



ICLG

The International Comparative Legal Guide to:

Mining Law 2016

3rd Edition

A practical cross-border insight into mining law

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Agnes Advokatbyrå
Ali Budiardjo, Nugroho, Reksodiputro
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Sociedade de Advogados, RL
Werksmans Attorneys

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Contributing Editors
Christopher Ian Stevens,
Werkmans Attorneys

**Head of Business
Development**
Dror Levy

Sales Director
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Commercial Director
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Account Directors
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Senior Account Managers
Maria Lopez

Sales Support Manager
Toni Hayward

Editor
Rachel Williams

Senior Editor
Suzie Levy

Group Consulting Editor
Alan Falach

Group Publisher
Richard Firth

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Global Legal Group Ltd.
59 Tanner Street
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Fax: +44 20 7407 5255
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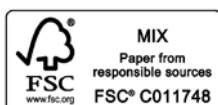
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General Chapters:

1	Mining of Mixed Minerals – Christopher Ian Stevens, Werkmans Attorneys	1
2	Overview of the West African Mining Sector: Institutions and Outlook – John Ffooks & Richard Glass, John W Ffooks & Co	5

Country Question and Answer Chapters:

3	Albania	Gjika & Associates Attorneys at Law: Evis Jani & Krisela Qirushi	9
4	Argentina	HOLT Abogados: Florencia Heredia & María Laura Lede Pizzurno	16
5	Australia	Allens: David Maloney AM & Alex Purtill	25
6	Bolivia	BM&O Abogados – Attorneys At Law: Adrián Barrenechea B. & Camilo Moreno O.	33
7	Botswana	Khan Corporate Law: Shakila Khan	41
8	Brazil	TozziniFreire Advogados: Luiz Fernando Visconti & Eduardo Miguel Serafini Fernandes	48
9	Bulgaria	CMS Bulgaria: Kostadin Sirlishtov & Jenia Dimitrova	56
10	Burkina Faso	John W Ffooks & Co: John Ffooks & Richard Glass	63
11	Canada	Lawson Lundell LLP: Khaled Abdel-Barr & Karen MacMillan	68
12	Colombia	Peña Mancero Abogados S.A.S.: Gabriela Mancero	78
13	Congo – D.R.	Geni & Kebe: Dr. Aboubacar Fall & Jocelyn Ismaël Itoua Ongagna	86
14	Congo – R.	John W Ffooks & Co: John Ffooks & Richard Glass	92
15	Ecuador	Coronel & Pérez: Daniel Pino Arroba & Paulette Ocampo Vélez	97
16	Ethiopia	Mehrteab Leul & Associates Law Office: Zelalem Yibrah	103
17	Gabon	Project Lawyers: Jean-Pierre Bozec	109
18	Greenland	Sandroos law firm: Bo Sandroos & Camilla Nymann Jørgensen	116
19	Guinea	Geni & Kebe: Mouhamed Kebe & Jocelyn Ismaël Itoua Ongagna	122
20	Indonesia	Ali Budiardjo, Nugroho, Reksodiputro: Woody Pananto & Freddy Karyadi	128
21	Ivory Coast	John W Ffooks & Co: John Ffooks & Richard Glass	139
22	Kazakhstan	GRATA Law Firm LLP: Yerbolat Yerkebulanov	144
23	Kyrgyzstan	Kalikova & Associates Law Firm LLC: Marina Lim & Jyldyz Tagaeva	152
24	Macedonia	Debarliev, Dameski & Kelesoska, Attorneys at Law: Dragan Dameski & Ana Hadzieva Angelovska	159
25	Madagascar	John W Ffooks & Co: John Ffooks & Richard Glass	165
26	Malawi	F.Kilembe Attorneys: Felisah Rose Kilembe	170
27	Mali	Latournerie Wolf from Avocats: Christopher Dempsey & Johanna Cuvex-Micholin	175
28	Mauritania	Latournerie Wolf from Avocats: Christopher Dempsey & Johanna Cuvex-Micholin	182
29	Mexico	RB Abogados: Enrique Rodríguez del Bosque	190
30	Mozambique	TPLA – Taciana Peão Lopes & Advogados Associados: Taciana Peão Lopes & André Cristiano José	197
31	Namibia	Koep & Partners: Hugo Meyer van den Berg & Peter Frank Koep	205
32	Nigeria	Bloomfield-Advocates & Solicitors: Kunle Obebe	211
33	Peru	Osterling Abogados: Luis Felipe Huertas del Pino	217
34	Portugal	Vieira de Almeida & Associados, Sociedade de Advogados, RL: Manuel Protásio & Filipa Serra	224
35	Romania	Pachiu & Associates: Alexandru Lefter & Ioana Iovanesc	230
36	Sierra Leone	BMT Law Chambers: Glenna Thompson & Drucil Taylor	238

Continued Overleaf →

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Country Question and Answer Chapters:

37	South Africa	Werksmans Attorneys: Christopher Ian Stevens	244
38	Spain	Prat & Roca Asociados: César Utrera-Molina Gómez & Daniel Roca Vivas	250
39	Sweden	Agnes Advokatbyrå: Agnes Larfeldt Alvéen & Kajsa Tiderman	257
40	Ukraine	CMS Ukraine: Vitaliy Radchenko & Inna Antipova	263
41	United Kingdom	Milbank, Tweed, Hadley & McCloy LLP: John Dewar & Felicia Hanson Ofori-Quaah	271
42	USA	Norton Rose Fulbright: Robert D. Comer & Daniel S. Shapiro	279
43	Zambia	Eric Silwamba, Jalasi and Linyama Legal Practitioners: Eric Suwilanji Silwamba, SC & Joseph Alexander Jalasi	286
44	Zimbabwe	Scanlen & Holderness: Sternford Moyo	292

EDITORIAL

Welcome to the third edition of *The International Comparative Legal Guide to: Mining Law*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of mining laws and regulations.

It is divided into two main sections:

Two general chapters. The first chapter discusses the mining of mixed minerals, and the second chapter provides an overview of the West African mining sector.

Country question and answer chapters. These provide a broad overview of common issues in mining laws and regulations in 42 jurisdictions. All chapters are written by leading mining lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor, Christopher Ian Stevens of Werksmans Attorneys, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Ethiopia

Mehrteab Leul & Associates Law Office

Zelalem Yibrah



1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The regulatory framework of the mining sector in Ethiopia is dealt with in different legislations. The 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE) exclusively vests ownership of all natural resources in the State, as well as in the peoples of Ethiopia. The Government holds land and other natural resources on behalf of the people and deploys them for their common benefit and development. The FDRE Ministry of Mines and the respective regional bodies control and administer mineral resources by granting, refusing and managing licences. The following specific proclamations govern the mining sector:

- Mining Income Tax Proclamation No. 53/1993.
- Mining Income Tax (Amendment) Proclamation No. 23/1996.
- Mining Operations Proclamation No. 678/2010.
- Mining Operation (Amendment) Proclamation No. 816/2013.
- Petroleum Operations Proclamation No. 295/1996.
- Petroleum Operations Income Tax (Amendment) Proclamation No. 226/2000.
- Petroleum Operations Income Tax Proclamation No. 296/1986.
- Transaction of Precious Minerals Proclamation No. 651/2009.

1.2 Which Government body/ies administer the mining industry?

The main organ which regulates the mining sector is the Ministry of Mines. This Government organ has, among other things, the power to issue licences to private investors engaged in exploration and mining operations. At regional level, there are also Mineral, Water and Energy Bureaus. The Ministry of Mines has the following four major core functions/departments:

- Mining Licensing and Administration.
- Petroleum Licensing and Administration.
- Artisanal Mining and Transaction Coordination.
- Research and Development.

The FDRE Ministry of Environment and Forest is, on the other hand, responsible of regulating environmental issues associated with mining. The FDRE Ministry of Labour and Social Affairs is responsible for health and safety standards in mines.

1.3 Describe any other sources of law affecting the mining industry.

Apart from the mining laws, there are other areas of law which have implications on the mining sector. The Environmental Impact Assessment Proclamation No. 299/2002 provides that an environmental impact assessment is to be made for activities which may have adverse consequences on the environment, such as mining activities. The Labour Proclamation No. 377/2003 is also pertinent as it, among other things, obliges employers to take health and safety measures in workplaces and employees to abide by the health and safety rules. Commercial Registration and Business Licensing Proclamation No. 686/2010 is also applicable to any person intending to engage in the mining sector.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

For Ethiopians, no licence is required to conduct reconnaissance without interfering with the rights of others. Foreigners, however, should have a reconnaissance licence to undertake the same activity. The Ministry of Mines, or the relevant state organ, grants a non-exclusive reconnaissance licence. This licence, which is non-renewable, is valid only for the period of time specified in it, but cannot exceed 18 months.

2.2 What rights are required to conduct exploration?

Like in the case of reconnaissance, a licence is required to undertake exploration activities. An exploration licence is valid for an initial period specified in the licence, which may not exceed three years. The licence may be renewed twice for a period not exceeding one year each. Furthermore, there is a possibility for the period to be extended up to a maximum of five years.

The holder of an exploration licence, on top of the relevant rights stated under question 7.1, has the right to remove, transport, analyse and export samples of minerals for testing. Furthermore, the licensee has the right to apply for and be granted a retention or mining licence. On the other hand, the holder of an exploration licence is under the obligation to commence exploration activities within 60 days from the effective date of the licence, comply with the terms and conditions of the licence and keep duplicates of samples removed and transported for tests or any other analysis.

2.3 What rights are required to conduct mining?

There are four kinds of mining licences which may be issued depending on the size and nature of the undertaking. These are large-scale, small-scale, special small-scale and artisanal mining licences. A large-scale mining licence may initially be granted for the duration stated in the licence, however, this period cannot exceed 20 years. On the other hand, small-scale and special small-scale mining licences may first be issued for a maximum period of ten years, however can later be renewed for a period not exceeding five years. Finally, an artisanal mining licence is valid for the period specified in the licence which, nevertheless, may not exceed three years. This licence may be renewed twice for three years each. In addition to the rights provided under question 7.1, the holder of a mining licence obtains title to the minerals specified in the licence upon their extraction. As a result, the licensee has the right to sell locally or export the minerals. However, the licensee is obliged to start mining activities within two years from the effective date of the licence and comply with its terms and conditions.

2.4 Are different procedures applicable to different minerals and on different types of land?

Petroleum operations are regulated under a separate law (see question 1.6). Transactions involving precious minerals are also regulated under a different law which dictates the requirements and procedures of their purchase, custody, transport, crafting, refining, sale or export. Licences are required to take part in brokerage, crafting and refining of precious minerals. Certificates of competence are also mandatory to trade in and export precious minerals.

2.5 Are different procedures applicable to natural oil and gas?

Natural oil and gas are governed by a separate legislation but are overseen by the same body, i.e. the Ministry of Mines. The Ministry of Mines promotes the available blocks in different parts of Ethiopia (areas which have not been given to other companies) and an applicant must apply to the Ministry in order to get a petroleum exploration licence for one of these blocks. If there is more than one applicant, the applicant will be determined through a bidding process. Following this process, a draft production sharing agreement will be prepared and sent to the Council of Ministers which will review and approve the agreement.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 Are there special rules for foreign applicants?

Ethiopians may conduct reconnaissance without having a licence, but foreigners cannot. In addition, only Ethiopian nationals can apply for, and obtain, artisanal mining licences as provided in the Mining Operation Proclamation.

3.2 Are there any change of control restrictions applicable?

No, there is no change of restriction control applicable under the

mining laws. If, however, the arrangement necessitates the transfer of a licence, the ordinary procedures of transferring licences are applicable.

3.3 Are there requirements for ownership by indigenous persons or entities?

Aside from the requirement of Ethiopian nationality for obtaining artisanal mining licences, the government is also entitled to 5% equity participation (see question 3.4 below).

3.4 Does the State have free carry rights or options to acquire shareholdings?

The government may acquire, without cost, a participation interest of 5% of any large-scale or small-scale mining investment. An additional equity participation of the Government may also be provided by agreement, which shall specify the percentage, timing, financing, resulting rights and obligations, and other details of such participation.

3.5 Are there restrictions on the nature of a legal entity holding rights?

There is no restriction on the type of legal entity which may hold rights in the mining sector. As such, mining activities may be performed in the form of sole proprietorship, partnership or companies (share or private limited companies).

4 Processing and Beneficiation

4.1 Are there special regulatory provisions relating to processing and further beneficiation of mined minerals?

Generally, there are no beneficiation requirements applicable to all minerals. Nevertheless, such requirements may be set out in the mining agreement concluded with the government. Moreover, gold and silver must be processed to their final form in order to be exported. With regard to tax incentives granted for exportation, the holder of an artisanal, small-scale or large-scale mining licence is entitled to export – free of customs duties and taxes – minerals produced in accordance with the licence. A holder of a large-scale or small-scale mining licence producing exportable minerals may retain a portion of the foreign currency earned, as may be determined by directives of the National Bank of Ethiopia, and use it for the settlement of transactions in foreign currencies.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

In order to export minerals, a person must get a competency certificate from the Ministry of Mines and a business licence from the FDRE Ministry of Trade. A Precious Mineral Export Certificate of Competence, upon acquiring the trade licence from the appropriate government body, grants the holder the right to purchase, custody and export precious minerals pursuant to the directives of the National Bank of Ethiopia.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

Licences, other than reconnaissance or retention licences, may be transferred with the prior consent of and registration with the competent authority.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged to raise finance?

Exploration and mining licences are capable of being mortgaged with the prior consent of the competent authority. However, one cannot create mortgage rights on a reconnaissance licence.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

Yes, except for reconnaissance or retention licences, provided that it is approved and registered by the competent Government authority.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Reconnaissance, exploration and mining shares can be held by companies through a joint venture agreement, a private limited company or share company.

6.3 Is the holder of a primary mineral entitled to explore or mine for secondary minerals?

Holders of mining licences cannot, as of right, extract minerals which are not part of the mining agreement. The mining agreement must be amended, or a new agreement must be issued, in order to extract minerals not covered under the original agreement.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

In order to undertake mining operations on the residue deposits, a new licence is required after the termination, revocation or expiry of the previous licence.

6.5 Are there any special rules relating to offshore exploration and mining?

There is no specific legislation governing offshore exploration and mining as Ethiopia is a landlocked country.

7 Rights to Use Surface of Land

7.1 What are the rights of the holder of a right to conduct reconnaissance, exploration or mining to use the surface of land?

Licencees mainly have the rights to enter the licence area. Within the licensed area they can: bring any equipment; construct any required surface or underground infrastructure; use construction minerals from within the licence area or an adjacent area as required for infrastructure; request from the appropriate authority a lease of land outside of the licence area which is required for mining operations; cut and use timber which is necessary for mining operations; use the existing infrastructure without impairing the use thereof by others; cut such timber as is strictly necessary for access to the licensed area; and relinquish all or part of the licence in accordance with the prescribed procedures.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

In addition to the payment of compensation discussed below in question 7.3, the licensee has the obligation not to cause harm to the property of others. The licensee is responsible for rectifying any damage caused by him.

7.3 What rights of expropriation exist?

For mining operations, which are deemed public purpose undertakings according to Proclamation No. 455/2005, the competent authority can expropriate any immovable property on any land and must cause the payment of fair compensation by the licensee in accordance with the relevant laws. The law imposes an obligation on the licensee to negotiate and agree with the owner of the property on the amount of compensation payable. If such agreement is reached, a copy of this agreement must be submitted to and registered with the competent authority.

However, if the licensee and the owner of the property are unable to agree, either of them can request in writing the competent authority to determine the compensation. The authority will then fix the *quantum* of compensation on the basis of the evidence and arguments submitted by both parties.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

Pursuant to the relevant environmental laws of the country, applicants for small-scale and large-scale mining licences, as well as exploration licences, must submit an environmental impact assessment and obtain all the necessary approvals from the competent authority. Moreover, licencees must allocate funds to cover the costs of rehabilitation of environmental impact. Mining and, as appropriate, exploration licencees must participate in a community development plan with the peoples of the licensed area, and shall allocate money for such expenses.

8.2 What provisions need to be made for the closure of mines?

The grounds for the closure of mines are: the revocation of the licence; termination of the mining operations; relinquishment of the whole or any portion of the licence area; or abandonment of the mine. The holder of a small-scale or large-scale mining licence is obligated to apply for a mine closure certificate on the ground of one of the above-mentioned reasons.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

For a mine closure certificate to be issued, the provisions pertaining to health, safety and the environment have to first be complied with. Even so, the grant of the certificate in no way relieves the licensee from the responsibility to monitor environmental effects after closure of the mine as required in the environmental impact assessment, and shall not release the licensee from the liability of performing the duties imposed upon him and due to be performed during the term of the licence.

8.4 Are there any zoning requirements applicable?

In principle, any land in Ethiopia is available for mining operations. However, unless the national interest of the country is not served, exploration, retention and mining licences may not be issued for certain reserved areas including: cemeteries and religious sites; sites containing archaeological remains or national monuments; areas reserved for physical infrastructure; natural habitats or national parks; and within 500 metres from the boundary of a village, city or water reservoir or dam without the consent of the competent body.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

There are no native rights which have an impact upon reconnaissance, exploration or mining operations except the issue of the property situated on the area required for the mining operation. In the latter case, the procedures stipulated for expropriation and payment of compensation will be applicable.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

There is no special legislation dealing with health and safety issues in the mining sector. However, the Labour Proclamation No. 377/2003 obligates employers to take measures to ensure occupational health and safety in workplaces.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

Employers have the duty to take all the necessary occupational

safety and health measures and to abide by standards and directives issued by the authorities (see question 10.1). Safety precautions and measures are also required from employees, who must abide by statutory or contractual safety requirements. Proclamation No. 678/2010 also sets a general obligation on the licensee to conduct its mining in such a way that it ensures the health and safety of its agents, employees and other persons.

11 Administrative Aspects

11.1 Is there a central titles registration office?

The Registry which is open to the public for inspection is established and maintained by the Ministry of Mines and the state organ in charge of the mining sector. Every licence, lease and instrument under which a mining right is transferred, assigned, surrendered, suspended, revoked, encumbered, inherited or otherwise treated is to be registered at the Registry.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Proclamation No. 678/2010 provides for a requirement of exhausting administrative remedies before applying to the competent court for the review of the administrative decision. Pursuant to this requirement, any person aggrieved by the decisions of the Licensing Authority should first appeal to the officials in the higher hierarchy. Furthermore, Proclamation No. 678/2010 provides that where disputes, controversies or claims arise, they will be referred first to negotiation, and when agreement cannot be reached through negotiation, then to arbitration, with the possibility of appealing the decision of the arbitrators to the competent court.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The FDRE Constitution provides that the right to ownership of land and all natural resources is exclusively vested in the State and in the people of Ethiopia. There is no direct constitutional restriction on the right to conduct reconnaissance, exploration and mining, as long as such right does not trigger expropriation and compensation provisions of the Constitution. According to the Constitution, it is the Federal Government which has the right to legislate on matters affecting rights to conduct reconnaissance, exploration and mining, whereas the State Governments are empowered to administer natural resources in accordance with the laws enacted by the Federal Government.

12.2 Are there any State investment treaties which are applicable?

Ethiopia has signed Bilateral Investment Treaties with 29 Countries (Algeria, Austria, BLEU (Belgium-Luxembourg Economic Union), China, Denmark, Egypt, Equatorial Guinea, Finland, France, Germany, India, Islamic Republic of Iran, Israel, Italy, Kuwait, Libya, Malaysia, Netherlands, Nigeria, Russian Federation, South Africa, Spain, Sudan, Sweden, Switzerland, Tunisia, Turkey, United Kingdom and Yemen). Investors coming from these countries will receive favourable treatment in accordance with their respective BITs.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

Mining Income Tax Proclamation No. 53/1993, as amended by Mining income tax (amendment) Proclamation No. 802/2013, provides that a holder of a large-scale mining licence shall pay 25% income tax on the taxable income.

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

Proclamation No. 678/2010 provides for royalties payable by holders of large-scale mining licences over and above other taxes. The rate of the royalty payable differs based on the different kinds of minerals. The rate of royalty payable for precious minerals is 8%, for semi-precious minerals it is 6%, for metallic minerals it is 5%, for industrial minerals it is 4%, for construction minerals it is 3%, for salt it is 4% and for geothermal it is 2%.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

The Regional State Governments are empowered to administer the land and natural resources in accordance with the Federal laws. Artisanal and small-scale mining are usually governed by regional laws.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

There are no regional rules, protocols, policies or laws relating to the mining sector.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Unless otherwise agreed, the holder of a small-scale or large-scale mining licence or a lease may abandon the right under the licence or lease by giving at least 12 months advance written notice to the Licensing Authority.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

The holder of an exploration licence is obliged to relinquish a portion not less than one quarter of the licence area when applying for the renewal of an exploration licence.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

The Licensing Authority is entitled to partially or fully suspend mineral rights or revoke any licence for reasons set forth in the Proclamation.



Zelalem Yibrah

Mehrteab Leul & Associates Law Office
Africa Avenue (Bole Road), Dembel City Center
8th Floor, Room # 805A, Elevator #4
Addis Ababa
Ethiopia

Tel: +251 932 095 745
Fax: +251 115 159 822
Email: zelalem@mehrteableul.com
URL: www.mehrteableul.com

Zelalem Yibrah is a lead lawyer at Mehrteab Leul and Associates Law Office, one of the pioneer and leading law offices in Ethiopia. He graduated from Bahir Dar University, *summa cum laude* and studied for his masters at the Royal Institute of Technology (Sweden). He has lectured at the Bahir Dar and Ethiopian Civil Service universities. He is the head of mining and energy practice group at Mehrteab Leul & Associates Law Office.



Mehrteab Leul and Associates (MLA) was founded by its principal lawyer Mehreteab Leul Kokeb in 1997. MLA has been selected as "*Leaders in their practice*" by Chambers and Partners Legal Directory in its 2014 edition. In 2015, MLA's business law practice has been ranked as "*Band One*" by Chambers and Partners. Mehrteab Leul and Associates is the only Law Office in Ethiopia to have appeared in the Legal 500 Directory in 2014.

MLA has advised and represented local and international clients on various legal issues. The Law Office offers a broad range of legal services in corporate and commercial areas such as mining and mineral law, industrial and labour law, investment, petroleum oil and gas, intellectual property, patents and trademark, corporate banking, securities, mergers and acquisition, tax and aviation law.

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59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

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