

On point

Local Content Requirements for the Mining Sector - Introduction of L.I. 2173

The Mining industry operations in Ghana are guided by the Minerals and Mining Act, 2006 (Act 703) ("MMA"). In accordance with Section 110 of the MMA, a legislative instrument has been introduced by the Minister responsible for Mines in exercise of the powers conferred on him under the MMA.

This Regulation [i.e. Minerals and Mining (General) Regulations, 2012 – L.I.2173] is to take effect from 20 March 2012 and is aimed at providing clearer interpretations of some provisions of the MMA.

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The Regulation focuses on three (3) main areas as pointed out below:

- ✓ the recruitment of expatriates and promotion of local workforce;
- ✓ the procurement of locally produced goods and services; and
- ✓ additional licensing and reporting requirements.

L.I. 2173 would in no doubt facilitate the implementation of these local content requirements which had previously been covered in a generic form under the MMA. It is expected that from the effective date of implementation of this Regulation, strict adherence to these guidance would be maintained by all affected businesses.

It is also important to note that L.I. 2173 provides clear but very burdensome and punitive measures in the event of a default.

Restrictions on expatriate recruitment and promotion of local workforce

The Regulations aim to promote growth in local knowledge and to minimise the number of expatriates assigned to jobs that require modest qualifications and could be performed by Ghanaians.

The Regulations require that an application for a license or right to provide mine support services is accompanied by a proposal in respect of the employment and training of Ghanaians:

- These particulars include among others:
- the positions to be filled by expatriates, their job descriptions, duration of contract and conditions of service of the expatriates;

- a statement indicating how the applicant intends to train Ghanaians to replace the expatriates within a specified time frame; and
- the level of compliance with requirements of the Regulations.

This proposal is to be attached to a license application and afterwards submitted within each 5-year interval.

Further, the grant of immigration quota to license holders would be subject to the approval of this proposal by the Minerals Commission.

For existing license holders, an approval would also be required of its programme to recruit and train Ghanaians including its plan to replace expatriates with Ghanaians, as well as the percentage of

expatriate staff relative to total number of staff.

Particularly for mining lease license holders, it is expected that the percentage of expatriate workers to the total workforce would not exceed 10% and 6% for the first 3 years and after the 3rd year respectively.

Unskilled labour and clerical positions are also to be generally reserved for Ghanaians.

Based on the above, mining businesses face the risk of being denied their immigration quota where their program is not approved by the Minerals Commission or where they do not adhere to the implementation of the approved program.

Procurement of local products

The Regulations also aim to promote procurement of local products. Major requirements are as follows:

- ✓ Mineral right holders and providers of mining support services are required to maintain procurement plans in which local products are to be procured and utilised to the extent possible;
- ✓ The procurement plan is to be submitted within a year after the commencement of this Regulation and should cover an initial period of 5 years;
- ✓ The Minerals Commission is to maintain a procurement list with goods and services with Ghanaian content which are to be procured by mining businesses. This procurement list shall be revised annually; and
- ✓ On 31 January of each year, mining businesses with approved localisation program are to submit an annual report showing their level of compliance with the program.

Mining business risk the possibility of becoming liable to the import duties that may have ordinarily been waived on imported goods if they fail to procure the items specified in the procurement list.

Additional licencing and reporting requirements

The Regulations expands the licensing requirements for applicants of a mining lease, to include license to purchase, export, sell or dispose of minerals, license to export industrial minerals and other mining-related license holders.

Licence holders of a mining lease are to accompany their proposals for a licence to export, sell or dispose of minerals, with a refining contract and a sales and marketing agreement.

Additionally, a licence holder shall also provide to the Mineral Commission particulars of the quantity and grade of the minerals to be shipped and access to the samples taken to the Government approved laboratory for assaying.

Other applicants are also to accompany their proposals for licence with some specified information for the Minister's consideration including a localisation programme in accordance with the Regulations.

It is also important to note that the Regulations require holders of a licence to export, sell and dispose of minerals to submit monthly and annual returns in the prescribed form.

The key question to be addressed is whether Ghana has built the capacity necessary for these local content requirements to be realistically implemented and what will become of these Regulations at end of the first year.

Available publications

Copies of the following publications are available to be sent to you upon request:

- 2011 Ghana Tax Facts and Figures
- 2012 Ghana Budget Highlights
- Oil and Gas Matters Newsletter
- Quick Guide to Setting up in Ghana.
- On point publications on:

- transfer pricing
- recent tax amendments
- 3rd tier pension stakeholders

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