

# MINERALS AND MINING

## THE LAW DIGEST

TOPIC: SETTING UP MINING SUPPORT SERVICE COMPANY

### **Contributor**

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## INTRODUCTION

### LARGE-SCALE MINING IN GHANA

Large-scale mining is particularly visible in Ghana. Large-scale gold mining is hugely capital intensive requiring high levels of mechanization and expertise. Responsible large-scale gold mining is the bedrock of Ghana's mining Laws and Regulations. Responsible mining has a significant positive impact, both on the macro-economy of Ghana and the lives of the citizens within the catchment areas where this mining takes place. Many multinational companies which undertake large-scale responsible mining in Ghana depends on the services of a license Mining, Support Service Company to thrive.

To ensure responsible mining, the Laws and Regulations of Ghana are so well-tailored or structured that mining support service companies have a significant all-important role to play. A license Mining, Support Service Company, is by law mandated to provide the large-scale mining companies with a high level of mechanization (industry tools, equipment, and expertise) needed for the mining activity.

To this end, the purpose of this article critically examines the laid down processes needed for the setting up of mining support service companies in Ghana.

### MINING SUPPORT SERVICE COMPANY

Ghana requires a particular method of setting up a mining support service company with a license from the Minerals Commission to provide mineral rights companies with the support services needed. To obtain a permit in Ghana for the provision of mining support services in the mining sector, an applicant has to go through a three-pronged process. The applicant, with the assistance of Legalstone Solicitors LLP, would have to ensure that the regulatory regime in 3 key Governments of Ghana agencies is adhered to. These are as follows;

1. Incorporation of the business with the Registrar Generals Department
2. Registration of the company with the Ghana Investment Promotion Centre (GIPC)
3. Application of the Licence from the Minerals Commission

#### Incorporation of the business with the Registrar Generals Department

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 belonging to that body corporate from which the agent regularly fills orders on behalf of the entity corporate.

To secure a licence or certificate for the business of engaging in mine support services 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.

1. 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.
2. 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.
3. The regulation of the company must be prepared. The regulation must be signed by one or more of the initial subscribers in the presence of an independent adult witness and must state:
  - a. The name of the company
  - b. The company's objects or authorized business
  - c. That the company can enter into a legally binding agreement
  - d. The name of the first directors of the company
  - e. That the powers of the directors are limited under the law
  - f. The number of shares in which the company is registered
  - g. The number of shares each subscriber will own on incorporation and the amount payable for the shares

- h. 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.

4. 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 mining support services in Ghana. The nature of the business that is the offer of mining support services is classified as "services" under the GIPC Act.

The law provides, that where the foreign investor intends to engage in the business of services and the said foreign investor has a Ghanaian partner, the foreign investor is required to invest a foreign capital of NOT less than Two Hundred Thousand United States Dollars (US\$200,000.00) in cash or capital good relevant to the investment or a combination of both by way of equity participation and the person who is a citizen must hold not less than 10% of the equity.

However, where the foreign investor wholly holds all the equity of the company, the GIPC Act, as stated, provides that the investor must invest a minimum of not less than Five Hundred Thousand United States Dollars (US\$500,000.00) to have the company licensed by the Minerals Commission.

A foreign investor must take note that under the mining laws of Ghana, he or she is not mandated to have a local Ghanaian partner before the Minerals Commission shall grant a license to engage in mining support services.

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

#### **APPLICATION OF CERTIFICATION OR LICENSE FROM THE MINERALS COMMISSION**

The Minerals Commission of Ghana is responsible for the certification of mining support service companies in Ghana. Under the 2012 Regulations L.I 2174, a person on meeting certain laid down conditions may be registered by the Minerals Commission to provide support services under the Laws and Regulations.

An application for mining support services shall be accompanied by the following:

- i. A profile of the applicant;
- ii. Particulars of incorporation in Ghana;
- iii. The annual reports of the applicant, if the applicant is an existing company;
- iv. A business plan of the applicant;
- v. Curriculum vitae of key personnel available to the applicant;
- vi. A copy of the applicant's contract with the mineral right holder, if any;
- vii. The particulars of machinery and equipment to be used by the applicant;
- viii. Evidence of the applicant's financial resources;
- ix. The tax clearance certificate of the applicant;
- x. The Social Security and National insurance Trust (SSNIT) Clearance Certificate);
- xi. The applicant's program for the employment and training of Ghanaians under the Minerals and Mining Regulations L.I 2173.

Upon satisfactory review of an applicant's application, an applicant shall be registered and issued with a certification as either "Class A" or "Class B" support service provider in Ghana. A foreigner shall be entitled to apply for a Class A support license, whereas a Class B support license is issued to a person who is a Ghanaian.

A "Class A" support service provider means a person who provides the following;

- a. Contract mining services which include topsoil and waste removal, drilling, and blasting, excavating and haulage of ore to plant on a turnkey basis;
- b. Mining and ancillary construction services or works which are provided expressly and exclusively for the mining industry, which includes;
  - i. Civil works;
  - ii. Topsoil and waste removal;
  - iii. Construction and heap leach pad;
  - iv. Construction of haulage roads;
  - v. Construction of tailings storage facility; and
  - vi. Installation of the water storage facility;
  - vii. Assay laboratory services;
  - viii. Drilling and blasting services;
  - ix. Mining consultancy services;
  - x. Mineral exploration services for a mineral right holder;
  - xi. Supply of mineral equipment and spare parts;
  - xii. Fabrications of equipment and manufacturing of components and consumables specifically and exclusively for the mining industry, which include manufacturing of explosives and hydraulic components, and production of activated carbon, sodium



- cyanide and lime; and
- xiii. Any other service that is specifically and exclusively related to mining, which the Commission considers necessary for the effective and sustainable development of the mining industry.

A certificate issued by the Minerals Commission is valid for one year from the date of issue. It is, therefore, subject to yearly renewal subject to the compliance and the terms and conditions of the certificate and the Laws and Regulations of Ghana.

A Class B support service provider means a person who is a Ghanaian and provides services specifically and exclusively to a mineral holder:

- a. Contract mining services for small scale mining, which include mining and processing of ore, reclamation revegetation, and management of mining operations;
- b. Haulage services to and from mine sites, including transportation of personnel; and
- c. Any other service that is specifically and exclusively related to mining, which the Commission considers necessary for the effective and sustainable development of the mining industry.

From the preceding, A Class A support service provider can, therefore, not provide services for small scale and artisanal mineral rights holders. That will be an infringement on the Laws and Regulations of Ghana.

#### **BENEFITS**

Among the concessions or benefits granted to a registered service provider are;

- a. In respect of a Class A support service provider, the following benefits are granted;
  - i. Concessionary rates of customs import duties in respect of plant, machinery, equipment, and accessories as provided in the Mining List, imported specifically and exclusively for mining-related activities as stated in Regulations L.I 2174.
  - ii. immigration quota in respect of the approved number of expatriate personnel;
  - iii. receipt of part of the payment for that person's services in foreign currency from that person's mining sector customers, to acquire machinery, equipment, spare parts and mining supplies for services specifically and exclusively provided to a mineral right holder or for servicing debts or paying dividends as approved by the Bank of Ghana on the recommendation of the Minerals Commission of Ghana.

The Minerals List is a catalogue of mining machinery, equipment, and consumables agreed upon by the Minerals Commission, Ghana Revenue Authority, Value Added Tax Service and the Ghana Chamber of Mines to be exempted or charged the concessionary rate for customs import duties and value-added tax.

## FEES

No.	TYPE OF SERVICE	FEES (UNITED STATES DOLLARS)
1.	Mine Support Service Company Licence	250.00
2.	Mine Support Service Company Licence Annual Fees (Specific)	10,000.00
3.	Mine Support Service Company Licence Annual Fees (General)	6,000.00
4.	Processing fee	500.00

**DOMESTIC PARTNER REQUIREMENT**

There is no requirement that a foreign party should have a domestic partner before been granted a license to offer mining support services in Ghana.

## 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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