

AN OVERVIEW OF THE MINERAL EXPORT AND TRADE LEGISLATION IN GHANA

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Introduction

The mining sector is a pillar of the Ghanaian economy, with the country being one of the largest exporters of gold in Africa. Attracting over half of all foreign direct investment (FDI), the mining sector contributes more than one-third of the country's total export revenues and holds the position of being the largest taxpayer in the country.[1] The sector is therefore a significant contributor to Ghana's gross domestic product (GDP) and employment rates.[2] Although, gold stands out as the most extensively mined mineral in Ghana, other minerals, such as manganese, bauxite, and diamonds, are also commercially exploited in Ghana. The country also possesses deposits of iron ore, limestone, columbite-tantalite, lithium, feldspar, and various other minerals which may be the subject of future commercial exploitation.

In 2022, Ghana garnered approximately USD 6.6 billion from the export of gold.[3]

[1] Mining Industry Equipment (2023) <<<https://www.trade.gov/country-commercial-guides/ghana-mining-industry-equipment>> accessed 16 February, 2024
[2] Ibid

Revenue from manganese and bauxite aggregated approximately USD 186 million and USD 19 million, respectively.[4] Collectively, the earnings from minerals constituted thirty-nine percent (39%) of Ghana's total exports in the year 2022.[5]

Being a vital component of Ghana's economy, numerous laws and regulations have therefore been instituted to govern trading and export endeavors within the minerals sector. These laws and regulations will be further examined in this article.

Governing Laws

The trading and exporting of minerals are highly regulated activities within Ghana. The principal legislations that govern mineral export and trade in Ghana are as follows:

[3] Kojo Adams "Government Generates \$6.6 Billion From Gold Exports-Jinapor" (2023) <<<https://gna.org.gh/2023/02/government-generates-6-6-billion-from-gold-exports-jinapor/>> accessed 16 February, 2024
[4] Doris Dokua Sasu "Revenue from leading minerals in Ghana 2022" (2023) <<<https://www.statista.com/statistics/1237309/revenue-from-leading-minerals-in-ghana/>> accessed 16 February, 2024
[5] Ibid

1. Minerals and Mining Act, 2006 (Act 703) as amended by the Minerals and Mining (Amendment) Act, 2015 (Act 900) and the Minerals and Mining (Amendment) Act, 2019 (Act 995);
2. Precious Minerals Marketing Corporation Act, 1989 (P.N.D.C.L. 219);
3. Kimberley Process Certificate Act, 2003 (Act 652);
4. Export And Import of Rough Diamonds Regulations, 2003 (L.I. 1731);
5. Minerals and Mining (General) Regulations, 2012 (L.I. 2173); and
6. Minerals and Mining (Local content and Local Participation) Regulations, 2020 (L.I. 2431)

Minerals and Mining Act, 2006 (Act 703) (as amended)

The Minerals and Mining Act, 2006 (Act 703) as amended ("**Mining Act**") regulates the buying, selling and export of minerals[6] in Ghana. Amongst others, Act 703 makes the acquisition of a licence mandatory for any person who seeks to buy, sell or otherwise deal in minerals.

Thus, the Mining Act prohibits any person from exporting, selling or otherwise disposing of a mineral, unless that person holds a licence granted by the Minister for Lands and Natural Resources ("**Minister**") for that purpose[7]. Under the Act, the Minister is required to consult with the Minerals Commission in issuing such licences and may refuse a licence application if, inter alia, it does not consider the applicant as a fit person to trade in the types and forms of minerals and under terms and conditions specified in the licence[8].

[6] Per section 111 of the Minerals and Mining Act, 2006 (Act 703) as amended, "Mineral" is defined as a substance in solid or liquid form that occurs naturally in or on the earth, or on or under the seabed, formed by or subject to geological process including industrial minerals but does not include petroleum as defined in the Petroleum (Exploration and Production) Law, 1984 (P.N.D.C.L. 84), now the Petroleum (Exploration and Production) Act, 2016 (Act 919) or water.

[7] Section 6(1) of the Minerals and Mining Act, 2006 (Act 703) as amended

[8] Section 104 of the Minerals and Mining Act, 2006 (Act 703) as amended



Similarly, under the Mining Act, radio-active minerals[9] can only be exported under a permit granted by the Minister for that purpose[10].

In practice, both holders and non-holders of mining leases may apply for a licence to trade and export minerals from the Minerals Commission. A licence granted for this purpose by the Minerals Commission allows the holder of the licence to export and trade in minerals in accordance with the terms of the licence.

Engaging in the buying and selling of minerals without a licence or other valid authority is considered an offense as is exporting a radio-active mineral without the requisite permit. A person involved in trading in minerals without a valid licence or authority could be liable to a fine not exceeding the Ghana Cedi equivalent of five thousand United States Dollars (USD 5,000) and, in the event of a continuing offense after the initial conviction, a penalty of the Ghana Cedi equivalent of five hundred United States Dollars (USD 500) for each day the offense persists[11]. Likewise, a person who exports radio-active minerals without obtaining the requisite permit or obtains the permit by means of a false statement or representation commits an

[9] Per section 111 of the Minerals and Mining Act, 2006 (Act 703) as amended, "Radio-active Mineral" is defined as a mineral which contains by weight at least one-twentieth of one per cent (0.05 per cent) of uranium or thorium or a combination of these elements including but not limited to the following: (a) monazite sand and other ores containing thorium; (b) carnotite, pitchblende and other ores containing uranium;

[10] Section 64(1) of the Minerals and Mining Act, 2006 (Act 703) as amended

[11] Section 106 of the Minerals and Mining Act, 2006 (Act 703) as amended

offence and could be liable to a fine not more than the Ghana Cedi equivalent of fifty thousand United States Dollars (USD50,000.00) or to imprisonment for a term not exceeding two (2) years or to both fine and imprisonment.

Precious Minerals Marketing Corporation Act, 1989 (P.N.D.C.L. 219)

The Precious Minerals Marketing Corporation Act, 1989 (P.N.D.C.L. 219) (the "**PMMC Act**") institutes the Precious Minerals Marketing Company ("**PMMC**"). Pursuant to the PMMC Act, the PMMC is tasked with (i) the grading, assaying, valuation, and processing of precious minerals[12], (ii) the buying and selling of these valuable resources, (iii) promoting the development of precious minerals and the jewellery industry in Ghana; and (iv) the appointment of licenced buying agents to acquire precious minerals produced by small-scale miners.

The PMMC currently operates as the Government's assayer with the sole mandate of assaying all gold and diamond, which leaves the country.

It is important to emphasize that the authority of the Minister to grant licences under the Mining Act does not impede the PMMC from executing its duties and issuing licences as specified under the PMMC Act.

In practice, the PMMC currently grants licences for the trading of gold or diamond only. The licence granted by the PMMC however does not allow the licence holder to engage in the export of gold or diamond. Additionally, a key term of the gold trading licence granted by the PMMC is that the licence holder shall purchase gold solely from small scale miners.[13]

[12] Per section 28 of the Precious Minerals Marketing Corporation Act, 1989 (P.N.D.C.L. 219), "Precious Minerals" is defined as gold, diamond, silver, platinum, and any other precious minerals that the Minister may by executive instrument specify.

[13] This is in accordance with the PMMC's mandate under section 2(d) of the Precious Minerals Marketing Corporation Act, 1989 (P.N.D.C.L. 219)

Kimberley Process Certificate Act, 2003 (Act 652)

The Kimberley Process Certificate Act, 2003 (Act 652) ("**Kimberley Act**") was enacted to implement the requirements of the Kimberley Process; that is, the multilateral trade regime established in 2003 with the goal of preventing the flow of conflict diamonds through the implementation of safeguards on shipments.

Per Act 652, a person holding a license under the Mining Act for the export, sale, or disposal of minerals is prohibited from exporting rough diamonds unless they have applied for and obtained a Kimberley Process Certificate ("**Kimberley Certificate**") from the Minister.

The Kimberley Act, amongst others, requires:

(i) a rough diamond exporter to generate an export report as a condition for the export of rough diamonds. The export report should distinctly outline details such as the exporter's name and address, consignee's name and address, Kimberley Certificate serial number, and the date of rough diamond export[14]. The export report must be submitted to a customs officer during the export process and, within seven days after the export, a copy of same must also be sent to the Minister.

ii) rough diamonds to be conveyed in containers that are constructed in a manner that makes the reseal of the



[14] Section 4 and the Schedule (Form 3) of the Kimberley Process Certificate Act, 2003 (Act 652)

container impossible after it is opened. The container must also bear the serial number of the accompanying Kimberley Certificate.

Violating any stipulation of the Kimberley Act constitutes an offense, punishable by a fine currently not exceeding six thousand Ghana Cedis (GHS6,000.00) or imprisonment for a term not exceeding two years, or both. Furthermore, any diamonds involved in the conviction shall be forfeited to the State^[15].

Export And Import of Rough Diamonds Regulations, 2003 (L.I. 1731)

The Kimberley Certificate and related requirements, as expatiated above, is further buttressed by the Export and Import of Rough Diamonds Regulations, 2003 (L.I. 1731) ("**EIRD Regulations**").

Per the EIRD Regulations, a person holding a licence for the export of rough diamonds must obtain a Kimberley Certificate from the Minister to ship rough diamonds out of the country. The exporter is mandated to submit an application for the certificate using the specified form, furnishing necessary details, including the diamond's origin, longitude and latitude of extraction, exploration site, and the diamond's value in United States Dollars^[16].

The Minister has the authority to issue a Kimberley Certificate for the relevant rough diamonds within three (3) days of the application submission provided all necessary information has been provided as required^[17].

It should be noted that failure to submit mandated reports, violation of any provisions under the EIRD Regulations, providing false statements to the Minister regarding a Kimberley Certificate, or

[15] Section 9 of the Kimberley Process Certificate Act, 2003 (Act 652)

[16] Regulations 1 and 2 of the Export and Import of Rough Diamonds Regulations, 2003 (L.I. 1731)

[17] Regulation 3 of the Export and Import of Rough Diamonds Regulations, 2003 (L.I. 1731)

becoming ineligible for certificate application for any reason constitutes a breach and may result in the Minister suspending or canceling a licence issued to an exporter of rough diamonds.

Minerals and Mining (Local Content and Local Participation) Regulations, 2020 (L.I. 2431)

The purpose of the Minerals and Mining (Local Content and Local Participation) Regulations, 2020 (L.I. 2431) ("**Local Content Regulations**") amongst others is to promote job creation through the use of local expertise, goods and services in the mining industry value chain, to achieve and maintain a degree of participation for Ghanaians or companies incorporated in the country in the mining industry value chain^[18]. The provisions of the Local Content Regulations apply to a holder of a licence to export or deal in minerals.

A person possessing a licence for mineral export and trade is allowed to hire and train both Ghanaians and expatriates. However, to promote local content, the licence holder is required to furnish the Commission with specific details regarding any recruitment of expatriates and the employment and training of Ghanaians.

Additionally, the licence holder is obligated to submit a training and recruitment programme for Ghanaians to the Minerals Commission for endorsement. This programme must emphasize gender inclusion and must comprehensively outline the current and future training and recruitment initiatives for Ghanaians, particularly in replacing expatriates^[19].

The Local Content Regulations also stipulate other requirements for a person holding a licence for mineral export and/or trade.

[18] Regulation 1 of the Minerals and Mining (Local content and Local Participation) Regulations, 2020 (L.I. 2431)

[19] Regulation 5 of the Minerals and Mining (Local content and Local Participation) Regulations, 2020 (L.I. 2431)

These include the following:

(i) a holder of a licence to export or deal in minerals must prioritize the acquisition of goods and services with a substantial Ghanaian component, ensuring alignment with safety, efficiency, and cost-effectiveness. The licence holder is obligated to submit a procurement plan to the Minerals Commission outlining these efforts[20]. The procurement plan must be aligned with the local procurement list published by the Minerals Commission from time to time.

(ii) The operations of a holder of a licence to export or deal in minerals must be insured against all insurable risks with an insurance company registered with the National Insurance Commission (“**NIC**”). Where there is a need to engage the services of an offshore insurance or reinsurance company, prior approval must be obtained from the NIC[21].



[20] Regulation 6 of the Minerals and Mining (Local content and Local Participation) Regulations, 2020 (L.I. 2431). Please note that the Mining Procurement List published by the Minerals Commission stipulates goods and services with Ghanaian content which are to be procured in the country by a holder of a licence to export or deal in minerals. A person who fails to comply is liable to pay in respect of goods, the full customs import duty in respect of the goods imported and administrative penalty of five percent (5%) of the total import value; and in respect of services, an administrative penalty of five percent (5%) of the gross contract sum.

[21] Regulation 10 of the Minerals and Mining (Local content and Local Participation) Regulations, 2020 (L.I. 2431)

(iii) Under the Local Content Regulations, it is obligatory for a holder of a licence to deal in minerals to exclusively enlist the services of lawyers and accountants certified to practice in Ghana. The licence holder is only allowed to involve the services of foreign lawyers or law firms or foreign accountants or accounting firms if and only if such services are provided in collaboration with Ghanaian lawyers or accountants or Ghanaian law firms or accounting firms[22].

(iv) Under the Regulations, a mineral export or trading licence holder must also exclusively utilize the services of financial institutions incorporated in the country for financial transactions that are related to its operations. A minimum of twenty percent (20%) of such transactions must be conducted with financial institutions owned by Ghanaian citizens.

Conclusion

As Ghana continues to attract foreign investment in its mining sector, effective regulation of mineral trading and export is imperative for sustainable economic development and the overall well-being of local communities. The current regulatory framework seeks to achieve this objective by balancing economic development with environmental and social considerations.



[22] Regulation 11 of the Minerals and Mining (Local content and Local Participation) Regulations, 2020 (L.I. 2431)

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