

LEGAL AND REGULATORY REQUIREMENTS FOR
EXPORTING GOLD FROM GHANA: THE NEED FOR DUE DILIGENCE
INTRODUCTION (MFA GM/794)

NATURAL OR JURIDICAL PERSONS (COMPANIES) SEEKING TO ENGAGE IN GOLD PURCHASE AND EXPORT FROM GHANA NEED TO UNDERSTAND THAT THIS IS A REGULATED INDUSTRY. IT IS GOVERNED BY LAWS WITH ESTABLISHED INSTITUTIONS MANDATED TO ENSURE COMPLIANCE.

THESE INSTITUTIONS INCLUDE THE MINERALS COMMISSION (MC) OF GHANA AND THE PRECIOUS MINERAL MARKETING COMPANY (PMMC). AMONG OTHERS. THERE IS, THEREFORE, THE NEED FOR INDIVIDUALS AND COMPANIES (FOREIGNERS) TO UNDERTAKE DUE DILIGENCE BEFORE UNDERTAKING TO ENGAGE A LOCAL GHANAIAAN ENTITY OR AN INDIVIDUAL FOR THE PURCHASE AND EXPORT OF GOLD.

IT IS NOT ONLY ADVISABLE TO UNDERTAKE DUE DILIGENCE ON THE LOCAL ENTITIES AND INDIVIDUALS IN GHANA, BUT IT IS IMPERATIVE TO AVOID BEING SCAMMED BY UNLICENSED ENTITIES.

PRECIOUS MINERAL MARKETING COMPANY (PMMC)

THE PRECIOUS MINERALS MARKETING COMPANY (PMMC) IS MANDATED BY LAW TO PERFORM THE FOLLOWING FUNCTIONS;

1. TO GRADE, ASSAY, VALUE, AND PROCESS PRECIOUS MINERALS
2. TO BUY AND SELL PRECIOUS MINERALS
3. TO PERFORM ANY FUNCTIONS CONFERRED UPON IT BY THE DIAMOND DECREE, 1972 (N.R.C.D. 32):
4. TO APPOINT LICENSED BUYING AGENTS FOR THE PURCHASE OF PRECIOUS MINERALS PRODUCED BY SMALL SCALE-MINERS:

5. TO PROMOTE THE DEVELOPMENT OF PRECIOUS MINERALS AND JEWELLERY INDUSTRY IN GHANA; AND
6. TO DO ALL SUCH THINGS AS ARE INCIDENTAL OR CONDUCTIVE TO THE ATTAINMENT OF ITS OBJECTIVES AND FUNCTIONS.

THE COMPANY NOW OPERATES AS THE GOVERNMENT'S ASSAYER WITH THE SOLE MANDATE OF ASSAYING ALL GOLD, WHICH LEAVES THE COUNTRY.

DUE DILIGENCE

PRIOR TO THE PURCHASE OF GOLD, DUE DILIGENCE SHOULD BE CONDUCTED TO;

1. ESTABLISH THAT THE INDIVIDUAL AND OR ENTITY THAT IS THE LOCAL COMPANY) THE FOREIGN ENTITY OR INDIVIDUAL INTENDS TO ENGAGE FOR GOLD PURCHASE AND EXPORT IS LICENSED IN GHANA, AND
2. IDENTIFY ALL FACTORS THAT WILL AFFECT THE TRANSACTION.

BESIDES, PROSPECTIVE BUYERS OF GOLD SHOULD CONDUCT AS MUCH RESEARCH AS IS NECESSARY TO ACHIEVE THE LEVEL OF COMFORT BEFORE ENTERING INTO GOLD PURCHASE AND EXPORT TRANSACTIONS IN GHANA.

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 BY THE MINERALS AND MINING ACT. 2006 (ACT 703). IT PROVIDES AMONG OTHERS THAT, THE MINISTER IN CONSULTATION WITH THE

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 SHOULD BE NOTED THAT, 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).

GUIDELINES FOR THE EXPORT OF GOLD IN GHANA

THE MINERALS COMMISSION HAD ISSUED A DIRECTIVE AND OR PROCEDURES TO GOVERN THE EXPORT OF GOLD FROM GHANA. THE FOLLOWING PROCEDURES SHALL GOVERN THE EXPORTATION OF GOLD BY LICENSED GOLD EXPORTERS (LGE) OTHER THAN THE HOLDERS OF MINING LEASES. THESE MEASURES ISSUED BY THE MINERALS COMMISSION SHALL BE IN FORCE UNTIL SUBSTITUTED BY OTHER PROCEDURES THAT MAY SUBSEQUENTLY BE PRESCRIBED. THESE INCLUDE THE FOLLOWING;

1. A LICENSED GOLD EXPORTER (LGE) WHO INTENDS TO EXPORT GOLD SHALL INFORM THE PRECIOUS MINERALS MARKETING COMPANY LIMITED (PMMC) IN WRITING OF ITS EXPORT PLANS AT LEAST TWO (2) WORKING DAYS BEFORE THE PLANNED WEEKLY EXPORT.

2. THE LGE SHALL SUBMIT THE GOLD ORE TO BE ASSAYED BY PMMC AT A DESIGNATED ASSAY CENTRE, TOGETHER WITH ALL DECLARATION DOCUMENTS, PACKING LIST. AND INVOICE.

3. THE PC SHALL DETERMINE THE GOLD CONTENT OF THE GOLD ORE PRESENTED

BY THE LGE USING THE APPROPRIATE ASSAY METHOD AS AGREED BY THE LGES, MINERALS COMMISSION, AND THE PMMC.

4. THE PMMC SHALL PREPARE A REPORT OF ANALYSIS OF THE GOLD ORE PRESENTED BY THE LGE AND ISSUE COPIES INSTANTLY TO THE BANK OF GHANA (BOG), THE GHANA REVENUE AUTHORITY CUSTOM OFFICER STATIONED AT THE ASSAY CENTRE AND THE MINERALS COMMISSION.

5. THE PMMC SHALL INVOICE THE LGE IN RESPECT OF THE ASSAY AT THE AGREED RATE OF 0.1% OF THE VALUE OF GOLD ASSAYED, AND THE LGE SHALL PAY THE SAME TO PMMC. THE PAYMENT OF THIS FEE IS WITHOUT PREJUDICE TO ANY FEE THAT MAY BE CHARGED BY THE MINERALS COMMISSION.

6. ALL GOLD BUYING AGENTS OF THE PC. BEFORE THIS PUBLICATION, MAY CONTINUE TO USE THEIR PERMITS UNTIL THE EXPIRY OF THE PRESENT TERM OF THE LICENSE AND SAME SHALL NOT BE RENEWED BY THE PMMC UPON EXPIRY. ALL SUCH GOLD BUYING AGENTS SHOULD IMMEDIATELY CONTACT THE MINERALS COMMISSION FOR FURTHER DIRECTIONS REGARDING THE USE OF THEIR PERMITS. ALL PERSONS WHO DESIRE TO OBTAIN PERMITS FOR BUYING GOLD SHALL APPLY TO THE MINERALS COMMISSION.

7. THE GRA CUSTOMS OFFICIAL AT THE ASSAY CENTRE SHALL INSPECT AND SUPERVISE THE SEALING OF THE ASSAYED GOLD ORE WITH THE CUSTOMS DIVISION'S SEAL AND ENDORSE THE CUSTOMS DECLARATION FORM. THE SEALING OF THE ASSAYED GOLD ORE BY THE CUSTOMS OFFICIAL SHALL BE DONE IN THE PRESENCE OF AN AUTHORISED REPRESENTATIVE OF THE ASSAY CENTRE, WHO SHALL ALSO AFFIX THE SEAL OF THE PMMC ASSAY CENTRE AT THE SAME TIME.

8. THE LGE SHALL COMPLETE THE REQUIRED DOCUMENTATION AT THE KOTOKA INTERNATIONAL AIRPORT (KIA) BEFORE EXPORTING THE ASSAYED GOLD.

9. UNDER NO CONDITION SHALL GOLD ORE BE EXPORTED BY LGE WITHOUT THE SEALS OF THE CUSTOMS DIVISION OF THE GHANA REVENUE AUTHORITY AND THE GOVERNMENT DESIGNATED LABORATORY, I.E., PMMC AND ACCOMPANIED WITH FULL DOCUMENTATION.

10. ALL LGE SHALL SUBMIT MONTHLY RETURNS TO THE MINERALS COMMISSION IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THEIR LICENSE AGREEMENTS.

LOCAL LEGAL REPRESENTATIVE (LLR)

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.