

**THE ENVIRONMENTAL MANAGEMENT AND COORDINATION
(DEPOSIT BONDS) REGULATIONS, 2014**

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impacts on the environment;

“Deposit Bond Assessment Report” means a written site specific, remediation and post-remediation care and maintenance cost estimates;

“Director General” means the Director General of the Authority;

“Economic instrument” means government tax and other fiscal incentives, disincentives or fees to induce or promote management of the environment and natural resources or the prevention or abatement of environmental degradation;

“Environmental Easement” means permission granted for purposes of remediation works and conservation in respect to the use of burdened land;

“Good environmental practices” means practice that is in accordance with the provisions of the Environmental Management and Coordination Act of 1999 or any other relevant law;

“Industrial Plants” means undertaking manufacturing, engineering and trade activities as listed in the First Schedule of these regulations;

“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 activities listed in the First Schedule of these regulations;

“Proponent” means a person proposing or executing a project, programme or undertaking as listed in the First Schedule of these regulations;

“Protected area” means a clearly defined geographical space recognised, dedicated and managed through legal or other effective means to achieve long-term conservation of nature with associated ecosystem services and cultural values;

“Register” means a register established under these regulations that includes activities, industrial plants and undertakings as set out in the first schedule of these regulations which are or most likely to have adverse effects on the environment when operated in a manner that is not in conformity with good environmental practices;

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

“Restoration Fund” means National Environment Restoration Fund vested in the Authority and that is a supplementary insurance for the mitigation of environmental degradation where the perpetrator is not identified or where the exceptional circumstances requires the Authority to intervene towards the control or mitigation of environmental degradation;

“Tribunal” means the National Environment Tribunal established under the Act;

“Unit” means a Deposit Bonds Management Unit established under these regulations.

Application of the Regulation

3. This Regulation shall be applicable to the activities, industrial plants and undertakings which have or more likely to have adverse effects on the environment.

Purpose of the Regulations

4. The purpose of these Regulations is to ensure:-

- a) good environmental practices;
- b) adequate remediation is achieved without adversely affecting economic viability;
- c) compliance with remediation obligations;
- d) availability of funds for remediation; and
- e) sustainable development.

PART II—DEPOSIT BONDS MANAGEMENT UNIT

Establishment of the Deposit Bond Management Unit

5. There is hereby established a Unit within the National Environment Management Authority to be known as the Deposit Bond Management Unit (hereinafter the “Unit”).

Functions of the Unit

6. (1) The functions of the Unit shall be to:-

(a) maintain a register of activities, industrial plants and undertakings that attract deposit bonds;

(b) review the terms of reference developed by

- the competent experts in carrying out deposit bonds assessment;
- (c) review the deposit bond assessment report to determine the adequacy and reliability of deposit bonds payable to the Restoration Fund;
 - (d) advise the Director General to issue approval with terms and conditions on deposit bonds assessment reports and notices of the deposit bonds payable to the persons liable to pay the deposit bond;
 - (e) liaise with the relevant Government agency(s) on the inflation rate to inform the annual adjustments of the deposit bond;
 - (f) invoke appropriate enforcement actions in case of non-payment of the deposit bond;
 - (g) undertake inspection and monitoring to determine compliance to good environmental practices in line with the conditions for approval;
 - (h) in liaison with the Technical Advisory Committee, advise the Authority on refund or confiscation of the deposit bond;
 - (i) receive the status reports of any ongoing remediation works annually from the operators or as may be prescribed by the Authority;
 - (j) prepare annual reports on deposit bonds received, refunded, confiscated and matters which have been determined and or pending before the Tribunal; and
 - (k) undertake any other activity, in consultation with the Technical Advisory Committee, as may be conferred on it under the Act or other law.
- (2) All the functions stipulated in Regulation 6 (1) shall be exercised by the Unit on behalf of the Authority.

PART III – ESTABLISHMENT OF THE REGISTER

- Establishment of the Register 7. The Authority shall establish a Deposit Bonds Register.
- Contents of the Register 8. The Register shall include activities, industrial plants and undertakings as set out in First Schedule.
- Periodic updating of the Register 9. The Register shall be updated from time to time in consultation with the Technical Advisory Committee.

PART IV – MANAGEMENT OF DEPOSIT BONDS

- Determination of a Deposit Bond 10. (1) Any person operating an industrial plant and undertaking an activity as stipulated in the Deposit Bonds Register shall be required to prepare a Deposit Bond Assessment Report.
- (2) Any person proposing to operate an industrial plant and undertaking an activity as stipulated in the Deposit Bonds Register shall submit a Deposit Bond Assessment Report as an integral part of the Environmental Impact Assessment report prior to the commencement of facility operations.
- (3) The report referred to in sub-regulation (1) shall be undertaken by a competent expert.
- (4) The report shall be conducted in accordance with the terms of reference developed by the competent expert and approved by the Authority.
- (5) A proponent and/or operator shall submit to the Authority, contents of the Deposit Bond Assessment Report incorporating but not limited to the following information: -
- (a) the proposed location of the project;
 - (b) site characteristics for facilities in operation;
 - (c) clear description of the activities;
 - (d) evidence of Environmental Impact Assessment or Environmental Audit where applicable;
 - (e) the environmental management systems in place
 - (f) a remediation, post care and maintenance plan including the required standards of remediation works, the activities involved, time frame (one time remediation works , long-term care and progressive remediation works where applicable), the remediation cost and the monitoring mechanism;
 - (g) the amount of deposit bond payable; and

(h) details of the operator/proponent who will be responsible for the execution and completion of successful remediation works.

(6) If established that any proponent, operator and/or competent expert has provided information or data that is false, incorrect or intended to mislead he shall be liable of an offence in accordance with the provisions of these regulations.

Review by the Authority and issuance of a notice of the deposit bond payable

11.(1) The Unit shall review the Deposit Bond Assessment Report based on set criteria and issue a decision on the same.

(2) On determination of the report;

(a) for the facilities in operation the decision of the Authority, together with the reasons thereof, shall be communicated to the operator within thirty (30) days of the submission of the report.

(b) for proposed projects, the decision of the Authority, together with the reasons thereof, shall be communicated to the proponent within thirty (30) days after the issuance of the Environmental Impact Assessment licence.

(3) Where the Authority is satisfied with the adequacy and the reliability of the information provided, the Authority shall issue-

(a) approval on terms and conditions, as may be appropriate, of the Deposit Bond Assessment Report; and

(b) notice of the deposit bond payable by the proponent and/or operator.

(4) If the Authority is not satisfied with the adequacy or reliability of information available to make a decision, the Authority may:-

(a) make a decision on the basis of the Authority's estimate of the deposit bond amount;

(b) consider reassessment of the deposit bond amount.

(5) The person liable to pay the deposit bond as per the notice issued in sub-regulation (3) shall pay to the Authority's Restoration Fund within a period of thirty (30) days.

(6) The deposit bond amount payable in sub-regulation (5) may, depending on the complexity of the facility or incident, regularity and quantum of payment to be paid within any other period as may be informed by the Deposit Bond Assessment Report.

Self-regulation
by the operator

12.(1) The payment of a deposit bond to the Authority
Shall:-

- (a) not be an exemption for non-compliance to applicable provisions of the Act, regulations and standards; and
- (b) afford no defence to any civil action or to prosecution that may be brought or preferred against a proponent or operator in respect to the manner in which the project is executed, managed or operated.

Reassessment of
a deposit bond

13.(1) The Authority may at any time reassess the deposit bond amount if:-

- (a) there has been an error in the assessment of the deposit bond amount (based on the original assessment);
- (b) there is substantial change or modification in the project or in the manner in which the project is being operated;
- (c) the project poses environmental threats requiring greater remediation interventions which could not be reasonably foreseen at the time of the original assessment and the review; or
- (d) it is established that the information and/or data given by the proponent or operator was false, inaccurate or intended to mislead.

(2) The Authority may refer issues for reassessment of the deposit bond to the Technical Advisory Committee set up under Part V of this Regulation to advise it on the reassessment of the deposit bond amount payable.

Annual
Adjustment
Notice

14. (1) The Authority shall liaise with the relevant agency(s) on the inflation rate to inform the annual adjustments of the deposit bond.

(2) The Authority shall prepare the adjustment notice to the person liable to pay the additional bond.

(3) The Adjustment Notice shall specify the following matters.
The:-

- (a) date of the notice;
- (b) current deposit bond amount; and
- (c) additional deposit bond amount which shall be paid within a period of thirty (30) days after the date of the notice or any other period as may be informed by the deposit bond assessment report.

Periodic audit of the deposit bond fund

- 15.** (1) The Authority may also engage a technical advisory committee to conduct a periodic review or audit of the deposit bond fund to ensure adequacy and use of the deposit bond funds pursuant to the approved remediation plan
- (2) The periodic review or audit shall be conducted depending on the complexity of the facility, long-term care and progressive remediation works required.
- (3) The Audit may be carried out every three to five years, or any other period as may be informed by the Authority.

Refund of a deposit bond

- 16.** (1) The Authority shall issue a refund of a deposit bond amount after establishing that the operator has observed good environmental practices.

(2) The operator shall 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 in accordance with Regulation 10(4).

(3) The Unit shall inspect, within sixty (60) days from the date of submission of the remediation report, to confirm compliance with the conditions, specifications and standards set out in the approval document, annual environmental audit reports, remediation, post care and maintenance plans and issue a bond discharge certificate as set out in the Second Schedule.

(4) The Unit shall take into account the following factors during 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) 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) time scales to meet the required remediation level will vary depending on the facility in question, the magnitude of the operation, nature of the incident, post remediation care and maintenance required;
- (h) the compliance history of the operator;
- (i) the compatible after-use plans of the site;

- (j) 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 Regulation 10 above shall be refunded to the operator of the activity, industrial plant or any other undertaking within twenty-four (24) months after issuance of the bond discharge certificate.

(6) The deposit bond refunded shall be less the interest accrued from the deposited amount.

Confiscation of a deposit bond

17. (1) The Authority may, after giving the operator an opportunity to be heard, confiscate a deposit bond where the operator is responsible for environmental practice that is in breach of the provisions of the Act.

(2) Where such confiscation as referred to in sub-regulation (1) above is intended, the Authority shall issue a written notice of confiscation to the operator.

(3) The operator shall be required to respond to the notice referred to in sub-regulation (2) above within a period of fourteen (14) days.

(4) If the operator fails to respond to the Notice referred to in sub-regulation (3) within the stipulated time, the Authority shall confiscate the deposit bond without any further reference to the operator.

(5) Upon response to the Notice referred to in sub-regulation (3), the Authority shall grant the operator an opportunity to be heard.

(6) The decision arrived at in the hearing shall be communicated to the operator within a period of fourteen (14) days and:-

(a) the decision of the Authority may be to issue an improvement notice to the operator to restore the affected media within reasonable time as required by the Authority;

(b) if the operator fails to remediate the land to the satisfaction of the Authority, the deposit bond will be confiscated and used to restore the affected media on which the liability was charged; and

(c) the Authority may in addition cancel any licence issued to the operator under the Act on the advice of the

Technical Advisory Committee, where the operator has become a habitual offender.

(7) Where the Authority confiscates a deposit bond and the operator is dissatisfied with the confiscation of his bond, he may appeal to the Tribunal as per the provisions of these regulations.

PART V – TECHNICAL ADVISORY COMMITTEE

Establishment and composition of the Technical Advisory Committee

18. It is hereby established a Technical Advisory Committee which shall consist of not less than five multi-disciplinary specialists with environmental, technical, engineering, legal and actuarial expertise.

Functions of the Technical Advisory Committee

19. The functions of the Technical Advisory Committee shall be to advise the Authority on:-

- (a) any policy initiatives concerning deposit bonds;
- (b) the reassessment of the deposit bond amount payable
- (c) periodic review and updating of the deposit bonds register; and
- (d) undertake any other function as may be referred to them by the Authority.

Conducting of the Affairs of the Technical Advisory Committee

20. In performance of its functions under the Act, the Technical Advisory Committee may set out its own rules of procedure to facilitate its operation.

PART VI – APPEALS

Appeals to the National Environment Tribunal

21.(1) Any person who is aggrieved by:-

- (a) the determination of/determined deposit amount payable;
- (b) the confiscation of a deposit bond;
- (c) the refundable amount of deposit bond;
- (d) the imposition of any condition, limitation or restriction in the approval condition pertaining to deposit bond; and

(e) any other decision made by the Authority pertaining to deposit bonds;

may appeal to the Tribunal within sixty days (60) in such a manner as may be prescribed by the Tribunal.

PART VII – MISCELLANEOUS

Offences and penalties

22. Any person found guilty of any offence under these regulations whose penalty is not otherwise stipulated shall be liable to a fine not exceeding three hundred and fifty thousand shillings, or to imprisonment for a period not exceeding eighteen months or to both such fine and imprisonment.

Liability on transfer

23. The transferee as well as the transferor of a facility listed in the First Schedule under this regulation shall be liable for all liabilities, and the observance of all obligations imposed by the transfer in respect of the facility transferred, but the transferor shall not be responsible for any future liabilities or any obligations so imposed with regard to the facility from the date of the transfer.

Transitional Clause

24. (1) Any person who is undertaking activities, industrial plants and undertakings which are listed under the register shall within six months of the commencement of these Regulations comply with the provisions of these regulations.

(2) Any person who fails to comply with regulation 24(1) shall be guilty of an offence and shall be liable to imprisonment for a term and or fine stipulated under regulation 21.

XXXXXXXXXXXXXXXXXXXXX
**Cabinet Secretary, Ministry of Environment,
Water and Natural Resources.**

Dated.....2014

SCHEDULES

FIRST SCHEDULE

List of activities, industrial plants and undertakings that will attract Deposit Bonds.

Projects that have or are most likely to have significant adverse effects on the environment when operated in a manner not in conformity with good environmentally practices would attract deposit bonds. This includes the following:-

1. Extractive Activities.

- (a) Exploration of oil and gas activities (onshore and offshore)
- (b) Exploitation/extracting of oil and gas activities (onshore and offshore)
- (c) Underground and open cast mining operations including gas and solid minerals
- (d) Quarrying

2. Industrial Plants.

- a) Breweries
- b) Distillery
- c) Steel mills
- d) Sewerage reticulation system
- e) Tanneries
- f) Cement industries
- g) Chemical and petrochemical industries
- h) Depots for petroleum products
- i) Refineries of petroleum products

3. Transportation – should be tiered

- a) Transport of petroleum products
- b) Transport of hazardous chemicals

4. Infrastructure projects.

- (i) Power generation plants
 - (a) Geothermal power plants
 - (b) Coal plants
 - (c) Nuclear power plant
 - (d) Thermal power plants
- (ii) Pipelines
 - (a) Operation of a main transmission pipe line for liquid (other than water) or gas
 - (b) Operation of a main sewer with diameter exceeding 600mm
- (iii) Management and disposal of waste
 - (a) Disposal of hazardous waste through incineration, treatment, re-processing, recycling and destruction

(b) existing open dumpsites

5. Introduction of alien species.

6. Refugee camps

SECOND SCHEDULE

DEPOSIT BOND DISCHARGE CERTIFICATE

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

Issued to (Name of proponent and/or operator).....

Address.....

Nature of the project/facility.....

.....

The Authority is satisfied that the remediation works undertaken by the proponent and/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 with a deposit bond amount.....

Date issued:.....

.....
Signature
Director General
(Seal)