

Legal and Regulatory Requirement for the Export of Gold from Ghana; The Need For Due Diligence

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Ghana possesses abundant natural resources, particularly gold, which has played a crucial role in the country's development. The stable economy and rich resources, especially gold, have attracted foreign entities to engage in business partnerships for the export of these resources. However, caution is advised due to the presence of unscrupulous entities posing as licensed gold buyers.

To address this issue, it is essential for foreigners, whether individuals or companies, to conduct due diligence before engaging with local Ghanaian entities for gold purchase and export. This is a regulated industry governed by institutions such as the Minerals Commission, the Ministry of Land and Natural Resources, and the Precious Mineral Marketing Company (PMMC).

PMMC, established in 1963, operates as the government's assayer, with functions including grading, assaying, valuing, processing, buying, and selling precious minerals. Due diligence should be focused on

verifying the licensing of local entities and understanding all factors that may impact the transaction.

In Ghana, individuals need a license to buy and deal with minerals, and the export of gold requires a license under the Minerals and Mining Act, 2006 (Act 703). The Minister, in consultation with the Minerals Commission, can issue licenses to suitable persons for buying and dealing in specified minerals.

The Minerals Commission has provided guidelines for the export of gold in Ghana, including notifying the PMMC two working days before export, submitting gold ore for assay, and following specific procedures for documentation and sealing. Licensed Gold Exporters must submit monthly returns to the Minerals Commission and adhere to a withholding tax of 1.5% along with other statutory fees.

Foreign entities engaging in gold export business in Ghana are strongly advised to have legal representation. The legal representative should conduct due diligence on the Licensed Gold Exporter, provide professional advice on regulatory changes, and ensure that the transaction

adheres to laws and regulations. Additionally, the legal representative should draft a comprehensive agreement to govern the transaction and protect the interests of all parties involved.

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 Minerals Commission, may in writing license people 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, 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).

Legal Representative

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.

Export Guidelines for Gold in Ghana:

The Minerals Commission has established procedures governing the export of gold in Ghana. These guidelines are applicable to Licensed Gold Exporters (LGE), excluding holders of mining leases. Key points include:

1. LGEs planning to export gold must notify the Precious Minerals Marketing Company Limited (PMMC) in writing at least two working days before the weekly export.
2. The LGE must submit gold ore for assay at a designated center, along with declaration documents, a Packing List, and an Invoice.
3. The PMMC will determine the gold content using an agreed assay method with the LGEs and Minerals Commission.
4. The PMMC will issue an analysis report to the Bank of Ghana (BOG), the Ghana Revenue Authority Custom Officer, and the Minerals Commission.
5. The PMMC will invoice the LGE for the assay at a rate of 0.1% of the gold value, payable to PMMC, in addition to any Minerals Commission fees.
6. Gold Buying Agents of the PMMC may use permits until expiry but won't be renewed; new permits must be obtained from the Minerals Commission.
7. The GRA Customs Official at the Assay Centre will inspect and supervise the sealing of assayed gold ore, endorsed on the Customs Declaration Form.
8. The LGE must complete required documentation at Kotoka International Airport (KIA) before exporting assayed gold.
9. Gold ore cannot be exported without seals from the Customs Division, PMMC, and accompanying full documentation.
10. LGEs must submit monthly returns to the Minerals Commission as per their license agreements.
11. A 1.5% Withholding Tax applies to all exports, along with other statutory fees.