



**SPECIAL TRAINING SESSION FOR JUDGES AND
MAGISTRATES ON THE OFFENCES AND PENALTIES
REGIME UNDER GHANA'S MINERALS AND MINING ACT,
2006 (ACT 703)**

**GOLDEN TULIP HOTEL, KUMASI
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OVERVIEW OF THE MINERALS AND MINING ACT, 2006 (ACT 703)

OUTLINE

- ❑ Ownership of minerals
- ❑ Grant of mineral rights
- ❑ Who qualifies for a mineral right
- ❑ Compensation and local content issues
- ❑ Government Interests and Fiscal matters
- ❑ Dealings in mineral rights
- ❑ Stability Agreements
- ❑ Development Agreements
- ❑ Dispute Resolution
- ❑ Penalties for breaches of Act 703 or terms of mineral right
- ❑ Action upon termination

Ownership of minerals

- All minerals in their natural state belong to the State and are vested in the President on behalf of and in trust for the people of Ghana. (Art. 257(6) of the 1992 Constitution)

“every mineral in its natural state in, under or upon land in Ghana, rivers, streams, water-courses throughout the country, the exclusive economic zone and an area covered by the territorial sea or continental shelf is the property of the Republic and is vested in the President in trust for the people of Ghana.”

- Section 1 of the Minerals and Mining Act, 2006(Act 703) reiterates the constitutional provision in Article 257(6).

Grant of mineral rights and licences

- ❑ The Minister responsible for Mines (Minister for Lands and Natural Resources) acts on behalf of the President to *negotiate, grant, revoke, suspend or renew* mineral rights. (s. 5, Act 703)
- ❑ The Minister acts on the advice and recommendation of the Minerals Commission (ss. 12 & 100(2), Act 703).
- ❑ Art. 269 of the 1992 Constitution and the Minerals Commission Act, 1993 (Act 450) set up the Minerals Commission (Mincom).
- ❑ Mincom is responsible for the regulation and management of the utilisation of mineral resources and the co-ordination of the policies in relation to them. (s. 2 of Act 450)

Grant of mineral rights and licences

- ❑ **Land available for mining:** every land in Ghana is available to be made the subject of a mineral right except
 - (a) land that is already the subject of a mineral right or
 - (b) land expressly exempted from becoming subject of a mineral right. (ss. 3 & 4, Act 703)

- ❑ **Compulsory acquisition:** where land is required to secure the development or utilization of a mineral, the President may acquire the land or authorize its occupation and use (*s. 2, Act 703; Art. 20 Constitution, 1992; sec. 223(1), Lands Act, 2020 (Act 1036)*)

- ❑ **Important considerations for compulsory acquisition:**
 - (a) Acquisition must be made under an Executive Instrument and gazetted
 - (b) Acquisition must be in the public interest;
 - (c) There must be prompt payment of fair and adequate compensation;
 - (d) There must be a right of access to High Court by a dissatisfied person
 - (e) Resettlement in the case of a displacement

Grant of mineral rights and licences

□ Types of mineral rights (s. 111)

- Reconnaissance Licence , Prospecting Licence (**exploration rights**), Mining Lease (**exploitation rights**),
- Restricted Minerals Rights in respect of industrial minerals – e.g., clay, sand, granite, salt
- Small Scale Mining Licence

□ Ratification: every mining lease granted by the Minister must be ratified by Parliament. (Art. 268(1), Constitution, 1992)

*“Any transaction, contract or undertaking involving the grant of a right or concession by or on behalf of any person including the Government of Ghana, to any other person or body of persons howsoever described, for the **exploitation of any mineral, water or other natural resource of Ghana** made or entered into after the coming into force of this Constitution shall be subject to ratification by Parliament.”*

Who qualifies for a mineral right or small-scale mining licence

- ❑ **Qualification for a mineral right (s. 10, Act 703)**
 - Body incorporated under the Companies Act, 2019 (Act 992), or
 - Body incorporated under the Incorporated Private Partnerships Act 1962 (Act 152)

- ❑ **Industrial Minerals (Restricted Minerals)**

General Rule: may be granted to only Ghanaian citizens (s. 78)

Exception: may be granted to a non-Ghanaian provided the proposed investment in the mineral operations is at least US\$10M (s. 79)

- Failure to expend at least US\$10M within timeframe may result in the cancellation of mineral right.

- ❑ **Qualification for a SSM Licence (ss. 83 & 85)**

- An individual,
- A group of persons,
- A co-operative society
- A company.

SSM may be granted to Ghanaian citizens only; All natural persons must be at least 18 years

Compensation and local content issues

❑ Compensation and resettlement issues (ss. 72 – 75, Act 703)

- ❑ Compensation is payable to owner or lawful occupier of land for disturbance of surface rights.
- ❑ Inhabitants of land subject to a mineral right may also be resettled by the mineral right holder under certain conditions. (also, Minerals and Mining (Compensation and Resettlement) Regulations 2012, (LI 2175)

❑ Local content (ss. 50, 59 & 105, Act 703)

Objective: to promote participation by Ghanaians in the entire mining value chain

Expanded in

- Minerals and Mining (General) Regulations 2012, (LI 2173),
- Minerals and Mining (Support Services) Regulations, 2012 (L.I. 2174) and
- Minerals and Mining (Local Content and Local Participation Regulations, 2020 (LI 2431)

Government Interests and Fiscal matters

□ Government's Free Carried Interest (s. 43, Act 703)

- Government has 10% free carried interest in the rights and obligations of **mining lease holders**.
- Gov't is entitled to equity shares in the company.
- No financial contribution by Gov't.

□ **Guaranteed Advance Payment:** Included in some recently negotiated development agreements

- If the company does not declare dividends, Government will be paid an amount mutually agreed upon until such time that dividends are paid, then it will be deducted from Government's share of dividend.
- E.g. Newmont Ghana, Goldfields Ghana, AngloGold Ashanti

Government Interests and Fiscal matters

□ Fiscal Payments

- **Ground Rent:** Payable by all mineral right holders to land owners. **(s. 23, Act 703)** In the case of stool lands, the Office of Administrator of Stool Lands (OASL) collects the payments and distributes to the relevant stools.
- **Royalties:** Payable by holders of exploitation mineral rights to the State – i.e., mining lease, restricted mining lease or SSM licence. **(s. 25)**. Currently the rate is **5% of the total revenue of minerals won.**
- **Annual Mineral Right Fees :** Paid by all mineral right holders annually to Mincom. **(s. 24)**
- **Corporate Income Taxes:** 35% for mining companies
- **Income Tax - Pay As You Earn (PAYE)**

Dealings in mineral rights

- **Dealings** in mineral rights require the approval of the Minister. (s. 14)
 - Transfers
 - Joint Ventures
 - Option Agreement
 - Mortgages etc.

- **Change of controller** of a mining company (i.e., a mining lease holder) requires Ministerial approval. (s. 52)
 - “**controller**” in relation to a company, means a person who, either along or with an associate or associates, is entitled to exercise, or control the exercise of **more than twenty per cent of the voting power** at any general meeting of the mining company or of another company which it is a subsidiary”

 - * 100% change in control will be treated as a transfer.

Stability Agreements

- ❑ Stabilizes the fiscal laws/regime at the time of the Agreement so that the company is not adversely affected by subsequent changes to the regime. **(s. 48)**
 - (a) 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,
 - (b) the level of and payment of royalties, taxes, fees and other fiscal imports, and
 - (c) laws relating to exchange control, transfer of capital and dividend remittance

- ❑ **Qualification for stability agreement:** Applicant must hold mining lease

- ❑ **Duration:** not exceeding 15 years

- ❑ **Ratification:** A Stability Agreement is subject to ratification by Parliament

Development Agreements

- ❑ Stabilizes the fiscal laws at the time of the Agreement plus other negotiated benefits. **(s. 49)**
 - (a) relating to the mineral right or operations to be conducted under the mining lease,
 - (b) relating to the circumstance or manner in which the Minister will exercise a discretion conferred by or under this Act,
 - (c) on stability terms as provided under section 48
 - (d) dealing with the settlement of disputes.

- ❑ **Qualification for development agreement:**
 - Applicant must hold mining lease
 - Applicant must show a proposed investment of US\$500M

- ❑ **Duration:** duration may be negotiated by the Parties

- ❑ **Ratification:** A Development Agreement is subject to ratification by Parliament

Dispute Resolution

1. General Dispute resolution (s. 27)

First, attempt amicable resolution through mutual discussion.

Next, referral to Arbitration.

- ❑ **Dispute between a Ghanaian and the Republic:** Local Arbitration E.g., Alternative Dispute Resolution Act, 2010 (Act 798)

s. 6 of Act 798:

- (1) Where there is an arbitration agreement and a party commences an action in a court, the other party may on entering appearance, and on notice to the party who commenced the action in court, apply to the court to refer the action or a part of the action to which the arbitration agreement relates, to arbitration.
- (2) The court on hearing an application made under subsection (1) shall, if satisfied that the matter in respect of which the application has been made is a matter in respect of which there is an arbitration agreement, **refer the matter to arbitration.**
- (3) The grant of an application shall serve as stay of the proceedings in the court.

Dispute Resolution

❑ **Dispute between a non-Ghanaian and the Republic: International Arbitration.**

International Centre for the Settlement of Investment disputes (ICSID)

United Nations Commission on International Trade Law (UNCITRAL)

International Chamber of Commerce (ICC)

E.g. Dunkwa Continental Goldfields Limited, Continental Construction and Mining Company Limited v. Government of the Republic of Ghana, ICC Case No. 18294/ARP/MD/TO (Final Award 30 July 2015)

2. Dispute resolution for compensation issues (ss. 73 & 75)

- First, negotiation between the mineral right holder and the claimant
- Referral to Minister / Land Valuation Division of the Lands Commission
- High Court

Penalties for breaches of Act 703 or terms of mineral rights

❑ Suspension and cancellation of mineral right (s. 68) (General)

A mineral right may be suspended or cancelled if the holder

- a) fails to make required payments;- e.g.. Ground rent, royalties
- b) becomes insolvent or bankrupt;
- c) makes a false statement in connection with the mineral right or
- d) for a reason, becomes ineligible to apply for a mineral right under the Act. Eg. by operation of law

❑ Suspension or cancellation of mining lease or restricted mining lease (s. 69) (Specific)

- Minister may suspend or cancel a mining lease or a restricted mining lease if the holder has failed other than for good cause, for a period of two years or more, to carry out any or a material part of the holder's programme or mineral operations.

❑ Fines (ss. 106 – 108, Act 703; others prescribed by regulations.

Action upon termination

- ❑ **“Termination”** means the lapse of mineral right by expiry of time, surrender or cancellation. (s. 111, Act 703)

- ❑ **Vesting of property on termination of mineral rights.**
 - Mining plant must be removed within 6 months or as allowed by the Minister, otherwise it shall vest in the Republic.
 - May be removed solely for use in another relevant mining activity in the country **unless** the land is the subject of a new mineral right held by the same person.
 - Termination of a mineral right **does not extinguish or diminish the former holder’s obligation** under Act 703 or another enactment to remove a mining plant and rehabilitate the land.

*Thank
you!*