

MINERALS AND MINING (AMENDMENT) BILL, 2014

ARRANGEMENT OF SECTIONS

Section

1. Section 25 of Act 703 amended
2. Section 99 of Act 703 amended
3. Section 106 Act 703 amended
4. Section 107 of Act 703 amended
5. Section 110 of Act 703 amended
6. Repeal and savings

Minerals and Mining (Amendment) Bill, 2014

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BILL

ENTITLED

MINERALS AND MINING (AMENDMENT) ACT, 2014

AN ACT to amend the Minerals and Mining Act, 2006 (Act 703) to provide for Regulations to be made to prescribe the rate and manner for the payment of royalties; the confiscation of equipment used in illegal small scale mining and for related matters.

PASSED by Parliament and assented to by the President:

Section 25 of Act 703 amended

1. The Minerals and Mining Act, 2006 (Act 703), referred to in this Act as the principal enactment, is amended by the substitution for section 25 of

“Royalties

25. A holder of a mining lease, restricted mining lease or small scale mining lease shall, in respect of minerals obtained from its mining operations, pay royalty to the Republic at the rate and in the manner that may be prescribed.”

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Section 99 of Act 703 amended

2. The principal enactment is amended by the substitution for section 99 of

“Offences and penalties

99. (1) A person who sells or buys minerals without a licence granted under section 97 or 104 or without a valid authority granted under this Act or any other enactment commits an offence and is liable on summary conviction to a fine of not more than three thousand penalty units or to a term of imprisonment of not more than five years or to both.

(2) A person who,

(a) without a licence granted by the Minister, undertakes a small scale mining operation contrary to the provisions of this Act, or

(b) acts in contravention of a provision of this Act in respect of which a penalty has not been specified,

commits an offence and is liable on summary conviction to a fine of not more than three thousand penalty units or to a term of imprisonment of not more than five years or to both.

(3) A foreigner who undertakes small scale mining operations contrary to the provisions of this Act commits an offence and is liable on summary conviction to a fine of not less than thirty thousand penalty units and not more than three hundred thousand penalty units or to a term of imprisonment of not more than twenty years or to both.

(4) A Ghanaian who employs or engages a foreigner to illegally undertake or participate in small-scale mining commits an offence and is liable on summary conviction to a fine of not more than seventeen thousand penalty units or to a term of imprisonment of not more than ten years or to both.

(5) Where a person is arrested for an offence under subsection (3) or (4), any equipment used in or associated with the commission of the offence and any product derived from the commission of the offence shall, regardless of the ownership of the equipment or product, be seized and kept in the custody of the police.

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(6) A court which convicts a person for an offence under subsection (2), (3) or (4) shall in addition to the penalty that it may impose, order the forfeiture of any equipment or product seized under subsection (5) to the State.

(7) In this section, "court" includes the Circuit Court."

Section 106 of Act 703 amended

3. The principal enactment is amended in section 106 by the addition of a new subclause (2) as follows:

"(2) Without limiting section 99, a court before which a person is convicted under this Act shall order the forfeiture to the State of the mineral in respect of which the offence was committed."

Section 107 of Act 703 amended

4. The principal enactment is amended in section 107 by the deletion of subsection (2).

Section 110 of Act 703 amended

5. The principal enactment is amended in section 110 by the addition of a new paragraph after paragraph (u) in subsection (2) as follows:

"(v) prescribing the rate for royalty and the manner of royalty payments in respect of minerals."

Repeal and savings

6. (1) The Minerals and Mining (Amendment) Act, 2010 (Act 794) is repealed.

(2) Despite the repeal of Act 794, the rate of royalty in force immediately before the commencement of this Act shall continue in force until the rate is altered.

Date of *Gazette* notification: 15th October, 2014.

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MEMORANDUM

The object of the Bill is to amend the Minerals and Mining Act, 2006 (Act 703). The amendments are in two fold. The first is to enable the Minister make Regulations to prescribe a rate for royalty payments and the second is to provide for the confiscation of equipment used in illegal small scale mining.

With regard to the payment of royalties, *clause 1* amends section 25 of Act 703 to remove the fixed rate of five percent in respect of royalty payment provided in that section and to provide for royalty payment to be prescribed in Regulations. The amendment of section 25 is therefore to provide that the payment of royalty has to be made to the Republic at the rate and in a manner that is prescribed. The payment of royalty is in respect of minerals obtained from mining operations.

Clause 5 of the Bill goes further to amend section 110 of the Act by adding a new provision to empower the Minister to make Regulations to prescribe the rate and the manner of royalty payment in respect of minerals. The amendment in *clauses 1* and *5* will therefore enable the Government to make Regulations by legislative instrument for the purpose of giving effect to Government's policy on the rate, manner and period for payments of royalties by mining companies.

Clause 6 of the Bill repeals the Minerals and Mining (Amendment) Act, 2010 (Act 794) which imposes an obligation on a holder of a mining lease, restricted mining lease or a small scale mining licence to pay royalty in respect of the minerals obtained from its mining operations to the Republic at the fixed rate of five percent.

With regard to the activities of small scale illegal mining or "galamsey", their activities have reached epic proportions in the country due to many factors, including the influx of foreigners into the sector and the impunity of persons engaged in illegal small scale mining activities. These activities have had a devastating effect on the environment by destroying farmlands and polluting a large number of water bodies and thereby adversely affecting the livelihoods of the persons living in the communities where these activities take place.

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As part of efforts to deal with these issues and to manage the mining sector more effectively, a number of interventions have been undertaken by the Minerals Commission in collaboration with other agencies. The interventions include conducting geological investigations and blocking out areas for small scale mining, creation of district mining offices of the Minerals Commission to facilitate licensing and monitoring of small scale mining activities, reducing the burden and cost of obtaining a small scale mining licence, establishment of a national security sub-committee and regional task forces to drive out illegal small scale miners, provision of financial and technical assistance to small scale mining cooperatives, sensitisation and education of stakeholders to enhance regulation of the sector, and the promotion of the formation of small scale mining associations.

To complement these, there is the need to put in place a legislative framework to criminalise the activities of the illegal small scale miners who conduct their activities with impunity. Currently, section 99 of Act 703, which deals with offences and penalties in relation to small scale mining licence, does not make any provision for the criminalisation of mining by foreigners or Ghanaians without a permit.

Clause 2 of the Bill therefore amends section 99 to add a number of offences. These include the criminalisation of the engagement of foreigners in small scale mining operations. *Subclause (4) of clause 2* also makes it an offence for a Ghanaian to employ or engage a foreigner to undertake or participate in illegal small-scale mining. The *clause* also provides for the confiscation of equipment used in illegal small-scale mining activities.

These amendments will ensure that persons who engage in illegal small scale mining activities are convicted and punished severely enough to deter others from participating in these activities.

Clause 3 of the Bill amends section 106 of the Act by empowering the court to order the forfeiture to the State of any mineral extracted as a result of the offence.

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Furthermore, the Bill in *clause 4* amends section 107 by deleting the current subsection (2). This is to ensure strict liability for offences committed under the Act. In this regard, an accused person can be convicted even if it is proven that the accused person did not knowingly commit the offence.

HON. NII OSAH MILLS
Minister for Lands and Natural Resources

Date: 26th September, 2014.