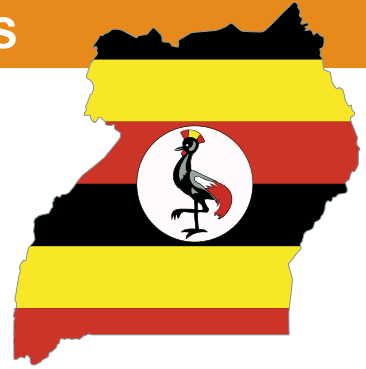


## UGANDA

## KATENDE, SSEMPEBWA &amp; COMPANY ADVOCATES



## FIRM INFORMATION

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## RELEVANT AUTHORITIES AND LEGISLATION

**What laws regulate mining?**

There are various laws that govern the mining sector in Uganda. Below is a summary of the key laws:

**The 1995 Constitution of Uganda**

The Constitution vests powers in the Parliament of Uganda to make laws regulating the exploitation of minerals, sharing of royalties arising from mineral exploitation, conditions of payment of indemnities arising out of exploitation of minerals and conditions regarding the restoration of derelict lands. The Constitution further provides that all minerals are held by the government on behalf of the people of Uganda.

**Mining Act 2003**

The Mining Act 2003 repealed and replaced the Mining Act 1964, Cap. 248, with provisions on mining and mineral development, which give effect to the relevant provisions of the Constitution; to vest the ownership and control of all minerals in Uganda in the Government.

The Act also provides for the acquisition of mineral rights; administration; licensing and leases and other related matters.

**Mining Regulations 2004**

The Regulations contain the procedure of applying and acquiring the various licences like prospecting licence, exploration, retention, location, and mining licence among others.

**National Environment Act (NEA Act) 2003**

The Act governs and sets out provisions that guide activities of the mining sector regarding the protection of the environment. Every holder of a mining lease is required to carry out an environment impact assessment in accordance with the provisions of the National Environment Act.

Other Acts include:

- The Income Tax Act
- The Public Finance Management Act 2015
- The Public Private Partnership Act 2015
- The Companies Act 2012
- The Contracts Act 2010
- The Wildlife Act Cap 200

- The National Forestry and Tree Planting Act
- The Land Act
- The Registration of Titles Act
- The Employment Act
- The Occupational Safety and Health Act

There is also a Mining Policy that was issued in 2001.

**Which Government Bodies administer mining law?****1. The Ministry of Energy and Mineral Development**

The ministry is responsible for the policy direction and accountable for the sector performance.

**2. The Directorate of Geological Survey and Mines (DGSM)**

Formerly known as the Department of Geological Survey and Mines, in 2015 was upgraded from department to a fully-fledged directorate with three Departments namely; the department of Geological Survey, the Department of Mines and the Department of Geothermal Resources.

The Directorate is the technical arm of the Ministry of Energy and Mineral Development responsible for the administration and management of the mineral sector in Uganda. The Mines Department is responsible for issuing licenses for the exploration and exploitation of identified mineral occurrence.

## TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

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

The Mining Act 2003 provides that any person in Uganda has the right to acquire and search for, retain, mine and dispose of any mineral as long as a licence to authorising the mining activities has been obtained from the Directorate. Failure to comply with this provision is a crime and may result into imprisonment or other penalty or both. The Act provides for four types of mineral rights which can only be exercised by holders of mineral licenses namely:



### Prospecting License

The right to prospect for minerals in Uganda is given to the holder of a prospecting license and authorises participation in mineral prospecting. The right is not transferable. The license is not area specific and gives authority to the holder to look for mineral occurrence of interest in Uganda. The Prospecting License is not renewable and lasts only one year from date of issue however an applicant is not prohibited from applying for another prospecting license following expiry of the first one. An application for a prospecting licence is made to the Commissioner for Geological Survey and Mines in the prescribed form upon payment of the prescribed fee.

### Exploration License

The license is exclusive and is granted for a duration of up to three years and the maximum area of exploration license is 500 km<sup>2</sup>. The license is renewable for two terms of two years each however half of the exploration area as at the date of grant or last renewal must be relinquished on renewal. Unlike a prospecting license which is not area specific, the exploration license defines the area for exploration and therefore it is a requirement that the application for an exploration license must be accompanied by a map of the area to be explored among other requirements.

### Retention License

A Retention license is granted to an applicant who is an exploration license holder and has identified a mineral deposit within the exploration area of potential commercial significance but is unable to develop the resource immediately by reason of adverse market conditions and other factors beyond the applicant's reasonable control which are temporary in nature. The license is only granted in respect of the exploration area granted in the exploration license and is granted for a maximum of three years and is renewable for a single period of two (2) years.

### Mining lease

The Mining lease is the right granted to authorise mining operations over an area. The application of the Mining Lease should be in a prescribed form and accompanied with the prescribed fee which is made to the Commissioner. The application should indicate financial and technical resources available to the applicant to carry out his obligations under the lease. The form should also be accompanied with a full

feasibility study including a plan of the area in respect of which the lease is sought. The lease is granted for a period of up to 20 years or the estimated life of the ore body proposed to be mined, whichever is shorter and may be renewed for a period not exceeding 15 years.

### Mining Location

This is granted to any person who is a Ugandan citizen wishing to carry out small scale prospecting and mining operations. In case of a body corporate, it is only granted to the body where at least 51% of the beneficial ownership of the body are citizens of Uganda. The total planned expenditure to bring the mine into operation must not exceed UGX 20,000,000 (Uganda Shillings Twenty Million only) approximately USD 3,000.

## OIL AND GAS

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

The Petroleum (Exploration, Development and Production) Act 2013 provides for the following rights to conduct oil and gas exploration and production:

- Reconnaissance Permit - This permit is granted to persons who intend to carry out reconnaissance surveys and these are required to apply to the Minister for this license upon payment of a prescribed fee. The license shall be for a geographically delineated area and is non-exclusive which means that it may be granted to more than two persons in respect of the same area. The duration of this license is eighteen months.
- Petroleum Exploration Licence - The licence is granted to authorise exploration of hydrocarbons in a specified area. The license can only be applied for upon the Minister of Energy announcing in the gazette the availability of areas for bidding. In exceptional cases enumerated in the Act, the Minister may receive direct applications for exploration licenses. The duration for this license is two years and may not be renewed more than twice.
- Petroleum Production licence - The holder of a Petroleum Exploration licence shall have exclusive right to apply for



the grant of a Petroleum Production License over any block following the discovery of petroleum in their exploration area. The license is granted for a period of twenty (20) years and may be renewed.

## INDIGENISATION REQUIREMENTS

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

The Mining Act 2003 prohibits any issuance of a mineral right to an individual who is not a citizen of Uganda or a company which is not registered or incorporated under the laws of Uganda.

Further, Location licenses under the Mining Act above are only granted to citizens of Uganda or a body corporate that has at least 51% of its beneficial ownership vested in Ugandans citizens.

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

According to the Mining Act 2003, mineral rights cannot be granted to foreign individuals or companies unless the company is registered or incorporated in Uganda. Additionally, foreigners are not eligible for the grant of a location license.

### **Identify any rights that the State may have. Does the State have any rights to equity in mining projects**

No.

## PROCESSING AND BENEFICIATION

### **Are there any requirements to beneficiate minerals mined?**

No. There are generally no mandatory legal requirements under the mining law or regulations to beneficiate minerals mined. However, the President of Uganda issued a directive specifically barring the exportation of unprocessed copper and iron ore to which there has been no value added or beneficiation.

### **Are there any restrictions on the export of minerals?**

Yes. A person who is interested in exporting minerals must obtain a permit from the Commissioner of the Geological Survey and Mines on conditions determined by or under the Act. Any person who exports any mineral from Uganda without complying with the requirements of the Mining Act 2003 commits an offence and may be liable, on conviction, to a fine or imprisonment or both.

Refer above, there is a presidential directive in place that restricts the exportation of unprocessed copper and iron ore without any beneficiation taking place.

## DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

### **Are there any statutory consents required to dispose of rights to explore and mine**

Yes. The Mining Act provides for restrictions on transfers for a mineral right. The Act prohibits any transfer of a Prospecting licence and any transfer for the other licences shall be void unless the Commissioner's consent is given.

The Commissioner of Geological Survey and Mines may give his or her approval for the transfer where the proposed transferee of the mineral right is a person that controls or is controlled by, or is under joint or common control with, the holder of the mineral right; however, such transferee is not disqualified under any provisions of the Act from holding the mineral right sought to be transferred.

### **Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?**

Yes. Any person seeking to dispose of any mineral right or share of the mineral right should seek the consent of the Commissioner Geological Survey and Mines before disposing of the interest.

## USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES

### **What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?**

Generally at common law, the holder of an exploration right is entitled to use the surface necessary or incidental to its operations. However the Act restricts this right where the operations are within 200 (Two Hundred) meters of any occupied or temporarily unoccupied house or building. Here, the holder of the exploration license must seek the written consent of the owner of the land.

The holder of a Mineral Right is also entitled to apply for exclusive rights over the whole or any part of the mining area. This is upon request by the owner or lawful occupant of the land on which the mining area is situated to obtain a lease or other rights to use the area upon such terms as to duration or the extent of the land to which the lease shall relate.

## ENVIRONMENTAL

### **What legislation governs environmental protection of exploration and mining sites?**

Under the Mining Act, every exploration licence and mining lease is granted with a condition that the holder of such a license or lease takes all necessary steps to ensure the prevention and minimization of pollution of the environment in accordance with the standards and guidelines prescribed in the National Environment Act.

Further, every holder of an exploration licence or a mining lease MUST carry out an Environmental Impact Assessment (EIA) of his/ her proposed operations in accordance with the National Environment Act.

The holder of an exploration licence or a mining lease MUST procure a certificate of approval of his or her proposed operations from the National Environmental Management Authority (NEMA).



The holder of an exploration licence or a mining lease MUST carry out an annual environmental audit and keep a record of operations describing how far the operations conform to the approved EIA.

The holder of an exploration licence or a mining lease MUST submit to NEMA an Environmental Management Plan indicating the type and quality of wastes to be generated from any exploration or mining operations they are currently undertaking and the method of final disposal.

Every Exploration Licence or Mining Lease MUST have a condition that the holder submits an Environmental Restoration Plan of the exploration or mining area that may be damaged or adversely affected by his/her exploration or mining operations.

## NATIVE TITLE AND LAND RIGHTS

### Is there any native title which has any implication for the exploration and mining industry?

Yes. Article 244(2) of the Constitution of the Republic of Uganda provides that minerals shall be exploited taking into account the rights of:

- Individual Land Owners;
- Local Governments; and
- The Government

Individual land owners under the Mining Act are entitled to compensation or to a share of royalties. In the event that the owner or lawful occupant of any land subject to a mineral right makes a demand to be paid the fair and reasonable compensation for any disturbance of their rights and for any damage occasioned to the surface of the land by the holder's operations, the law grants the land owner or occupant an inherent right to compensation.

The Individual Land Owner, Local Government and the Government are also entitled to a share in the royalties that accrue from exploitation of mineral rights. The owners or lawful occupier of the land subject to mineral rights are entitled to a 3% share, the Local Government 17% and the Government 80%.

## HEALTH AND SAFETY

### What legislation governs health and safety in mining?

#### The Occupational Health and Safety Act, 2006

This Act generally sets out the standard regarding health and safety in employment situations. It sets out the rights and duties of employees, and duties of the employer regarding the health and welfare of employees, the standard at which workplaces must be maintained and sets out general safety requirements that every employer must adhere to.

## CONSTITUTIONAL AND ADMINISTRATIVE LAW

### Is there a Constitution which has an impact upon rights to prospect and mine?

Yes. The Constitution of the Republic of Uganda, 1995 provides that minerals and mineral ores shall be exploited taking into

account the interests of the individual land owners, local governments and the Government.

The Constitution vests powers in the Parliament of Uganda to make laws regulating the exploitation of minerals, sharing the royalties arising from mineral exploitation, the conditions of payment of indemnities arising out of exploitation of minerals and conditions regarding the restoration of derelict lands.

The Constitution further provides that all minerals are held by the government on behalf of the people of Uganda.

### Are there administrative appeals in the mining law?

Yes. There are two types of administrative reviews recognised under the Mining Act.

#### 1. Administrative review by the Minister

A person aggrieved by the decision of the Commissioner is allowed to request an administrative review within thirty (30) days after being notified of the decision and the Minister is granted powers to either confirm, set aside or vary the decision complained of.

#### 2. Judicial review of the Minister's decision

Any person aggrieved by a decision, order, act or omission of the Minister is allowed to apply to the High Court for judicial review.

## ROYALTIES AND TAXES

### Are there special rules applicable to taxation of exploration and mining companies?

Yes. Mining Companies have an entire section under the Income Tax Act dedicated to the taxation of Mining Operations. Mining Companies are allowed up to 100% exploration expenditure as a deduction within the year it is incurred. The expenditure must be of a capital nature and must be incurred in searching for, discovering and testing or winning access to deposits of minerals in Uganda.

Further the Income Tax Rate for Mining Companies is not fixed at 30% as for all other Companies but rather is calculated using a special formula which fluctuates the rate of tax between 25% - 45% depending on several factors.

### Are there any royalties payable to the State over and above any taxes?

The Mining Act is to the effect that all minerals obtained or mined in the course of prospecting, exploration, mining or mineral beneficiation operations shall be subject to the payment of royalties on the gross value of the minerals based on the prevailing market price of the minerals at such rates as shall be prescribed.

The Individual Land Owner, Local Government and the Government are all entitled to a share in the royalties that accrue from exploitation of mineral rights. The owners or lawful occupiers of the land are entitled to a 3% share, the Local Government 17% and the Government 80%.

