

GHANA

BENTSI-ENCHILL, LETSA & ANKOMAH



FIRM INFORMATION

Website address: www.belonline.org
Languages spoken: English
Telephone: +233 30 2221 171
Address: 4 Momotse Avenue, Adabraka, Accra
Contact: Kojo Bentsi-Enchill
Email: bel@belonline.org, kojo.bentsi-enchill@belonline.org

RELEVANT AUTHORITIES AND LEGISLATION

What Laws Regulate Mining?

The laws which regulate mining in Ghana are constitutional and statutory.

The 1992 Constitution, the highest legal authority, mandates in Article 268, Parliamentary ratification of all transactions, contracts or undertakings involving the grant of rights or concessions for the exploitation of any mineral, water or other natural resource of Ghana. Key legislation relating to the sector includes:

- Minerals and Mining Act, 2006 (Act 703), which is the parent legislation that consolidates the law relating to minerals and mining.
- The Minerals and Mining (Amendment) Act, 2015 (Act 900), amends the Minerals and Mining Act, 2006 (Act 703) in areas such as royalty payments and small scale mining.
- Minerals Commission Act, 1993 (Act 450), which establishes the Minerals Commission, which is the regulatory body for the mining sector, provides for its composition and prescribes its functions relating to the regulation and management of the utilisation of minerals.
- Minerals (Royalties) Regulations 2009, which provides for the payment of royalties by license holders.
- Minerals and Mining (General) Regulations, 2012 (LI 2173), which prescribes guidelines for the mining industry on matters such as staffing, disposal of minerals, mineral rights and reconnaissance, prospecting and mining operations.
- Minerals and Mining (Explosives) Regulations, 2012 (LI 2177), which regulates the use of explosives in the sector.
- Minerals and Mining (Licensing) Regulations, 2012 (LI 2176), which prescribes the procedures for obtaining, maintaining licenses and transferring licenses.
- Minerals and Mining (Health, Safety and Technical) Regulations, 2012 (LI 2182), which regulates safety, health and technical operation parameters in the industry.
- Minerals and Mining (Support Services) Regulations, 2012 (LI 2174), which regulates entities that provide auxiliary services to the mining sector.
- Minerals Development Fund Act 2016 (Act 912), which establishes a Minerals Development Fund to address the development challenges affecting mining communities by setting aside 20 percent of mineral royalties received by the

Government for development projects.

- Environmental Protection Agency Act, 1994 (Act 490), which consolidates the law relating to environmental protection.
- Environmental Assessment Regulations, 1999 (LI 1652), which prescribes the procedure for acquiring and maintaining an environmental permit.
- Income Tax Act, 2015 (Act 896), which imposes a 'mineral income tax' on income derived from mining operations and establishes the framework for the tax.

Which Government bodies administer mining law?

The Ministry of Lands and Natural Resources is the sector ministry with oversight responsibility for the mining sector.

The Minerals Commission is the main regulatory body that administers mining law in Ghana. Mandated by the Constitution and set up by the Minerals Commission Act, 1993 (Act 450), it is responsible for the regulation, management of the utilisation of mineral resources and the co-ordination of the policies in relation to mineral resources. An application for a mineral right and mineral licence should be submitted to the Minerals Commission for processing.

Another major regulatory body is the Environmental Protection Agency ("EPA"), which is the regulator for all activities that have an impact on the environment. The EPA is mandated to issue environmental permits and every undertaking in the mining industry is required to register with the EPA and receive an environmental permit before it can commence operations. An Environmental Impact Assessment ("EIA") is a pre-condition for the issue of licences, permits, approvals or consents in relation to matters affecting the environment, by other regulatory agencies.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

Reconnaissance License - a reconnaissance license confers on the holder or its authorised person, the exclusive right to



carry on reconnaissance in the reconnaissance area for the minerals to which the licence relates and to conduct other ancillary or incidental activity. For that purpose, the licensee or its authorised person may erect camps or temporary buildings in the reconnaissance area. The licensee cannot, however, engage in drilling or excavation.

Prospecting License - a prospecting license gives a licensee the right to enter the land to which the licence relates and:

- Prospect for the mineral in respect of which the licence is granted;
- Make boreholes and excavations that may be necessary for the prospecting purposes;
- Erect camps and put up temporary buildings necessary for the prospecting operations; and
- Conduct other activities ancillary or incidental to prospecting.

Mining Lease - a mining lease authorises the holder, its agents, employees and properly authorised persons to enter the land and:

- Conduct mineral operations including mining for the specified minerals of the mining lease;
- Erect equipment, plant and buildings for the purposes of mining, transporting, dressing, treating, smelting or refining the specified minerals recovered during the mining operations;
- Take from the land, the specified minerals and dispose of them in accordance with the holder's approved marketing plan;
- Stack or dump a mineral or waste product as approved in the holder's Environmental Impact Statement; and
- Conduct other incidental or ancillary activity.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?

Petroleum, like minerals, existing in their natural state within the jurisdiction of Ghana is the property of the state and is vested in the President on behalf of the people. Apart from the Ghana National Petroleum Corporation (GNPC), no person may engage in the exploration, development or production of petroleum except in accordance with the terms of a petroleum

agreement entered into between that person, the Republic and the GNPC.

A contractor conducting oil and gas exploration and production has a right to carry out petroleum operations and execute the works that are expedient in the authorised area. The contractor has the right to enter land to carry out petroleum operations. The exercise of the contractor's rights is however subject to restrictions in specified areas to be prescribed in Regulations. However, no relevant regulations have been promulgated yet. The contractor also has the right to export the petroleum to which it is entitled under the terms of a petroleum agreement, although in the event of an emergency affecting energy supplies, the Minister may require the contractor to sell all or part of the petroleum at the prevailing market prices to the state or an agency of the state.

The Petroleum Agreement (PA) entered into by a contractor, the government and the Ghana National Petroleum Corporation, to conduct oil and gas exploration also grants the contractor the following rights within the terms of applicable law:

- To establish offices in Ghana and assign the necessary representatives to the office;
- To use public lands for installation and operation of shore bases, terminals, harbours and related facilities, pipelines from fields to terminals and delivery facilities, camps and other housing;
- To receive licenses and permission to install and operate the necessary communications and transportation facilities required for its operations;
- To bring to Ghana the number of foreign national employees necessary for its operations, including employees assigned on permanent or resident status, with or without families, as well as those assigned on temporary basis, such as rotational employees;
- To provide or arrange for reasonable housing, schooling and other amenities for its employees and to import personal and household effects, furniture and vehicles, for the use of its personnel in Ghana;



- To be solely responsible for provision of health, accident, pension and life insurance benefit plans for its foreign national employees and their families; and those employees are not required to participate in any insurance, compensation or other employee or social benefit programs established in Ghana;
- To have, together with its personnel, at all times, the right to enter or exit its offices in Ghana, the contract area, and the facilities associated with its petroleum operations, including the offshore waters, using its owned or chartered means of land, sea and air transportation;
- To engage subcontractors, including consultants, expatriate and national, and to bring them and their personnel to Ghana in order to carry out the petroleum operations in a skilful, economic, safe and expeditious manner; and the subcontractors will have the same rights as the contractor, as specified above.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?

Small scale mining is exclusively reserved for Ghanaians, hence a small scale mining licence will only be granted to a Ghanaian. Restricted licenses, which are licenses for the reconnaissance, prospecting and mining of industrial minerals, are mainly granted to Ghanaian citizens. Nevertheless, a non-citizen may apply for a mineral right in respect of industrial minerals provided the proposed investment in the mineral operations is US\$ 10 million or above. If the holder of the mineral right fails, within a period specified in the holder's programme of mineral operations which is given with the application, or further time permitted by the Minister responsible for mines ("Minister"), to expend an amount equal to or greater than US\$ 10 thousand (sic), the Minister may suspend or cancel the mineral right.

Are there any special rules or restrictions applicable to foreign applicants?

There are restrictions on the grant of a small scale mining licence to a foreigner – a foreigner cannot engage in small scale mining in Ghana and will, therefore, not be granted a small scale mining licence.

The Ghana Investment Promotion Centre Act, 2013 (Act 865) mandates all enterprises in which foreign participation is permitted (including mining), to register with the GIPC. Under the GIPC Act, special rules relate to capital requirements for the operations. Where a foreign national enters a joint enterprise with a Ghanaian citizen, the foreign partner must invest not less than US\$200,000 in cash or capital goods relevant to the investment or a combination of both, by way of equity participation and the Ghanaian partner must not have less than 10% equity participation in the joint enterprise. Where the enterprise is wholly owned by the foreigner, the foreigner must invest a foreign capital of not less than US\$500,000 in cash or capital goods relevant to the investment or a combination of both by way of equity capital in the enterprise.

As stated earlier, for the grant of licenses for the reconnaissance, prospecting and mining of industrial minerals, a foreigner may only apply if its proposed investment in the mineral operations is US\$10,000,000 or above.

The State's rights to equity in mining projects

Where a mineral right is for mining or exploitation, the Government is entitled to a 10% free carried interest in the rights and obligations of the mineral operations. This does not preclude the Government from any other participation in mineral operations that may be agreed with the holder.

The Minister may also give written notification to a mining company to issue to the Republic a special share in the company for no consideration. The special share constitutes a separate class of shares and has the rights that the Minister and the company will agree on. In the absence of the agreement, the special share has the following rights:

- The share is a preference share and carries no right to vote but the holder is entitled to attend and speak at a general meeting of the members of the company or a separate meeting of the holders of a class of shares in the company;
- The share may only be issued to, held by or transferred to the President, the Minister or another person that the President or Minister may authorise in writing;
- The share does not confer a right to participate in the dividends, profits or assets of the company or a return of assets in a winding-up or liquidation of the company;
- The holder of the share may require the company to redeem the share at any time for no consideration or for a consideration determined by the company and payable to the holder on behalf of the Republic;
- A mining company, which for a period of 2 months, fails to comply with a notice to issue a special share commits an offence and is liable on summary conviction to a fine of not more than the cedi equivalent of US\$10,000.

The Government also has the right of pre-emption of all minerals raised, won or obtained in Ghana and from any area covered by territorial waters, the exclusive economic zone or the continental shelf and products derived from the refining or treatment of these minerals.

PROCESSING AND BENEFICIATION

Requirements to beneficiate minerals mined

There are no requirements to beneficiate minerals mined.

Restrictions on the export of minerals

Minerals cannot be exported, sold or otherwise disposed of without a licence granted by the Minister for that purpose. A licence issued is not transferable. Shipment of rough diamonds to and from Ghana is subject to prescribed rules and regulations and should be in accordance with the Kimberley Process Certification Scheme.



DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Statutory consents required to dispose of rights to explore and mine

A mineral right cannot, in whole or in part, be transferred, assigned, mortgaged or otherwise dealt in, without the prior written approval of the Minister. The approval should not be unreasonably withheld or given subject to unreasonable conditions.

Restrictions on disposals of controlling interests in entities holding exploration or mining rights

There are restrictions on the disposal of controlling interests in entities which hold mining rights. A person may not become a controller of a mining company unless:

- The person gives the Minister written notice of his intention to become a controller of the mining company, and
- The Minister has, within 2 months after being served with the notice, given the person written notice that there is no objection to the person becoming a controller of the mining company; or the 2 month period has elapsed without the Minister having served the person with a written notice of objection.

The notice served to the Minister loses effect if the person fails to acquire the controlling interest within 1 year from the date of service of the notice. If the Minister considers on reasonable grounds that the public interest would be prejudiced by the person becoming a controller of the mining company, the Minister will serve a written notice of objection on the person. If a person becomes a controller without giving the notice, the Minister will serve the person with a written notice of objection within 6 months after becoming aware of that fact.

Contravening these requirements is an offence punishable on summary conviction to a fine of not more than the cedi equivalent of US\$ 20,000 or imprisonment for a term not more than 3 years or to both.

When a person becomes or remains a controller after being served with a notice of objection, the Minister, acting on the recommendation of the Minerals Commission may, by Executive Instrument, order that specified shares must, until further order is made, be subject to one or more of the following restrictions:

- A transfer of, or agreement to transfer those shares or, in the case of un-issued shares, a transfer of or agreement to transfer the right to be issued with them shall be void;
- No voting rights shall be exercisable in respect of the shares;
- No further shares shall be issued in right of them or in pursuance of an offer made to their holder;
- Except in a liquidation, no payment shall be made for sums due from the mining company on the shares, whether in respect of capital or otherwise.

The Minister may also apply to the High Court for the sale of specified shares.

The specified shares subject to these measures are:

- Shares or rights to be issued with shares in the mining company of which the person in question is a controller which are held by the person or an associate of the person

and which were not held immediately before the person became a controller, and

- Where the person in question became a controller of a mining company as a result of the acquisition by the person or an associate of the person of shares in another company, to all the shares or rights to be issued with shares in that company which are held by the person or an associate of the person which were not held before the person became the controller.

A person who ceases to be a controller of a mining company must notify the Minister in writing prior to or within 14 days of ceasing to be a controller.

A mining company must also give written notice to the Minister of the fact that a person has become or ceased to be a controller of the company. The notice should be given within 14 days of the mining company becoming aware of the relevant facts. Failure to give the required notice makes the company liable to an administrative penalty of the cedi equivalent of US\$ 1000 payable to the Minerals Commission. The Minister may also, whenever considered desirable in the public interest, appoint one or more competent persons to investigate and report on the ownership or control of a mining company.

USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES

Rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation

The rights of the holder of a mineral right are subject to limitations on surface rights that apply under an enactment or reasonably determined by the Minister.

The holder of a mining lease has the right to, within 30 days after the grant of the mining lease, designate an area within the lease area as a mining area. This should be done with the approval of the Minerals Commission and upon notification and payment of the appropriate compensation to the affected persons.

The holder of a mining lease may, from time to time, vary the boundaries of the areas designated as a mining area, subject to the approval of the Minerals Commission and to the notification of affected persons and the payment of appropriate compensation to said affected persons. Once compensation has been paid, no one can exercise surface rights in such a designated area. However, the holder of a mining lease cannot restrain or restrict any lawful occupier of land outside the mining area from exercising surface rights over that area.

Further, the owner or lawful occupier of land within a mining area needs the consent of the holder of the mining lease (or if the consent is unreasonably withheld, the consent of the Minister) before erecting a building or a structure.



A lawful occupier of land within an area subject to a mineral right retains the right to graze livestock on or cultivate the surface of the land if the grazing or cultivation does not interfere with the mineral operations of a holder of a mineral right in the area. However, where compensation has been paid by the holder to the affected persons or claimants outside the mining area but within the lease area, a person or lawful occupier of land within that area shall not retain the right to graze livestock, cultivate the land or erect a building or structure without the consent of the holder of the mining lease.

ENVIRONMENTAL

Legislation that governs environmental protection of exploration and mining sites

Environmental protection of exploration and mining sites is generally governed by the Minerals and Mining Act, 2006 (Act 703), the Environmental Protection Agency Act, 1994 (Act 490) and the Environmental Assessment Regulations, 1999 (LI 1652). Before undertaking an activity or operation under a mineral right, the holder of the mineral right must obtain the necessary approvals and permits required from the Forestry Commission and the Environmental Protection Agency for the protection of natural resources, public health and the environment.

The Environmental Assessment Regulations, 1999 (LI 1652) protect the environment by ensuring that a mining company conducts an Environmental Impact Assessment of its activities before it can be granted an Environmental Permit with which to conduct its business. Once an Environmental Permit is granted, the mining company should submit an annual environmental report in respect of its undertaking to the Environmental Protection Agency (EPA).

NATIVE TITLE AND LAND RIGHTS

Native title which has implications for the exploration and mining industry

There are no native land titles with implications for the exploration and mining industry.

HEALTH AND SAFETY

Legislation that governs health and safety in mining

A number of legislation control different aspects of health and safety in mining.

The Minerals and Mining (Explosives) Regulations, 2012 (LI 2177) regulate the conveyance, storage, possession, manufacture and use of explosives for mining and substances used for the manufacture of explosives.

The Minerals and Mining (Health, Safety and Technical) Regulations, 2012 (LI 2182) is a comprehensive legislation with extensive provisions on health and safety, including ventilation and dust prevention, the management of cyanide, discharge of dust, gas and fumes into the atmosphere, conveyance, fire protection, first aid, provision of health facilities, mine rescue brigades and medical examination of workers.

The Environmental Assessment Regulations, 1999 (LI 1652) protect the environment by ensuring that a mining entity conducts an Environmental Impact Assessment of its activities before it can be granted an Environmental Permit with which to conduct its business. Once an Environmental Permit is granted, the mining entity must submit an annual environmental report in respect of its undertaking to the Environmental Protection Agency (EPA).

The Fire Precaution (Premises) Regulations, 2003 (LI 1724) governs fire safety by requiring that a fire certificate be acquired for mining premises before work can be commenced. The certificate is revocable if the fire precaution measures on the premises cease to conform to the requirements of the Regulations.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Constitution which impacts upon rights to prospect and mine

The Constitution of the Republic of Ghana ("the Constitution") requires Parliamentary ratification of all transactions, contracts or undertakings involving the grant of rights or concessions by or on behalf of any person including the Government of Ghana, to any other person or body of persons for the exploitation of any mineral or other natural resource of Ghana.

Administrative appeals in the mining law

There are no specific laid down procedures for administrative appeals. However, mutual discussions to resolve disputes are encouraged by the Minerals and Mining Act. Where a dispute arises between a holder of a mineral right and the Republic in respect of a matter expressly stated by the Minerals and Mining Act to be referable for resolution, all efforts should be made through mutual discussion and if agreed between the parties, by reference to alternative dispute resolution procedures to reach an amicable settlement. Thus, mutual discussions are offered as a first option for dispute resolution.

ROYALTIES AND TAXES

Special rules applicable to taxation of exploration and mining companies

Generally, mining companies are subject to the general taxes of income/corporate tax, gains from the realization of a capital or investment asset and withholding tax. In addition, mining companies may also be granted the following:

- Exemption from payment of customs import duty in respect of plant, machinery, equipment and accessories imported specifically and exclusively for the mineral operations;
- Exemption of staff from the payment of income tax on furnished accommodation at the mine site;
- Immigration quota in respect of the approved number of expatriate personnel; and
- Personal remittance quota for expatriate personnel free from tax imposed by an enactment regulating the transfer of money out of the country.



The minister may also, as a part of a mining lease, enter into a stability agreement with the holder of the lease to ensure that the holder will not, for a period not exceeding 15 years from the date of the agreement, be adversely affected by subsequent changes to:

- The level of and payment of customs or other duties relating to the entry materials, goods, equipment and any other inputs necessary to the mining operations or project;
- The level of and payment of royalties, taxes, fees and other fiscal imports; and
- Laws relating to exchange control, transfer of capital and dividend remittance.

The stability agreement is subject to Parliamentary ratification.

Royalties payable to the State over and above any taxes

Currently, a holder of a mining lease, restricted mining lease or small scale mining license must pay royalty in respect of minerals obtained from its mining operations to the state at the rate to be prescribed by the Minister. The existing flat royalty rate of 5%, which was introduced by section 1 of the Minerals and Mining (Amendment) Act, 2010 (Act 794), remains the same until such time as the rate is altered or prescribed.

Annual ground rent, as may be prescribed must also be paid to the owner of the land or successors and assigns of the owner except in the case of annual ground rent in respect of mineral rights over stool lands, which should be paid to the Office of the Administrator of Stool Lands.

An annual mineral right fee, payable to the Minerals Commission, may also be prescribed.

