

P.N.D.C.L. 219

PRECIOUS MINERALS MARKETING CORPORATION ACT, 1989

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P.N.D.C.L. 219**PRECIOUS MINERALS MARKETING CORPORATION ACT, 1989¹**

AN ACT to establish a precious minerals marketing corporation and to provide for related matters.

*Establishment***1. Establishment of the Corporation**

(1) There is hereby established a body corporate to be known as the Precious Minerals Marketing Corporation.

(2) The Corporation shall have perpetual succession and a common seal and may sue and be sued in its corporate name.

(3) The Corporation may for the discharge of its objects and for the performance of its functions, acquire and hold movable or immovable property or enter into a contract or transaction.

2. Objects and functions of the Corporation

The objects and functions of the Corporation are,

- (a) to grade, assay, value and process precious minerals;
- (b) to buy and sell precious minerals;
- (c) to perform any of the functions conferred upon it by the Diamond Act, 1972;²
- (d) to appoint licensed buying agents for the purchase of precious minerals produced by small-scale miners;
- (e) to promote the development of precious minerals and jewellery industry in Ghana; and
- (f) to do any other things that are incidental or conducive to the attainment of its objects and functions.

3. Conduct of affairs on sound commercial lines

(1) The Corporation shall conduct its affairs on sound commercial lines.

(2) The Minister may give directions of a general nature to the Corporation and the Corporation shall give effect to them.

*The Board***4. The Board of the Corporation**

(1) The governing body of the Corporation is a board of directors appointed by the President in accordance with article 70 of the Constitution and consisting of

- (a) the chairman,

1. The Act was issued as the Precious Minerals Marketing Corporation Law, 1989 (P.N.D.C.L. 219) made on the 19th day of April, 1989, and notified in the *Gazette* on 16th June, 1989.
2. N.R.C.D. 32.

- (b) the managing director appointed under section 10, and
- (c) seven other members.

(2) A member, other than the managing director, shall hold office for a term of three years and is eligible for re-appointment.

(3) A member, other than the managing director, may resign from office by writing addressed to the President who may remove a member from office.

(4) A member, other than the managing director, shall be paid the allowances determined by the Board with the approval of the President.

5. Functions of the Board

The Board is responsible for the formulation of policies for the proper management of the Corporation and for ensuring that the policies, objects and functions of the Corporation are carried out.

6. Qualifications of members of the Board

(1) A person is not qualified to be a member of the Board if that person

- (a) has been sentenced to death or to a term of imprisonment not exceeding twelve months without the option of a fine or has been convicted of an offence involving dishonesty or moral turpitude and has not in each case been granted a free pardon;
- (b) having been declared as insolvent or bankrupt under a law in force in Ghana or any other country is undischarged insolvent or bankrupt; or
- (c) is adjudged to be a person of unsound mind.

(2) Where the office of a member becomes vacant the Minister shall notify the President of the occurrence of the vacancy and in the case of a member, other than the managing director, where the vacancy occurs before the term of office expires under subsection 19, a person shall be appointed in accordance with section 4 to hold that office for the unexpired portion of the previous holder's term of office.

(3) Subject to this Act where a member is incapacitated by reason of absence from Ghana, or illness or any other sufficient cause from performing the functions of office, the President may appoint another person to hold that office until the incapacity of that person has terminated or until the expiry of the term of office of that member, whichever first occurs.

7. Meetings of the Board

(1) The Board shall meet at least once in every three months for the dispatch of business at the times and at the places determined by the Board.

(2) A special meeting of the Board shall be called on a written request signed by the chairman or by a majority of the members addressed to the secretary of the Corporation.

(3) The chairman shall preside at meetings of the Board, and in the absence of the chairman a member of the Board appointed by the members present shall preside.

(4) Issues before the Board shall be determined by a simple majority of members present and voting, and in the event of an equality of votes the person presiding shall have a casting vote.

(5) The quorum at a meeting of the Board is four.

(6) The Board may co-opt a person to act as an adviser at any of its meetings, but a person co-opted is not entitled to vote at the meeting on a matter for decision by the Board.

(7) The validity of the proceedings of the Board shall not be affected by a vacancy among its members or by a defect in the appointment of any of them.

(8) A member who has an interest in a company or who has an interest in a contract which the Corporation proposes to enter into shall disclose in writing to the Board the nature of the interest, and unless the Board otherwise directs, is disqualified from participating in the deliberations of the Board on the contract and is disqualified from voting on a decision of the Board on the contract.

(9) A member who infringes subsection (8) shall be removed from the Board.

8. Committees

The Board may appoint the committees that it considers necessary to perform the functions or advise the Board on the matters that the Board may determine.

9. Use of the seal

(1) The use of the seal of the Corporation shall be authenticated by

- (a) the signature of the managing director or some other member authorised by the Board to authenticate the application of the seal, and
- (b) the signature of the secretary to the Corporation or some other officer of the Corporation authorised by the Board to act in the secretary's place for that purpose.

(2) The Corporation may by instrument in writing under its common seal empower a person generally or in respect of a specified matter as its attorney, to execute deeds or contracts on its behalf in a place not situated in Ghana.

(3) A deed or contract signed by the attorney on behalf of the Corporation and under the seal of the attorney is binding on the Corporation and has the same effect as if it were under the common seal of the Corporation.

(4) An instrument or contract which if executed or entered into by a person other than a body corporate would not require to be under seal, may be executed or entered into on behalf of the Corporation by the managing director or a member if that person has previously been authorised by a resolution of the Board to execute or enter into that particular instrument or contract.

(5) The Corporation may by writing under its common seal appoint a person outside Ghana as agent to contract or execute an instrument and the contract or instrument if executed or entered into on behalf of the Corporation shall have effect as if it has been duly executed or entered into as prescribed for the purpose of subsection (4).

(6) A document purporting to be an instrument executed or issued by or on behalf of the Corporation and to be

- (a) sealed with the common seal of the Corporation authenticated in the manner provided by subsection (1), or
- (b) signed by and under the seal of a person appointed as attorney under subsection (2), or
- (c) signed by the managing director or by a member or any other person authorised in accordance with subsection (3) to act for that purpose,

shall be deemed to be so executed or issued until the contrary is shown.

(7) This section has effect subject to section 9 or section 12 of the Contracts Act, 1960 (Act 25).

Administration

10. The managing director

(1) The Corporation shall have a managing director who shall be the chief executive of the Corporation.

(2) The managing director shall be appointed by the President and shall hold office on the terms and conditions determined by the President.

(3) The managing director, subject to the directions given by the Board on matters of policy, is responsible for the day-to-day administration and management of the affairs of the Corporation.

11. The general manager

(1) The Corporation shall have a general manager who shall be appointed by the Board, with the approval of the Minister.

(2) The general manager shall hold office on the terms and conditions that the Board may, with the approval of the Minister, determine.

(3) The general manager shall assist the managing director in the performance of functions under this Act and shall perform the functions that the Board or the managing director may assign.

(4) In the absence of the managing director, the general manager shall be responsible for the performance of the functions of the managing director.

12. Staff of the Corporation

(1) Subject to this Act, the Corporation may engage officers and any other employees necessary for the proper and efficient performance of the functions of the Corporation and on the terms and conditions that the Board may determine.

(2) The Corporation may engage the services of consultants and advisers determined by the Board on the recommendations of the managing director.

(3) The Board may delegate to the managing director the power to appoint the category of junior employees of the Corporation that the Board may determine.

(4) Public officers may be transferred or seconded to the Corporation.

13. Sponsoring of appointments

A member shall not personally sponsor or recommend an application for the employment of a person under this Act and a member who infringes that provision of this section is liable to be removed from the Board.

14. Staff welfare fund

(1) The Corporation shall have a staff welfare fund.

(2) At the end of each financial year, the Corporation shall transfer to the staff welfare fund a sum of money, not exceeding five percent of the net profits of the Corporation that the Board may determine.

(3) The Corporation may, with the approval of the Minister, use the staff welfare fund for the provision of staff facilities such as canteens, low interest bearing staff welfare loans and for other purposes aimed at enhancing the welfare of the staff of the Corporation.

(4) The operation of the staff welfare fund shall be subject to the specific rules and regulations made by the Board.

15. Secretary of the Corporation

(1) The Corporation shall have an officer to be designated as the secretary of the Corporation and the appointment shall be made by the Board.

(2) The secretary of the corporation shall act as secretary to the Board and shall, subject to the directions of the Board, arrange the business for and record and keep the minutes of the meetings of the Board.

(3) The secretary of the Corporation shall perform any other functions that the Board may direct or that the managing director may delegate to the secretary and shall be assisted in the performance of those functions by the staff of the Corporation that the managing director may direct.

Financial Provisions

16. Internal audit

(1) The Corporation shall have an internal auditor

(2) Subject to this Act, the internal auditor shall be responsible to the managing director for the performance of the functions of the internal auditor.

(3) The internal auditor shall, at intervals of three months, prepare a report on the internal audit work carried out during the period of three months immediately preceding the preparation of the report and submit the report to the managing director.

(4) Without prejudice to the general effect of subsection (3), the internal auditor shall make in each report the observations that appear necessary as to the conduct of the financial affairs of the Corporation during the period to which the report relates.

(5) The internal auditor shall send a copy of each report prepared under this section to the Minister and also to

- (a) the Minister responsible for Lands and Natural Resources,
- (b) the Minerals Commission, and
- (c) the chairman and each of the other members of the Board.

(6) This section shall be read and construed as one with the Internal Audit Agency Act, 2003 (Act 658) and where there is a conflict that Act shall prevail.

17. Funds of the Corporation

The Parliament may provide the Corporation with a working capital and moneys required for the performance of the functions of the Corporation.

18. Budget estimates

(1) The managing director shall prepare the budget estimates for each financial year and shall present the estimates to the Board for its approval not less than one month before the end of the financial year.

(2) The estimates shall then be forwarded to the Minister responsible for Finance through the Minister.

19. Depreciation fund

(1) The Corporation shall have a depreciation fund and for this purpose the Corporation shall open a depreciation reserve account with the Bank of Ghana.

(2) At the end of each financial year the Corporation shall transfer to the credit of the depreciation reserve account the amounts charged to profit and loss account in respect of depreciation for buildings, plant and equipment, fixtures and any other fixed assets.

(3) The amounts transferred to the depreciation reserve account shall be utilised only to replace fixed assets and equipment which are worn out or have become obsolete.

(4) Expenditure in respect of current repairs and in respect of purchases of spare parts shall not be met out of the depreciation reserve account but shall be charged to the income and expenditure account of the Corporation for the financial year during which the expenditure is incurred.

20. Payments into Consolidated Fund

At the end of each financial year, after the Corporation has made provision for

- (a) bad and doubtful debts,
- (b) depreciation of assets,
- (c) contribution to staff superannuation and staff welfare fund,

- (d) expansion and promotion activities, and
- (e) any other contingencies that the Board may determine,

that part of the profits of the Corporation remaining, that the Minister after consultation with the Board and the Minister responsible for Finance may in writing direct, shall be paid into the Consolidated Fund.

21. Borrowing powers

(1) The Corporation may obtain loans and any other credit facilities from the National Investment Bank or from any other Bank that the Minister and the Minister responsible for Finance may approve.

(2) In addition to the powers of the Corporation under subsection (1) the Corporation may with the prior approval of the Minister and the Minister responsible for Finance borrow money from any other source.

(3) For the purposes of a technical arrangement in connection with the raising of a loan under subsection (2), the Corporation shall, if the National Investment Bank agrees, use the services of that Bank.

(4) The Corporation may borrow temporarily by way of overdraft or otherwise the sums of money that it may require for meeting its current obligations or performing its functions.

(5) This section is subject to article 181 of the Constitution.

22. Financial control

(1) The Corporation shall in each financial year prepare a production and financial plan for the following financial year and shall not later than three months before the commencement of the new financial year for which it is prepared, submit the plan for approval to the Minister with copies to

- (a) the Minister responsible for Finance,
- (b) the Mineral Commission,
- (c) the Bank of Ghana, and
- (d) the Government Statistician.

(2) The production and financial plan shall show in respect of the financial year for which it is prepared,

- (a) the expected turnover and the gross and net receipts for the year;
- (b) a full breakdown of the Corporation's expected expenditure in terms of purchases, wages and salaries, overheads administrative cost and financial costs in the nature of loans and bank charges;
- (c) the income both in foreign currency and Ghana currency in respect of the financial year for which it is prepared;
- (d) the expected financial requirement of the Corporation of foreign currency and the sources, whether from the Corporation's own funds or otherwise from which these funds are expected to be derived to meet those requirements;

- (e) the production plan of the Corporation broken down into monthly and quarterly targets, each monthly target representing what the Corporation expects to accomplish in respect of each of the months of which the quarter consists; and
 - (f) any other particulars which the Minister may request.
- (3) The Minister may, after consultation with the Board, approve, amend or recommend changes in the production and financial plan as the Minister thinks fit.
- (4) The managing director
- (a) shall prepare and submit to the Board as soon as possible after the end of each quarter, a comprehensive operational report of the business of the Corporation during the quarter, and
 - (b) shall, unless the Minister otherwise directs, in writing state in each report whether or not in respect of that quarter the monthly targets referred to in subsection (2) (e) have been achieved, and where there has been a variation from those targets the main reasons for the variations.
- (5) The managing director shall send a copy of each report prepared under subsection (4) to the Minister with a copy to
- (a) the Minister responsible for Finance,
 - (b) the Minerals Commission,
 - (c) the Bank of Ghana, and
 - (d) the Government Statistician.

23. Books of account

The Corporation shall keep proper books of accounts and proper records in relation to the accounts in the form approved by the Auditor-General.

24. Financial year of Corporation

- (1) The Corporation's financial year shall end on the 31st day of December in each year.
- (2) For the purposes of subsection (1), the period extending from the commencement of this Act to the 31st day of December shall be deemed to be a financial year.

25. Audit

- (1) The books and accounts of the Corporation shall each year be audited by the Auditor-General and a report submitted to the Board.
- (2) The Corporation shall pay in respect of the audit the fee that the Auditor-General and the Board may agree on or in the case of failure to agree, the fee that the Minister may determine.
- (3) The Board shall as soon as possible on receiving the report of the Auditor-General forward a copy of the report to the Minister.

(4) The Minister shall as soon as practicable on receipt of the report lay before Parliament a copy of the Auditor-General's report under this section.

Miscellaneous

26. Annual report

(1) The Corporation shall, as soon as possible after the expiration of each financial year but within six months after the end of each financial year, submit to the Minister an annual report dealing generally with the activities and operations of the Corporation within that year which shall include

- (a) a copy of the audited accounts of the Corporation together with the Auditor-General's report on those accounts,
- (b) each report, submitted in relation to that financial year by the internal auditor under section 16, and
- (c) any other information that the Minister may by writing request.

(2) A copy of the annual report of the Corporation shall be sent by the managing director to

- (a) the Minister responsible for Finance,
- (b) the Minerals Commission,
- (c) the Government Statistician, and
- (d) the Bank of Ghana.

(3) The Minister shall as soon as possible after receiving the annual report of the Corporation, lay the report before Parliament.

(4) The Corporation shall also submit to the Minister any other reports, information and documents on its operations that the Minister may in writing request.

27. Regulations

The Minister may, by legislative instrument, make Regulations that are necessary for carrying this Act into effect.

28. Interpretation

In this Act, unless the context otherwise requires,

“**Auditor-General**” includes an auditor appointed by the Auditor-General;

“**Board**” means the governing body of the Corporation established by section 4;

“**Corporation**” means the corporation established by section 1;

“**member**” means a member of the Board;

“**Minister**” means the Minister responsible for Lands and Natural Resources;

“**precious minerals**” means gold, diamond, silver, platinum and any other precious minerals that the Minister may by executive instrument specify.

29. Revocation and saving*Spent.*²**30. Transfer of assets and liabilities***Spent.*³**31. Reference to Diamond Marketing Corporation***Spent.*⁴

2. The section provided as follows:

"(1) The Diamond Marketing Corporation Instrument, 1974 (L.I. 916) is hereby revoked.

(2) Notwithstanding the revocation of the Diamond Marketing Corporation Instrument, 1974 (L.I. 916)

(a) any regulation, by-laws or orders; and

(b) any appointment made thereunder in force immediately before the commencement of this Law, shall until altered, revoked, modified or terminated, continue in force as if made under the corresponding provision of this Law."

3. The section provided as follows:

"All rights, assets, properties, obligations and liabilities of the Diamond Marketing Corporation in existence before the commencement of this Law are hereby transferred to the Corporation established under this Law."

4. The section provided as follows:

"On the coming into force of this Law any reference to the 'Diamond Marketing Corporation' in any enactment shall be construed as a reference to the Precious Minerals Marketing Corporation."

