

MINERALS AND MINING

THE LAW DIGEST

TOPIC: EXPORTING GOLD FROM GHANA:
THE NEED FOR DUE DILIGENCE

Contributor

David Yaw Danquah, Esq

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For further information please contact david@legalstonesolicitorsllp.com

Contributor

David Yaw Danquah, Esq

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INTRODUCTION

Ghana is endowed with abundant natural resources, which have played a key role in the development efforts of the country. Ghana has a long history of mining, especially for gold. Gold is a precious metal of high monetary value, sought after for the production of coins, jewellery, and other artefacts. It is a fact, evidence by records over the years, that gold is a major foreign exchange earner for Ghana's socio-economic development.

Over the years, Ghana's stable economy and abundance of natural resources, especially gold, have attracted many foreign entities and or individuals to develop strategic business partnerships with local Ghanaian companies for the export of these resources. A lot of these individuals have been cheated of their hard-earned resources by unscrupulous entities masquerading as licensed gold buying companies by regulators when in fact they have no such license. This article is therefore intended to throw light on the procedures and legislative framework established for the sale and export of gold from Ghana.

It is important, following the above warning for foreigners, be it private individuals and incorporated companies seeking to engage in gold purchase and export in Ghana to understand that this is a regulated industry. It is governed by laws with established institutions mandated to ensure compliance. These institutions include the Minerals Commission (MC) of Ghana and the Precious Mineral Marketing Company (PMMC), among others.

There is, therefore, the need for individuals and companies (foreigners) to undertake due diligence before undertaking to engage a local Ghanaian entity or an individual for the purchase and export of gold. It is not only advisable to undertake due diligence on the local entities and individuals in Ghana, but it is imperative to avoid being scammed by unlicensed entities.

PRECIOUS MINERAL MARKETING COMPANY (PMMC)

Precious Minerals Marketing Company (PMMC) Ltd was established in 1963 as Ghana Diamond Marketing Board charged with the sole responsibility for the purchase and marketing of Ghana's diamonds. In 1965, by Legislative Instrument (LI) 401, the Company was incorporated as a State-Owned Enterprise (SOE). With the promulgation of the Diamonds Decree (NRCD 32) in 1972, the Legislative Instrument (L.I 916) was enacted to change the company's name to Diamond Marketing Corporation. However, in 1989, Precious Mineral Marketing Corporation Law (PNDC Law 219) was enacted to yet again change the Company's name to the Precious Minerals Marketing Corporation with the following functions

1. To grade, assay, value, and process precious minerals
2. To buy and sell precious minerals
3. To perform any functions conferred upon it by the Diamond Decree, 1972 (N.R.C.D. 32)
4. To appoint licensed buying agents for the purchase of precious minerals produced by small scale-miners
5. To promote the development of precious minerals and jewellery industry in Ghana
6. To do all such things as are incidental or conducive to the attainment of its objectives and functions.

Finally, in the year 2000, it was converted by Statutory Corporations Conversion to Companies Act, 1993 (Act 461) to a Limited Liability Company to operate under the Companies Act, 1963 (Act 179) as Precious Minerals Marketing Company Limited with the same functions under the

PNDC Law 219.

The following have been the functions of the Company until 2016 when most of the functions changed as a result of the appointment of PMMC as the government assayer.

1. Grading, assaying, valuing, and processing of precious minerals.
2. Buying and selling precious minerals
3. Appointment of licensed buyers for the purchase of precious minerals produced by small scale miners
4. Production of jewellery
5. To carry on trade and business whatsoever, which can, in the opinion of the directors, be profitable ancillary for the general business of the Company.

The Company now operates as the Government's assayer with the sole mandate of assaying all gold, which leaves the country.

DUE DILIGENCE

Due diligence should be conducted to;

1. establish that the individual and or entity (that is the local company) the foreign entity or individual intends to engage for gold purchase and export is licensed in Ghana, and
2. identify all factors that will affect the transaction.

In any case, any individual or entity must establish its minimum level of comfort and must conduct as much research as is necessary to achieve the level of comfort before entering into gold purchase and export transactions in Ghana.

LICENSE TO BUY AND EXPORT GOLD

It is imperative to note that, in Ghana, an individual need a license to buy and deal with minerals. Therefore, the export of gold out of the jurisdiction of Ghana can only be done under a license by an entity. This is regulated under the Minerals and Mining Act, 2006 (Act 703). It provides among others that, the Minister in consultation with the Commission, may in writing license persons the Minister considers fit, to buy and deal in the types and forms of minerals identified under the Act.

It must be noted that, under the Act, mineral means a substance in solid or liquid form that occurs naturally in or on the earth and include gold and diamond but does not include petroleum resources as the latter is under a separate regulation. It is important to note further that, Minister under the Act means the Minister responsible for Mines and Natural Resources and reference to Commission means the Minerals Commission established under section 1 of the Minerals Commission Act, 1993 (Act 450).

GUIDELINES FOR THE EXPORT OF GOLD IN GHANA

The Minerals Commission had issued a directive and or procedures to govern the export of gold from Ghana. The following procedures shall govern the exportation of gold by Licensed Gold Exporters (LGE) other than the holders of mining leases. These measures issued by the Minerals Commission shall be in force until substituted by other procedures that may subsequently be prescribed. These include the following;

1. A Licensed Gold Exporter (LGE) who intends to export gold shall inform the Precious Min-

- erals Marketing Company Limited (PMMC) in writing of its export plans at least two (2) working days before the planned weekly export.
2. The LGE shall submit the gold ore to be assayed by PMMC at a designated assay centre, together with all declaration documents, Packing List, and Invoice.
 3. The PMMC shall determine the gold content of the gold ore presented by the LGE using the appropriate assay method as agreed by the LGEs, Minerals Commission, and the PMMC.
 4. The PMMC shall prepare a report of analysis of the gold ore presented by the LGE and issue copies instantly to the Bank of Ghana (BOG), the Ghana Revenue Authority Custom Officer stationed at the Assay Centre and the Minerals Commission.
 5. The PMMC shall invoice the LGE in respect of the assay at the agreed rate of 0.1% of the value of gold assayed, and the LGE shall pay the same to PMMC. The payment of this fee is without prejudice to any fee that may be charged by the Minerals Commission.
 6. All Gold Buying Agents of the PMMC, before this publication, may continue to use their permits until the expiry of the present term of the license and same shall not be renewed by the PMMC upon expiry. All such Gold Buying Agents should immediately contact the Minerals Commission for further directions regarding the use of their permits. All persons who desire to obtain permits for buying gold shall apply to the Minerals Commission.
 7. The GRA Customs Official at the Assay Centre shall inspect and supervise the sealing of the assayed gold ore with the Customs Division's seal and endorse the Customs Declaration Form. The sealing of the assayed gold ore by the Customs Official shall be done in the presence of an authorized representative of the Assay Centre, who shall also affix the seal of the PMMC Assay Centre at the same time.
 8. The LGE shall complete the required documentation at the Kotoka International Airport (KIA) before exporting the assayed gold.
 9. Under no condition shall gold ore be exported by LGE without the seals of the Customs Division of the Ghana Revenue Authority and the Government designated laboratory, i.e., PMMC and accompanied with full documentation.
 10. All LGEs shall submit monthly returns to the Minerals Commission in accordance with the terms and conditions of their license agreements.

LOCAL LEGAL REPRESENTATIVE (LLR)

The foreign entity should have access to legal representation before engaging in any gold export business in Ghana. Not only will the legal representative conduct due diligence on the Licensed Gold Exporter to ascertain that it is in fact licensed and in good standing, he/she will also be expected to educate and or proffer sound professional advice to the foreign entity on any changes in the laws and regulations governing the purchase and export of gold in Ghana.

Most importantly, the legal representative shall police the processes leading to the purchase and export of the gold to ensure that the precise ounces and the required purity of the mineral are shipped from the Republic to its intended recipient. This timely legal advice must be obtained from a lawyer with knowledge and working experience in the gold trading business in Ghana.

The Legal Representative shall also be responsible for the formulation, and the drafting of an agreement to govern the transaction before any transfer of funds shall be effected for payments. This eventually will help to secure the interest of the parties to the transaction and ensure that their reasonable expectation is met at the end of the day.

NOTES ON CONTRIBUTOR



Mr David Yaw Danquah is the founder and Managing Partner of Legalstone Solicitors LLP, a boutique law firm in Ghana with a concentration on Corporate and Commercial, Mining and Infrastructure, Debt Recovery and Restructuring, Real Estate and Construction Law, and Commercial Arbitration.

He heads the firm's practice areas of focusing are Corporate and Commercial, Mining and Infrastructure, Debt Recovery and Restructuring, and Commercial Arbitration.

David has advised on numerous investment and mining-related transactions. He also has assisted countless international entities in establishing their operations in Ghana, and through his firms, offers support services to those entities. He has an impeccable record of providing technical savvy and exceptional client services.

David is a graduate of Kwame Nkrumah University of Science and Technology (KNUST), Kumasi, where he received his Bachelor's Degree in Law (LL. B) and the Ghana School of Law, where he studied and received a Post Graduate Qualifying Certificate in Law (PQCL). He holds a Certificate in Negotiation Mastery from Harvard University. Presently, he is pursuing an LL.M Degree in International Dispute Resolution at the prestigious Queen Mary University of London, United Kingdom.

David is a member of the Ghana Bar Association, Association of International Petroleum Negotiators (AIPN) and Institute of Energy Law (IEL) based in Houston, U.S.

LEGALSTONE SOLICITORS LLP

Website:

www.legalstonesolicitorsllp.com

Email:

info@legalstonesolicitorsllp.com
david@legalstonesolicitorsllp.com

Ghana Post GPS:

GA-417-3770