

MINERALS AND MINING

THE LAW DIGEST

TOPIC: SETTING UP OF LICENCE GOLD EXPORT
COMPANY IN GHANA

Contributor

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This article was first published in June 2019
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ACKNOWLEDGMENT

Legalstone acknowledges all its staff and partners for contributing to this law digest on setting up licenced gold export company in Ghana.

INTRODUCTION

Ghana is well endowed with gold deposits and is one of the most attractive business markets in West Africa. Ghana's wealth of resources, democratic political system, and dynamic economy makes it undoubtedly one of Africa's leading and stable economy, more conducive to do business than expected. Ghana's gold deposit is evident in the gold reserves, which, according to the US Geological Survey, is estimated to be 50 million ounces (1,600 tons).

Ghana requires a particular method of setting up mineral purchasing and export company with a license from the minerals commission to deal in gold trading and export.]

The Minerals and Mining Act, 2006, as amended by the Minerals and Mining (Amendment) Act, 2015 (Act 900) provides succinctly that a person shall not export or sell or otherwise dispose of a mineral unless that person holds a license granted by the Minister responsible for Mines and Natural Resources. A person here refers to a corporate entity established under the laws of the Republic of Ghana.

Incorporating a company means establishing a corporate legal entity that is distinct and separate from the legal identity of its directors and shareholders. It means that the business entity can transact in its corporate name, sue, and be sued. Also, the liabilities of its members are limited to the amount on the unpaid shares if it's a company limited by shares.

On the other hand, if it is a company limited by guarantee, the amount that the members may respectively undertake to contribute to the assets of the company in the event of its being wound up. The Companies Act, 2019 (Act 992), governs the organization of companies in Ghana.

An incorporated company may either be

1. A company limited by shares;
2. A company limited by guarantee;
3. An unlimited company; and
4. External company

A company limited by shares: - a company limited by shares is a company that has the liability of its members limited to the amount unpaid on the shares respectively held by them. The company cannot offer its shares to the general public. It is a popular form of company structure in Ghana limiting the day to day running of the company to the company's board of directors;

A company limited by guarantee: - a company limited by guarantee is a company that has the liability of its members limited to an amount that the members may respectively undertake to contribute to the assets of the company in the event of its being wound up. It is an incorporated company without share capital. It is not in the business for profit, and as such, its object must exclude profit-seeking ventures.

Unlimited company: - an unlimited company is a company that does not have a limit on the liability of its members.

External company: - an external or a foreign company is a company formed outside the Republic of Ghana, which has an established place of business in Ghana. The expression of an established place of business means a branch, management, share, transfer, or registration office, factory, mine, or any other fixed place of business. Still, it does not include an agency unless the agent has. It habitually exercises, a general authority to negotiate and conclude contracts on behalf of the body corporate or maintains a stock of merchandise be-

longing to that body corporate from which the agent regularly fills orders on behalf of the entity corporate. For our discussions on general trading (gold purchase and export) in Ghana, the particular purpose vehicle, that is, the type of business structure required shall be that of an incorporated company limited by shares (private limited liability company).

A COMPANY LIMITED BY SHARES.

The following conditions must be met to incorporate a private limited liability company by shares; Decide who will act as the company's first directors. A company incorporated and registered in Ghana must have a minimum of two directors, both natural persons over 21 years, one of whom must be a permanent resident of Ghana.

The directors also appoint the company secretary, who may be a natural person or a body corporate. As part of the new prescription by the companies act, among the persons qualified to be appointed a company secretary is a barrister or solicitor in good standing in the Republic of Ghana.

The directors are also mandated to appoint the first auditors of the company.

The company must choose a business name and must confirm whether the business name is available for use by the company.

The company must as well register with the Ghana Revenue Authority for the issuance of tax identification number (TIN) for its members if they don't have them already. The company is mandated to register with GRA for purposes of tax payments. On registration, the company shall be issued with a tax clearance certificate. The issuance of the tax clearance certificate is essential to aid in the process of certification with the Minerals Commission.

The regulation of the company must be prepared. The regulation of the company must be signed by one or more of the initial subscribers in the presence of an independent adult witness and must state:

1. The name of the company
2. The company's objects or authorized business
3. That the company can enter into a legally binding agreement
4. The name of the first directors of the company
5. That the powers of the directors are limited under the law
6. The number of shares in which the company is registered
7. The number of shares each subscriber will own on incorporation and the amount payable for the shares.
8. A declaration that the liability of the members of the company is limited

Where the Registrar is satisfied that the application for incorporation of a company complies with this Act, the Registrar shall, after payment of the prescribed fee, certify under the seal of the Registrar that the company is incorporated and, in the case of a limited liability company, that the liability of the members is limited. From the date of incorporation, the company becomes a body corporate by the name contained in the application for inclusion. It is capable of performing the functions of an incorporated company.

For incorporation of the company to be completed, a fee (capital duty charged) at the rate of 0.5% of the company's stated share capital and the registration fee must be submitted to the Registrar of Companies.

The company shall also register with Social Security and National Insurance Trust (SSNIT) after incorporation and the issuance of a certificate of incorporation. Upon registration with SSNIT, the company shall be issued with SSNIT clearance certificate as part of the process build-up for the application of certification

from the Minerals Commission.

The estimated processing time for the completion of the above processes will be three weeks, and they must happen concurrently.

REGISTRATION OF THE COMPANY WITH THE GHANA INVESTMENT PROMOTION CENTRE (GIPC)

The Ghana Investment Promotion Centre Act, 2013 (Act 865), prescribes the minimum capital threshold for non-Ghanaians for the setting up of companies with the ultimate object of being licensed or certified by the Minerals Commission to undertake the export of Gold in Ghana. The nature of the business that is the purchase and export of gold in Ghana is classified as “trading” under the GIPC Act.

The law provides, that where the foreign investor intends to engage in the business of trading and the said foreign investor has a Ghanaian partner, the foreign investor is required to invest a foreign capital of NOT less than ONE MILLION UNITED STATES DOLLARS (US\$1,000,000.00) in cash or capital good relevant to the investment or a combination of both by way of equity participation.

Presently the minimum foreign capital requirement is:

Joint venture:	US\$200,000.00
Wholly-owned foreign business (services):	US\$500,000.00
General trading company:	US\$1,000,000.00

The applicable fees for registration of the business are as follows;

Joint venture (i.e US\$200,000.00 minimum foreign equity):	US\$2,000.09
Wholly foreign (i.e US\$500,000.00 minimum foreign capital):	US\$3,200.15
General trading company (i.e US\$1,000,000 minimum foreign capital):	US\$6,000.27

INCENTIVES AND BENEFITS UNDER THE GIPC ACT

The GIPC Act provides for automatic incentives and benefits as follows:

1. Customs Import Duty Exemptions (There are custom duties exemption for plant, machinery, equipment, and parts thereof)
2. Various Tax benefits (Subject to some conditions)
3. Investment Guarantees (Free Transferability of Capital, Profits and Dividends and immigrant quotas depending on the amount of paid-up capital of the enterprise)

MINERALS COMMISSION

The Minerals Commission is responsible for the regulation and management of the development of mineral resources of Ghana. It is also responsible for coordinating and implementing policies related to mining in Ghana. It is also responsible for the grant of licenses to corporate entities to undertake the business of purchase and export of gold in Ghana. All applications for permits, including the permission to trade in gold, shall be made to the Minerals Commission for approval.

LICENSING PROCEDURES

Before applying for a license to engage in gold trading and export, the entity must satisfy the following if it is wholly owned (all equity is held by foreigners) by the foreigner;

1. Must be an incorporated company with a minimum capital of US\$1,000,000.00.
2. Must have been registered with Ghana Investment Promotion Center.
3. Registered with the Ghana Revenue Authority
4. Register with Social Security and National Insurance Trust (SSNIT)
5. Must have a registered office.

APPLICATION FOR LICENSE TO EXPORT GOLD BY AN ESTABLISHED ENTITY

The Minerals and Mining (General) Regulations, 2012 (L.I 2173) provides that a corporate body seeking to apply for a license to engage in export of gold must be prepared to provide the following;

1. Particulars of financial and technical resources available to the applicant;
2. An estimate of the amount of money proposed to be spent;
3. A business plan or details of the program of the proposed operations; and
4. A localization program in accordance with these Regulations L.I 2173.

The Minister of Mines upon receipt of these particulars and forms may grant a license to an applicant where the Minister is satisfied that, the business plan or details of the program of the proposed operations include:

1. The refining or polishing of the minerals in Ghana before export;
2. The purchase of only refined or polished minerals for export; or
3. The supply of a percentage of the minerals determined by the Minister to lead refineries to ensure regular supply to local users; and
4. The applicant can demonstrate that it has access to adequate financial resources, technical competence, and experience to carry out the operations effectively.

Once the license is granted, the holder is required to submit monthly and annual returns to the Minerals Commission on all exports of minerals made. The holder is also expected to comply with the conditions specified in the license and any other terms that the Minister may determine.

APPLICATION FOR EXPORT LICENSE BY HOLDER OF MINING LEASE

Different sets of rules apply to holders of mining leases that intend to apply for a license to engage in the export, sale, and disposal of minerals in Ghana.

An application by a holder of a mining lease for a license to export, sell or dispose of gold or other precious minerals produced by the holder shall be submitted to the Minister responsible for Mines and Natural Resources. The application shall be accompanied by the following:

1. A refining contract and
2. Sales and marketing agreement.

Once the Minister is satisfied, the license shall be granted to the applicant. The license holder is however required to notify the Minerals Commission of particulars of shipment of minerals, details of the quantity and grade of the minerals to be shipped and access for samples to be taken by a government-designated laboratory for assaying purposes;

DURATION OF LICENSE

A license granted shall be for an initial period of 3 years and subject to renewal for further three (3) years.

LOCAL LEGAL REPRESENTATIVES (LLR)

It is advisable for a foreign entity, be it an individual or corporate body seeking to set up a wholly-owned or subsidiary mineral purchasing and export company in Ghana to have access to legal representation for timely advice and completion of documentation. The legal representative must a lawyer with in-depth knowledge and workings of mineral and mining law.

Legalstone Solicitors LLP fully understands the intricate underpinning of the mineral and mining laws of Ghana. We provide timely advice tailored to the needs of our clients.

Other Services by Legalstone Solicitors LLP

We shall be responsible for the following;

1. Registration with the Ghana Revenue Authority.
2. Registration of the entity with the Social Security and National Insurance Trust.
3. Setting up a corporate bank account for the Company.
4. Renting of office accommodation for the company.

GOVERNMENT FEES

Incorporation of the Company (General Trading)	US\$12,000
Registration of the Company with the Ghana Investment Promotion Centre (GIPC)	US\$6,000.27
License to Export Gold	US\$16,750

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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.

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