



**MINERALS AND MINING (LOCAL CONTENT AND
LOCAL PARTICIPATION) REGULATIONS, 2020 (L.I. 2431)
(THE “REGULATIONS”)**

APRIL 2021

The Minerals and Mining industry in Ghana is the latest member of the extractive sector to issue consolidated and dedicated local content and local participation regulations for the sector. The Minerals and Mining (Local Content and Local Participation) Regulations, 2020 (L.I. 2431) (the “**Regulations**”), which came into force on 16th October 2020, consolidates important mining laws and regulations relating to local content including the Minerals and Mining Act, 2006, Act 703, Minerals and Mining (General) Regulations, 2012 (L.I. 2173) and the Minerals and Mining (Support Services) Regulations, 2012 (L.I. 2174).

The Regulations reinforce Government’s objective to promote the utilization of local goods and services, training and capacity building for Ghanaians, creating sustained growth within the local minerals and mining value chain, introducing tighter reporting requirements and enforcement regime and the long awaited, but most welcomed, promotion of gender inclusion within the sector.

Below are important highlights from the Regulations which companies within the minerals and mining sector should be mindful of.

1. Timeframe for compliance with the Regulations

Existing holders of reconnaissance licences, prospecting licences or mining leases, mining support services companies and holders of licences to export or deal in minerals (“**Applicable Entities**”) are required to comply with the Regulations and must do so within one year of its enactment.

2. Localization Plans

a. While the Regulations repeal regulations 1 and 2 of the Minerals and Mining (General) Regulations, 2012 (L.I. 2173), which relate to the submission of plans in respect of the recruitment of expatriates, the employment and training of Ghanaians and procurement of local goods and services, they replicate those requirements in more detail in several provisions.

b. Particulars of proposals for the recruitment of expatriates and proposals for the training and recruitment of Ghanaians must be submitted at three (3) year intervals instead of the previous five (5) year intervals.

c. Localization programmes are required to

provide an indication of gender-inclusive recruitment and an annual report must be submitted to the Minerals Commission (the “**Commission**”) on or before 31st January each year showing the level of compliance with the approved localization programme. In addition, particulars of an applicant’s proposals with respect to the recruitment of expatriates and the employment and training of Ghanaians (which should be submitted when applying to become an Applicable Entity) should have due regard for gender inclusion.

d. Prior to approving an immigration quota or an application to recruit an expatriate, the Commission will ascertain that no

Ghanaian has the requisite qualification and experience to occupy the position for which the expatriate is to be recruited and may request an applicant to advertise for a particular job or recruit from a database established by the Commission.

e. A person who does not comply with the localization programme approved under the Regulations is liable to pay to the Commission an administrative penalty of one year’s gross salary of the expatriate involved for each month or part of the month that the expatriate worked.

3. Procurement of Local Goods and Services

In assessing tenders for

goods and services on the local procurement list, the Applicable Entity is mandated to select the bid which contains the highest level of Ghanaian participation in terms of ownership and management by Ghanaians. The Regulations also require that, with respect to specified bid value ranges as set out below, the higher Ghanaian participation should be selected if the margin of preference threshold is satisfied:

- For bids valued at the Ghana Cedi equivalent of US\$4.5million and above, the Margin of Preference is two point five percent (2.5%) of each other;
- For bids valued at the Ghana Cedi equivalent of US\$ 2 million to

US\$4,499,999.99 million, the margin of preference is three percent (3%) of each other;

- For bids valued at Ghana Cedi equivalent of US\$1million to US\$1,999,999.99 the margin of preference threshold is five percent (5%) of each other; and
- For bids below the Ghana Cedi equivalent of US\$1million the margin of preference threshold is ten percent (10%) of each other.

4. Professional Services

The following services must be rendered by companies owned and managed by Ghanaian citizens:

- Technical and Engineering Services;
- Insurance and Reinsurance Services;
- Accounting Services;
- Legal Services; and

- Financial Services

Where there is a need to engage a foreign company or firm to provide these services, it must be done in collaboration with a Ghanaian service provider and subject to the approval of the Commission. If the sector is regulated, such as insurance, the approval of the National Insurance Commission or other regulator is also required.

5. Listing on the Ghana Stock Exchange

The Regulations have introduced a requirement for the holder of a mineral right whose planned capital expenditure exceeds certain limits¹ to list at least 20% of the equity of the holder on the Ghana Stock Exchange within 5 years of commencement of mining operations.

6. Research and Development programs and initiatives

The holder of a mining lease shall within a year of commencement of mining operations

submit to the Commission, a plan based on the guidelines² for research, skills development and a budget for the promotion of education, practical attachments, training and research and skills development.

¹ The guidelines are yet to be determined by the Minister of Lands and Natural Resources who must do so on the recommendation of the Commission and in consultation with the Securities and Exchange Commission.

² These guidelines are yet to be issued by the Commission which must do so in consultation with the mining industry, universities, research, technical and vocational institutions.

* JLD & MB Legal Consultancy is a top-tier corporate and commercial law firm with extensive experience advising global and local clients on some of Ghana's highest profile transactions. We provide innovative and solution-oriented advisory services across several practice groups and have received international recognition for our lawyers and our work in a number of sectors including Oil, Gas and Petroleum, Energy and Natural Resources, Banking and Finance, Capital Markets and Mergers and Acquisitions.

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