

LESOTHO

WEBBER NEWDIGATE ATTORNEYS



FIRM INFORMATION

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?

Lesotho's mining industry is currently being guided by the adopted Minerals and Mining Policy, 2015 (the "Policy"). Further, there are multiple laws that regulate and/or affect the mining industry.

The Lesotho Constitution; the Land Act, 2010; Mines and Minerals Act, 2005 (hereinafter "MMA"); and the Precious Stones Order, 1970 (hereinafter "PSO") play an integral part in the handling of land and minerals in Lesotho. In addition to these laws mentioned there are numerous regulations promulgated under them.

The Constitution, among other laws and regulations, provides that all land and mineral rights vest in the Kingdom of Lesotho, and as such prospecting and mining can only be undertaken with the relevant mineral concessions provided by the Government of Lesotho.

The MMA, more specifically provides for rights to prospect and mine for minerals in the country. We note that the Government is currently working on a new regulatory framework – so that mining is regulated in a manner consistent with the countries adopted Policy.

The Environmental Act, 2008, further regulates mining and prospecting activities by making certain consents and licences peremptory in order to obtain mineral concessions in the country, this is further discussed herein below.

Which Government Bodies administer mining law?

Predominantly, the Government Body tasked with the administration of mining law is the Ministry of Mining. In terms of the MMA, the Minister of Mining supported by the Commissioner of Mines and the Mining Board administer mining law in accordance with the MMA.

For matters related to environmental law, it is the task of the Department of Environment to regulate environmental issues in accordance with the Environment Act, with the assistance of the National Environment Council.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

Prospecting License

In general, a prospecting license, issued in terms of the MMA, provides the holder thereof the following rights:

- The right to prospect for minerals to which the license relates;
- Make necessary excavations and drill boreholes; and
- Erect camps and put up temporary structures for machinery necessary for prospecting purposes.

A prospecting license is acquired by way of application to the Mining Board through the Commissioner of Mines. It is the Minister's role to approve, issue, renew, cancel or suspend prospecting licenses. In general, the license is issued for a period not exceeding two years and may be renewed, by way of application, for a further period not exceeding a year. The license is transferable subject to certain conditions in the MMA.

It should be noted that where a discovery of minerals occurs the licensee is obligated to acquire the written consent of the Commissioner before the removal of minerals from the prospecting area.

Mining Lease

In general, a mining lease, issued in terms of the MMA, confers to the holder thereof the following rights:

- The right to take all reasonable measures on or under the surface to mine the mineral to which the license relates;
- The right to erect the necessary equipment, plant and buildings for the purposes of mining, transportation, dressing, treating, smelting or refining minerals recovered by the lessee during mining operations;
- The right to dispose of any mineral product recovered;
- Prospect within the mining area for minerals for which the lessee holds the mining lease; and
- Stack or dump any waste product in a manner approved by the Authority, in terms of the EA.

A person wishing to obtain such a lease is entitled to apply to the Mining Board through the Commissioner. It is for the Minister of Mines to approve, issue, renew, cancel or suspend mining leases. The lease can be issued for a period not exceeding ten years and may be renewed for further periods of ten years, by way of application, not later than one year before the expiry of such lease. Such a lease may also be amended, by way of application, to include further mineral deposits found not included in the lessee's mining lease. The license is transferable subject to certain conditions of the MMA.

Mineral Permit

In general, a mineral permit, issued in terms of the MMA, confers onto the holder thereof the following rights:

- The right to mine the mineral to which the permit relates;
- The right to dispose of the mineral to which the permit relates; and
- The right to erect such temporary structures, other than residential buildings, as may be necessary for the purpose of mining.

Mineral permits are provided to those who wish to conduct small scale mining operations, over an area not exceeding 100m², for any mineral other than precious stones. Application for a permit can only be made to the Mining Board by a citizen of Lesotho. The permit is valid for a year from the date of issue and may, on application, be renewed for a further period not exceeding a year from the date of issue of renewal.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?

There are currently no rights granted to conduct oil and gas exploration in Lesotho.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?

An individual cannot acquire a mining right in his/her own name if that individual is not a major citizen of Lesotho. A company can acquire a mining right provided it is registered and established in Lesotho.

Are there any special rules or restrictions applicable to foreign applicants?

Apart from having to register a company under the laws of Lesotho, there are no restrictions or special rules relating to foreign applicants.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects?

The Government may, through the Ministry of Natural Resources, acquire not less than twenty percent shareholding in a proposed mine, and is required to inform an applicant of a mining lease as to whether the Government is taking up shareholding in the proposed mine.

The shareholding of the Government with relation to diamond mines are negotiated between the Government and the proposed mining operation and subsequently reflected in the mining lease agreement.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?

There are currently no requirements within Lesotho to beneficiate minerals mined. The Government is currently considering local beneficiation requirements.

Are there any restrictions on the export of minerals?

The Precious Stones Order regulates the export of precious stones with its main focus on the export and cutting of diamonds. Accordingly, no person may export diamonds mined in the Kingdom of Lesotho unless he/she is a licensed dealer or producer. A permit in this regard is thus required. Further, all the rules and regulations governing the export of diamonds are implemented in accordance with the Kimberly Process Certification Scheme.

In terms of the Precious Stones Order, the Minister may request a provider to make available a percentage of the company's diamond production for sale for local cutting and polishing.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Are there any statutory consents required to dispose of rights to explore and mine?

Prospecting license

Transfer may be made by application to the Mining Board to any person who meets the requirements to hold such a license. Where the Minister is satisfied that the transferee is qualified to hold said license the Mining Board shall notify the applicant of the approval of transfer. Upon transfer the transferee assumes all rights, obligations and liabilities under the prospecting license.

Mining Lease

A mining lease may only be transferred with the consent of the Minister of Mines. Approval is acquired by way of application and is subject to the same requirements as an application for a mining lease. Upon transfer the transferee assumes all rights, obligations and liabilities in terms of the mining lease agreement transferred.

Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?

Prospecting license

There are currently no restrictions on the disposal of a controlling interest in a prospecting operation.

Mining Lease

The regulations governing the transfer of a mining lease are the same as those for the transfer of a controlling interest held in a mining operation. As such, where a controlling interest in a mining operation is transferred the consent of the Mining Minister is required.

USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?

The MMA provides that the holder of a mining lease may take all reasonable measures on or under the surface, to mine the mineral to which it relates.

That being said, however, the MMA provides certain restrictions to the exercise of rights under a mineral concession over certain specific land (e.g. land dedicated as a place of burial, land containing any ancient or national monument; land set aside for use by the Government, and national parks). Further it provides for consent of the lawful occupier of land as a requirement for the exercise of any right over such land. Where such consent is unreasonably withheld, consent can be acquired from the Minister, subject to conditions he may impose, including the payment of reasonable compensation.

The rights conferred by a mineral concession are required to be exercised reasonably and in a manner that affects the interests of any lawful occupier of the land covered by such mineral concession as little as possible. The mining lease agreement would dictate the extent of the right the holder thereof has with relation to surface rights.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?

Environment Act, 2008, provides an overall legal and regulatory view of environmental standards, procedures, and compliance requirements. Observation of the Environmental Act is peremptory for a mineral concession.

The Act requires that an environmental impact assessment report be concluded for certain listed activities. These activities, more specifically, include mining, mineral extraction including quarrying and open-cast extraction of precious stones, minerals and metals; coal; stone and slate, aggregates of sand and gravel; clay; tunnelling; diamonds; limestone and dolomite, and base metals.

The MMA further provides that all mining operations are to comply with international standards and the law in preserving the environment, minimising and controlling waste or damage to the environment, and to promptly treat pollution and contamination of the environment.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?

No native title is recognised to provide the holder thereof the right to prospect or mine. Application for a Mineral Permit would be required.

HEALTH AND SAFETY

What legislation governs health and safety in mining?

The Mine Safety Act, 1981, was published to make provision for the purpose of governing health and safety for persons employed at mines, including connected persons. In addition, certain health and safety regulations in terms of the Labour Code Order, 1992, must also be observed.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact upon rights to prospect and mine?

Yes, the Constitution, 1993, provides that all land in Lesotho vests absolutely and irrevocably in the Basotho nation. As such the Constitution provides for the administration of minerals in Lesotho.

Further provisions may impact on rights to prospect and mine such as the right to property.

Are there administrative appeals in the mining law?

Lesotho currently has no specific procedures laid down for administrative appeals relating to mining law.

Where a conflict may arise due to the failure of a holder of a mineral concession, the Minister has the authority in terms of the MMA to suspend or cancel a mineral concession. The Minister shall, however, provide the holder notice in writing, specifying the particular contravention and call upon the holder to remedy the contravention within a certain period, being not less than 30 days.

This being said, certain administrative procedures may be agreed upon in a mining lease agreement.

Although there are no set statutory procedures for administrative appeals, the judiciary, namely the High Court and Court of Appeal, enjoy inherent powers of review and appeal over administrative actions and decisions.

ROYALTIES AND TAXES

Are there special rules applicable to taxation of exploration and mining companies?

Currently entities involved in mining activities are subject to taxes same as any other entity in terms of the Income Tax Act, 1993. It should be noted that the Policy makes provision for special rules, however, to date none have been promulgated. Regulations published in terms of the Income Tax Act, 1993 do allow mining assets to be depreciated at a rate of 100% per annum.

Are there any royalties payable to the State over and above any taxes?

The MMA provides that the holder of a mineral concession shall be liable for royalties to the Government on any mineral obtained. The royalties payable are currently determined at ten percent for precious stones and three percent for other minerals or mineral products.

The royalty is calculated on the gross market value receivable at the mine gate and is payable by the holder of the mineral concession. A royalty may, in certain circumstances, be remitted by the Minister in terms of the MMA.

The royalty rate on diamonds may be negotiated between the holder and the Government in a lease agreement to a rate not more than 10%.

In addition to a royalty, the holder of a mineral concession is further obliged to pay an annual charge in respect of a mineral concession through the Ministry of Natural Resources.