Bond Assessment Report prepared under sub-regulation (1) shall be prepared by a competent expert in accordance with terms of reference approved by the Authority.

(3) A Deposit Bond Assessment Report shall include—

- (a) the proposed location of the project;
- (b) site characteristics for a facility in operation;
- (c) a clear description of the activities being undertaken at the facility;
- (d) evidence of integrated environmental assessment or environmental audit where applicable;
- (e) the environmental management systems in place;
- (f) the existing environmental levies or other insurance covers that the facility may have;
- (g) a remediation, post-care and maintenance plan, including the required standards of remediation works, the activities involved, time frame, cost and the monitoring mechanism;

- (h) an analysis of the amount of deposit bond payable in respect of the projected cumulative risks of the project activities to the recipient environment and affected media and persons as shall be prescribed by the Cabinet Secretary responsible for matters relating to finance on the recommendation of the Cabinet Secretary; and
- (i) details of the operator or proponent who shall be responsible for the execution and completion of remediation works.

(4) A person who provides information or data which is false, incorrect or intended to mislead in relation to this regulation, commits an offence.

9. (1) The Authority shall, in consultation with the relevant lead agencies, review and make a decision on the Deposit Bond Assessment Report based operational standards set by the Authority.

Review and approval by the Authority.

(2) Upon review of the report under sub-regulation (1), the Authority shall, in writing, communicate its decision—

- (a) to the operator of the facilities in operation, within thirty days of the submission of the report; and
- (b) to the proponent of a proposed project, within thirty days after the issuance of the Integrated Environmental Assessment Licence.

(3) Where the Authority is satisfied with the contents of the Deposit Bonds Assessment Report, the Authority shall—

- (a) issue an approval of the Deposit Bond Assessment Report; and
- (b) issue a notice of the deposit bond payable.

(4) Where the Authority is not satisfied with the adequacy or reliability of information provided in the Deposit Bond Assessment Report, the Authority may—

- (a) make a decision on the basis of the Authority's estimate of the deposit bond amount; or
- (b) undertake a reassessment of the deposit bond payable.

(5) The project proponent shall pay the deposit bond notified under sub-regulation (3) to the Restoration Fund within a period of thirty days of the date of the notice or such other period depending on the complexity of the operation, regularity and quantum of payment required.

10. The payment of a deposit bond shall not operate as—

- (a) an exemption for non-compliance to applicable provisions of the Act; and
- (b) a defence to any civil action or to prosecution that may be brought or preferred against a proponent or operator in

Non- applicability of the deposit bond.

respect to the manner in which an activity, industrial plant or undertaking is executed, managed or operated.

11. The Authority may, at any time after the bond has been paid but before the completion of the affected project, reassess the amount payable as deposit bond, if—

Reassessment of a deposit bond.

- (a) there has been an error in the original assessment;
- (b) there is a substantial change or modification in an activity, industrial plant or undertaking or in the manner in which an activity, industrial plant or undertakings is being operated;
- (c) an activity, industrial plant or undertaking poses an environmental threat requiring greater remediation interventions which could not be reasonably foreseen at the time of the original assessment was approved;
- (d) it is established that the information or data given by the applicant was false, inaccurate or intended to mislead; or
- (e) the deposit bond amount has been partially or fully utilised before the completion of the affected project.

12. (1) The Authority may conduct a review of the deposit bond payable under these Regulations to ensure adequacy of the deposit bond with regard to the approved remediation plan.

Review of the deposit bond payable.

(2) The review under sub-regulation (1) may be—

- (a) conducted depending on the complexity of the operation, long-term care and progressive remediation works required; or
- (b) carried out every three years, or any other period as may be approved by the Authority.

13. (1) The Authority shall, pursuant to section 28(3) of the Act, issue a refund of a deposit bond amount after inspecting an operation and establishing that the operator has observed good environmental practices.

Refund of a Deposit Bond.

(2) An operator shall within sixty days of nearing completion of an operation, notify the Authority when an operation is approaching closure and end of remediation works by submitting a remediation report demonstrating the completion of the remediation works is done in accordance with the parameters set out under sub-regulation (4).

(3) The Authority shall inspect the facility within sixty days from the date of submission of the remediation report under sub-regulation (2), to ensure compliance with the conditions, specifications and standards set out in the approval document, annual environmental audit reports, remediation, post care and maintenance plans and initiate the processing of a bond discharge certificate as set out in the Second Schedule.

(4) The Authority shall take into account the following factors during an inspection—

- (a) the public safety of the site;
- (b) the stability of the site under a range of seasonal conditions representative of that climate;
- (c) the ecological system recovery at the site;
- (d) the sampling and analysis of applicable parameters;
- (e) the state of recovery in comparison to the surrounding area;
- (f) the aesthetic value of the site;
- (g) the time scales to meet the required remediation level;
- (h) the compliance history of the operator;
- (i) the compatible after-use plans of the site;
- (j) the involvement of stakeholders, project affected populations and surrounding community; and
- (k) any other factor as may be determined by the Authority.

(5) The deposit bond determined in accordance with these Regulations shall be refunded without interest to the operator within six months after issuance by the Authority of the bond discharge certificate.

14. (1) The Authority may, pursuant to section 28(4), confiscate a deposit bond where the operator breaches the provisions of the Act and these Regulations.

Confiscation of a deposit bond.

(2) Where the Authority intends to confiscate a deposit bond, the Authority shall issue a notice, in writing, of the intended confiscation to the operator.

(3) The operator shall be required to respond to the notice under sub-regulation (2) within fourteen days of receipt of the notice.

(4) Where the operator fails to respond to the notice as required under sub-regulation (3), the Authority may confiscate the deposit bond without any further reference to the operator.

(5) Where the Authority receives a response from the operator under sub-regulation (3), the Authority shall grant the operator an opportunity to be heard and in this regard, schedule a date for the hearing that shall be at least fourteen days after the response by the operator.

(6) The decision of the Authority shall be communicated to the operator within fourteen days from the date of the hearing.

(7) Upon hearing a matter under this regulation, the Authority may—

- (a) issue a notice requiring the operator to restore the affected media within the time specified by the Authority;
- (b) where the operator fails to remediate the affected media to the satisfaction of the Authority, the Authority shall

confiscate and within sixty days initiate the process to use the deposit towards restoration of the affected media and thereafter prepare and publish a financial report in the *Gazette* on how the funds in the deposit bond were utilised; or

- (c) cancel any license issued to the operator under the Act on the advice of the Committee, where the operator has become a habitual offender.

(8) Where the cost of remediation exceeds the deposit bond amount confiscated, the balance of such costs shall be recovered from the operator.

(9) Where the Authority confiscates a deposit bond and the operator is dissatisfied with the confiscation, the operator may, pursuant to section 28(5) of the Act, refer the matter to a competent court of law within sixty days of the decision of the Authority.

15. (1) A person may appeal to the Tribunal or competent court of law in accordance with the provisions of the Act if that person is aggrieved by—

Appeals.

- (a) the determination of the amount of the deposit bond payable under these Regulations;
- (b) the confiscation of a deposit bond by the Authority;
- (c) the refundable amount of a deposit bond;
- (d) the imposition by the Authority of any condition, limitation or restriction in the approval condition pertaining to deposit bond; or
- (e) any other decision made by the Authority relating to the payment of a deposit bond by that person.

PART III—MISCELLANEOUS PROVISIONS

16. A person who commits an offence under these Regulations for which no specific penalty has been provided shall be liable, on conviction, to the penalty specified under section 144 of the Act.

Offences and penalties.

17. The transferee as well as the transferor of an undertaking set out in the First Schedule shall be liable for all liabilities and the observance of all obligations imposed by the transfer in respect of the operation transferred, but the transferor shall not be responsible for any future liabilities or any obligations so imposed with regard to the operation from the date of the transfer.

Liability on transfer.

18. (1) A person who is carrying out an activity, industrial plant or undertaking set out in the First Schedule shall, within twelve months of the commencement of these Regulations, comply with the provisions of these Regulations.

Transitional Clause.

(2) A person who fails to comply with sub-regulation (1) commits an offence.

FIRST SCHEDULE

(rr. 2, 3, 8(1), 18(1))

Activities, industrial plants and undertakings eligible for deposit bonds

The activities, industrial plants or undertakings that have or are likely to have significant adverse effects on the environment when operated in a manner not in conformity with good environmental practices and would attract the payment of a deposit bond, include the following—

1. Extractive Activities

- (a) exploration of oil and gas activities (onshore and offshore);
- (b) exploitation or extracting of oil and gas activities (onshore and offshore);
- (c) underground and open cast mining operations including gas and solid minerals; or
- (d) quarrying.

2. Industrial Plants

- (a) breweries;
- (b) distillery;
- (c) Sugar factories;
- (d) Paper pulping and recycling;
- (e) batteries manufacturing and recycling;
- (f) Pharmaceutical industries;
- (g) steel mills;
- (h) tanneries;
- (i) cement industries;
- (j) chemical and petrochemical industries;
- (k) storage facilities for petroleum products including depots and petroleum service stations; or
- (l) refineries of petroleum products.

3. Agricultural

Large scale horticultural and flower farms exceeding 100 hectares

4. Transportation

- (a) transportation of petroleum products;
- (b) transportation of hazardous chemicals.

where transportation is part of the activities of the main facility operator, this will be covered by the deposit bond paid by the operator for the facility.

5. Infrastructure projects

- (a) Power generation plants —

- (i) geothermal power plants;
 - (ii) coal plants;
 - (iii) nuclear power plant;
 - (iv) Storage and multipurpose dams of more than 500,000 cubic metres; or
 - (v) thermal power plants.
- (b) Pipelines —
- (i) operation of a main transmission pipeline for liquid (other than water) or gas; or
 - (ii) operation of sewerage reticulation systems.
- (c) Management and disposal of waste—
- (i) disposal of hazardous waste through incineration, treatment, re-processing, recycling and destruction;
 - (ii) sanitary landfills and waste disposal sites; or
 - (iii) publicity and advertisement materials including posters, photographs, banners, papers and any other materials incidental to campaigns.
6. Introduction of alien or invasive species of fauna and flora into ecosystems.
 7. Introduction and testing of genetically modified organisms.
 8. Refugee camps.

SECOND SCHEDULE

THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (DEPOSIT BONDS) REGULATIONS, 2024

DEPOSIT BOND DISCHARGE CERTIFICATE (r13(3))

Deposit Bond Discharge Certificate No.....

Deposit Bond Assessment Report/Approval No.....

Issued to (Name of proponent or operator)

Address

Nature of the operation

Physical Location (Plot No. L.R. No., GPS coordinates) of the operation

The Authority is satisfied that the remediation works undertaken by the proponent or operator is compliant with the conditions, specifications and standards as set out in the remediation, post care and maintenance plan and has therefore observed good environmental practices.

The Authority shall issue a refund of a deposit bond amount (Kshs)

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Date issued: Signature:

Director-General
(seal)

Made on the 23rd January, 2025.

ADEN DUALE,
Cabinet Secretary for
Environment, Climate Change and Forestry.