

GUIDANCE



THE REGULATORY REGIMES FOR BUSINESS OPERATIONS IN GHANA - PART III

PART III: NATURAL RESOURCES RELATED BUSINESSES IN GHANA

This PART III of the **“SUSTINERI GUIDANCE”** for the month of March 2024 seeks to review the regulatory compliance demands on businesses operating in the Natural Resources and Renewable and recommend ways businesses can improve their compliance culture.

The following compliance demands are outlined on the basis that any related business will have complied with regulatory demands highlighted as “General” in Part I of this month’s “Sustineri Guidance”.

NATURAL RESOURCES

1. MINING



The key legislation regulating mining in Ghana are the 1992 Constitution of Ghana, the Minerals and Mining Act, 2006 (Act 703), as amended by the Minerals and Mining (Amendment) Act, 2015 (Act 900), the Minerals and Mining (Amendment) Act, 2019 (Act 995), and the Minerals Commission Act, 1993 (Act 450). It should be noted that there are other subsidiary legislation that regulate different aspects of the mining sector.

The agency that has the mandate and is responsible for issuing a mining license is the Minerals Commission. In addition to granting of licenses, the Minerals Commission undertakes the coordination and implementation of policies related to mining in Ghana.

Other relevant regulatory bodies include the Ministry of Lands and Natural Resources, the Ministry of Environment, Science, Technology and Innovation, the Forestry Commission, and the Environmental Protection Authority.

There are various types of Mineral Rights and Licenses available in Ghana. They include:

- i. Reconnaissance License
- ii. Prospecting License
- iii. Mining Lease
- iv. Restricted Mining Lease
- v. Small Scale Mining License

HOW CAN YOU OBTAIN A MINING LICENSE IN GHANA?

- i. You will first have to submit your application to the Minerals Commission.
- ii. After the submission of the application, the Minerals Commission will publish particulars of the application in the Gazette (the government's official publication)
- iii. The various stakeholders in the mining industry (Forestry Commission, Environmental Protection Agency etc.) will then submit any concerns they have to the Minerals Commission on your application.
- iv. If satisfied, the Minerals Commission will recommend your application to the Minister responsible for Natural Resources.
- v. The Minister will decide whether or not your application should be approved.
- vi. If your application is approved, you must pay the applicable registration and licensing fees.
- vii. After paying the requisite fee, the Minister will issue the license to you.

2. OIL AND GAS



a. **UPSTREAM ACTIVITIES**

All companies which intend to operate in Ghana's upstream petroleum sector are required to register with the Petroleum Commission and be issued with a permit (renewable annually) before commencement of operations.

Application Process

- i. First, you must acquire an application pack from the Petroleum Commission upon paying a non-refundable fee.
- ii. The application form and associated documents must be submitted to the Petroleum Commission. These documents include a cover letter, certificate of incorporation, certificate to commence business, company regulations, audited financial statements etc.
- iii. In the case of Joint Venture Companies, further documents and information would have to be provided by the applicant to the Petroleum Commission.
- iv. The Petroleum Commission will only issue a license when all requirements are satisfactorily met.
- v. If your application is successful, you must pay appropriate fees based on their Annual Turnover (for already existing companies) or projected revenue (for newly formed companies) in accordance with the Petroleum Commission (Fees and Charges) Regulations, 2015 (L.I. 2221).
- vi. Permits will only be issued by the Petroleum Commission after the applicant has satisfactorily met all requirements and paid the appropriate fee.

b. **DOWNSTREAM ACTIVITIES**

The National Petroleum Authority has the core mandate of granting licenses and permits to Petroleum Service Providers (PSPs) in the Petroleum Downstream Industry.

The activities and operations of the Licensing Department are strongly backed by Sections 11 (1) and (2) of the National Petroleum Authority Act, 2005 (Act 691) which prohibits individuals or companies from engaging in a business or commercial activity in the downstream industry unless that person has been granted a license for that purpose by the Board.

The business or commercial activities of the downstream industry in respect of crude oil, gasoline, diesel, liquefied petroleum gas, kerosene, and other designated petroleum products are: (a) Importation, (b) Exportation, (c) Re-exportation, (d) Shipment, (e) Transportation, (f) Processing, (g) Refining, (h) Storage, (i) Distribution, (j) Marketing, and (k) Sale.

Application Process

- i. First, you must apply to the National Petroleum Authority (NPA) for the license.
- ii. You would then have to submit the completed application form along with the required documents, such as your business plan, financial statements, tax clearance certificate, and proof of ownership or lease of your proposed business premises.
- iii. After submitting your application, the NPA will review it and conduct a due diligence check on your company and its directors.
- iv. If the NPA is satisfied with the contents of your application, it will be approved, and you will be issued with a downstream petroleum license upon the payment of a prescribed fee.

c. **NATURAL GAS**

The Energy Commission (EC) is required under section (11)(a) of the Energy Commission Act, 1997 (Act 541) to license operators in the electricity, midstream oil, and natural gas industries.

Specifically, the EC grants licenses for natural gas processing, liquefied natural gas (LNG) facilities, natural gas wholesale supply, natural gas transmission, natural gas distribution and natural gas sale.

The procedure for acquiring such licenses is outlined in the Licensing Manuals for service providers in the electricity and natural gas supply industries.

The License and Permit Application Manual for Service Providers in the Natural Gas Supply Industry is being developed to formally establish the framework for licensing natural gas processing, wholesale supply, transmission, distribution, and sale, as well as licensing Liquefied Natural Gas (LNG) facilities, and granting of permits to bulk customers as stipulated by the Energy Commission Act.

3. PRECIOUS MINERALS



A. PMMC

Precious Minerals Marketing Company (PMMC) Ltd was established in 1963 as Ghana Diamond Marketing and is the authorized body, legally permitted to grade, assay, value, process, buy and sell precious minerals and to license agents in Ghana.

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 jewelry
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.

B. LICENSE TO BUY AND EXPORT GOLD

It is imperative to note that, in Ghana, an individual needs 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 Minerals 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 includes gold and diamond but does not include petroleum resources as the latter is under a separate regulatory regime. It is important to note further that, the 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).

ABOUT THE FIRM

SUSTINERI ATTORNEYS PRUC is Ghana's foremost Start-up and Technology law firm specializing in Corporate, Transactions, Tax, and Dispute Resolutions.

At the core of our practice is our competitive advantage of leveraging our professional, entrepreneurial, and sound legal understanding of Ghana's commercial ecosystem to simplify client problems and deliver outstanding results.

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