

MINERALS AND MINING

COMPARATIVE GUIDE ON MINING

Contributors

David Yaw Danquah, Esq

Kenneth Ohene-Manu, Esq

MINERALS AND MINING

COMPARATIVE GUIDE ON MINING

Reproduced with permission from Legalstone Solicitors LLP
This article was first published in June 2020
For further information please contact david@legalstonesolicitorsllp.com

Contributors

David Yaw Danquah, Esq
Kenneth Ohene-Manu, Esq

THE COMPARATIVE
GUIDE

LEGAL NOTICE

The contents of this publication, current at the date of publication set out above, are for reference purposes only. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

ACKNOWLEDGMENT

Legalstone acknowledges all its staff and partners for contributing to this comparative guide on mining in Ghana.

Mining

1. Legal and regulatory framework

1.1 Which legislative and regulatory provisions govern mining in your jurisdiction?

The principal Legislation and Laws governing mining in Ghana include the following:

- a. Substantive Legislation:
 - i. **The 1992 Constitution of the Republic of Ghana.**
 - ii. **The Minerals and Mining Act 2006 (Act 703) as amended by the Minerals and Mining (Amendment) Act 2015 (Act 900) (All together the Minerals and Mining Act).**
 - iii. **The Minerals Income Investment Fund Act, 2018 (Act 978)**
 - iv. **The Minerals Development Fund Act, 2016 (Act 900)**
- b. Regulations:
 - i. **The Minerals and Mining (Licensing) Regulations, 2012 (L.I 2176)**
 - ii. **The Minerals and Mining (Explosives) Regulations, 2012 (L.I 2177)**
 - iii. **The Minerals and Mining (General) Regulations, 2012 (L.I 2173)**
 - iv. **The Minerals and Mining (Compensation and Resettlement) Regulations, 2012 (L.I 2175)**
 - v. **The Minerals and Mining (Support Services) Regulations, 2012 (L.I 2174)**
 - vi. **The Minerals and Mining (Health, Safety, and Technical) Regulations, 2012 (L.I 2182)**

1.2 When was the mining legislation last reviewed?

The last review of the mining legislation took place in the year 2015. However, between 1986 and 2006, the Minerals and Mining Law 1986, PNDC Law 153 was the basic law regulating the mining industry in Ghana. Even though the PNDC Law 153 was regarded as trail-blazer in comparison to many Legislation in sub-Saharan Africa, changes in the international mining scene necessitated its revisions. After a careful review of the old PNDC Law 153, the current Mining Act, Act 703 of 2006, as amended by Act 900 of 2015, became the governing legislation for Ghana's Minerals and Mining Sector.

1.3 What other legislative and regulatory provisions have relevance for mining operations in your jurisdiction?

These include the following;

- i. **Companies Act, 2019 (Act 992)**
- ii. **Environmental Protection Agency Act, 1994 (Act 490)**
- iii. **Ghana Investment Promotion Centre Act, 2013 (Act 865)**
- iv. **Income Tax Act, 2015 (Act 896)**
- v. **Forestry Commission Act, 1999 (Act 571)**
- vi. **Water Resources Commission Act, 1996 (Act 522)**
- vii. **Ghana Geological Survey Authority Act, 2016 (Act 928)**

1.4 Are there any regional treaties or laws that need to be taken into account?

It is important to note that Ghana subscribes to broader continental, sub-regional, and international Policy initiatives on mining including the African Mining Vision (AMV) of 2009 and its 2011 Action Plan developed under the auspices of the African Union (A.U.) and the Economic Community of West African States (ECOWAS) Mineral Development Policy (EMDP) adopted in 2011.

1.5 Which bodies are responsible for enforcing the applicable mining laws and regulations?
What powers do they have?

The key regulatory institutions are:

a. Minerals Commission

The Minerals Commission was established under the Minerals Commission Act 1993 (Act 450) for the regulation and management of the mobilization of mineral resources of Ghana and the coordination of the policies in relation to them. The Commission serves as the technical advisory Agency to Government. The Minerals Commission is empowered under section 100 of Act 703 to, under the direction of the Minister responsible for Lands and Natural Resources, supervise the proper and effective implementation of the provisions of Act 703 and the various Regulations made under the Act. The Minerals Commission is mandated under section 2 of the Minerals Commission Act, 1993 (Act 450) to:

- i. Formulate recommendations of National Policy for exploration and exploitation of mineral resources with special reference to establishing national priorities naming due regard to the national economy;**
- ii. Advise the Minister of Lands and Natural Resources on matters relating to minerals.**
- iii. iMonitor the implementation of laid down government policies on minerals and report on this to the Minister.**
- iv. Monitor the operation of all bodies or establishments with the responsibility to mine.**
- v. Receive and assess public agreements relating to minerals.**
- vi. Collect data on national mineral resources.**

In addition to the broad supervisory role of the Commission, the Inspectorate Division (I.D.) of the Minerals Commission is given responsibility for enforcing the mining regulations. The Inspectorate Division of the Minerals Commission was established under section 101 of Act 703. The Head of the Inspectorate Division or an officer authorized by the head may at reasonable times enter a reconnaissance, prospecting or mining area or premises in the area other than a dwelling house to ascertain whether a nuisance is created in the area by the mineral operations. They are to ensure that mining operations are undertaken in compliance with the basic laws and regulations of Ghana.

b. Forestry Commission

The Forestry Commission was established under the Forestry Commission Act, 1999 (Act

571). The Forestry Commission is responsible for the regulation of the utilization of forest and wildlife resources, the conservation and management of these resources, and the coordination of policies related to them. With respect to mining, section 18 of Act 703 provides that holder of a mineral right shall obtain a permit from the Forestry Commission before undertaking any mineral operations.

c. Water Resources Commission

The Water Resources Commission was established under the Water Resources Commission Act, 1996 (Act 522). The Water Resources Commission is responsible for the Regulation and management of the utilization of water resources and the coordination of any policy in relation to them. The Water Resources Commission is therefore mandated to grant water rights. Under section 17 of Act 703, a holder of a mineral right may, for purposes of or ancillary to the mineral operations, obtain, divert, impound, convey and use water from a river, stream underground reservoir or watercourse within the land the subject of the mineral right subject to obtaining the requisite approvals or licenses under Act 522. Under the Water Use Regulation, 2001 (L.I 1692), passed pursuant to the Water Resources Commission Act, the Commission also has the power to enter upon any land to inspect works constructed or under construction there to ascertain the amount of water obstructed or capable of being hampered by means of the works.

d. Environmental Protection Agency

The Environmental Protection Agency (EPA) was established under the Environmental Protection Agency Act, 1994 (Act 490). The EPA is responsible for, among other things, the enforcement of environmental regulations. In accordance with section 18 of Act 703 and the Environmental Assessment Regulations, 1999 (L.I 1652) of the EPA, a holder of a mineral right requires an environmental permit from EPA in order to undertake any mineral operations. Environmental Assessment Regulations, 1999 (L.I 1652) is the main legal framework used by the EPA for regulating and monitoring mineral operations. The Regulations requires the applicant to prepare a scoping report setting out the scope or extent of the environmental impact assessment to be carried out by the applicant and includes a draft term of reference, which indicates the essential issues to be addressed in the environmental impact statement. A holder of a mineral right granted an environmental permit is required to submit an annual environmental report in respect of the mineral operations to the Agency.

e. Lands Commission

The Lands Commission is the body charged with the responsibility to ensure the judicious management of the Country's land. The Land Valuation Board, a division of the Lands Commission, which is involved in the valuation of land and other properties, assist the mining sector in issues relating to compensation.

f. Ghana Geological Survey Authority

The Ghana Geological Survey Authority is established under the Ghana Geological Survey Authority Act, 2016 (Act 928) with the mandate to advise Government on geoscientific issues relating to mineral resources, environment and hydro-geology.

The objects of the Authority under Act 928 are to:

- a) Carry out systematic geological mapping, assess, monitor and evaluate geological hazards and risks, collect geoscientific data, manage and disseminate geoscientific information;
- b) Promote the search for, and exploitation of, minerals in the Republic, undertake research in the field of geoscience and furnish specialized geoscientific services;
- c) Conduct research into matters of importance for the exploration, exploitation and protection of the nation's geological and geoscientific natural resources; and
- d) Conduct site, foundation or geotechnical investigations and issue reports as pre-requisites for major construction projects in the country.

The functions of the Authority under Act 928 shall be to:

- i. Advise the Government on matters related to geology, geohazards and the search for and exploitation and development of mineral resources in the country;
 - ii. Conduct geological, geochemical, geophysical, seismological, hydrogeological, geotechnical and geo-environmental surveys, mineral exploration, systematic mapping of rocks and other geological or geoscience materials including soil and clays of the country including its offshore areas;
 - iii. Develop and maintain a National Seismic Network to monitor earthquakes, tsunamis and mine blasts that have the potential to impact negatively on persons and property in the country and for optimum land-use-planning;
 - iv. Serve as a national repository for geoscientific data and information generated by public and private entities including mining and mineral exploration companies which operate in the country;
 - v. Collaborate with relevant local and international bodies on geoscientific matters that the Board established under section 5 considers necessary;
 - vi. Conduct site or foundation investigations and issue certified reports before major construction works or projects that have the potential to impact on the subsurface structure, socio-economic, cultural and aesthetic environment;
 - vii. Conduct ground surveys or airborne surveys, take samples and make borings necessary for the conduct of investigations and the preparation of relevant reports to assist with national development;
 - viii. Liaise with relevant public agencies involved in land-use planning for sustainable use of the spatial environment in Ghana;
 - ix. Perform the functions and undertake investigations that the Minister may assign to the Authority; and
 - x. Perform any other functions conferred on it by this Act or that are ancillary to the achievement of the objects of the Authority.
- e. The Ghana Geological Survey Authority also has a significant role to play in the mining industry of Ghana.

1.6 What is the regulators' general approach in regulating the mining sector?

In seeking to regulate the mining sector, the regulators' general approach is to ensure that mineral operations are conducted responsibly. The regulator considers that neglect of the environment, and harm to local communities as a result of mineral resource development is not acceptable. The intention is, therefore, to ensure that Ghana secures the full economic and social benefits that mining development promises, in an environmentally and socially responsible manner.

2. Mining industry

2.1 How mature is the mining industry in your jurisdiction?

a. The mining industry in Ghana is very well matured. Ghana is endowed with substantial mineral resources and has a well-established mining sector, which has grown considerably in recent years to represent an important pillar of the economy. This is a result of the pursuit of generally liberal macroeconomic policies by successive governments. These measures have helped in no small way to attract investments into the economy at large but particularly the mining industry, especially the gold sector.

Ghana has substantial mineral resources; gold, diamonds, manganese, and bauxite are the major minerals mined, but the Country also has unexploited deposits of iron ore, copper, chrome, nickel, limestone, quartz, and mica. Mining has played an important role in the political economy of Ghana for centuries.

2.2 What are the key minerals which are mined in your jurisdiction, and where is mining activity typically based?

The key minerals which are mined in Ghana include

- i. Gold**
- ii. Diamonds**
- iii. Bauxite, and**
- iv. Manganese.**

Mining activity is typically based within Ashanti Region, Western Region, Northern Region and Eastern Regions of Ghana

2.3 Are any minerals deemed strategic and, if so, what impact does this have?

Gold is deemed strategic to Ghana's economy. The World Bank has recently published a report that shows that Ghana has now surpassed South Africa, exporting 158 tonnes of gold in 2018. The contribution of gold to the economy of Ghana is remarkable even though Ghana produces other minerals like diamonds, manganese, and bauxite. In 2015, the earnings from gold accounted for 96.68% of the total earnings from exported minerals. Diamond, Bauxite, and Manganese racked up 0.3%, 1.24%, and 1.95%, respectively. The mining sector contributed Ghc15.8 billion and Ghc17.1 billion in 2016 and 2017,

respectively proving to be one of the largest sources of revenue to the government as mineral royalties, corporate taxes, and employee income taxes play pivotal roles in the revenue stream of the government.

Data from the Bank of Ghana shows that the export of gold increased from 3.84 million ounces in 2016 to 4.61 million ounces in 2017. The 20 per cent growth in exports was driven mainly by a combination of a modest increase in the gold price and an upturn in the output of large-scale producers as well as the volume of gold exported by Licensed Gold Exporting (LGE) Companies. As well, exports of manganese increased from 2 million tonnes in 2016 to 3 million tonnes in 2017 while the shipment of bauxite also expanded from 1.14 million tonnes to 1.47 million tonnes over the same period.

These figures demonstrate the strategic importance of minerals to the economy of Ghana.

2.4 Who are the key players in the mining industry in your jurisdiction?

The major gold producing companies (Key Players) in Ghana are; Goldfields Ghana Ltd (Tarkwa and Abuso mines), AngloGold Ashanti (Obuasi and Iduapriem mines), Golden Star Resources (Bogosu/Prestea and Akyem Mines), and Newmont Ghana (Ahafo and Akyem mines). Ghana Bauxite Company Ltd (GBC) operates the Country's only bauxite mine at Awaso just as Ghana Manganese Company Limited's Nsuta-Wassa open-pit mine remains the only significant producer of manganese ore in Ghana. Ghana Consolidated Diamonds, Akwatia diamond mine is also the only operating diamond mine in Ghana.

Adamus Resources Limited, an Australian exploration company with its headquarters based in West Perth, Australia, has also established its operations in Ghana. It runs 90% of Ghana's Nzema Gold Project, which produces an average of 100,000 ounces of gold annually.

Perseus Mining Limited

An Australian mining company with a diversified focus in West Africa. It runs the Edikan Gold Mine, where it has produced over 200,000 ounces of gold since 2012.

2.5 In addition to exploration rights and mining rights, what other mining rights and titles exist (e.g., artisanal or small-scale mining rights)?

Subject to the laws on minerals and mining in Ghana, small-scale and artisanal miners are permitted to undertake mining in Ghana. A vital point worthy of note is that small-scale and artisanal mining is reserved for Ghanaians only.

3. Exploration rights

3.1 What licences are required to undertake prospecting and exploration activities in your jurisdiction? Do these vary depending on the type of mineral or the location of the activity?

Ghana grants two types of License to persons and corporate bodies to undertake prospecting and exploration activities.

These are:

- a. Reconnaissance License; and
- b. Prospecting License.

Reconnaissance License

A reconnaissance license confers on the holder and a person authorized in accordance with Act 703 the exclusive right to carry out reconnaissance in the Reconnaissance Area for the minerals to which the Reconnaissance License relates and to conduct other ancillary/incidental activity. The holder of a reconnaissance license may enter a reconnaissance area and erect camps or temporary buildings, however, the holder shall not engage in drilling or excavation. A reconnaissance license may be granted for an initial period, not more than twelve months. A holder of a reconnaissance license may not later than three months before the expiration of the initial term of the license, apply to the Minister for an extension of the term of the reconnaissance license in respect of all or part of the reconnaissance area. A reconnaissance license may be extended once only and for a period not exceeding twelve months.

Prospecting License

The holder of a prospecting license may in the exercise of their rights under the license, enter upon land to which the license relates to prospect for the mineral in respect of which the license is granted, make boreholes and excavations that may be necessary for the prospecting purposes, erect camps and put up temporary buildings necessary to the prospecting operations and conduct other activity ancillary or incidental to the prospecting. A prospecting license shall be granted an initial period not exceeding three (3) years. The area of land in respect of which a prospecting license may be granted shall be a block or a number not exceeding 750 contiguous blocks each having a side in common with at least one other block.

The grant of Reconnaissance and Prospecting Licenses is not dependent on the type of mineral or the location of the mineral activity. It is granted on the dictates of the laws on minerals and mining in Ghana.

- 3.2 What requirements must be satisfied to obtain a licence?

To obtain an exploration license, the applicant must demonstrate that it is an incorporated company registered under the Companies Act, 2019 (Act 992), or the Incorporated Private Partnership Act, 1962 (Act 152), or registered under any other enactment in force. Most importantly, an applicant must also meet the minimum capital requirement stipulated under the Ghana Investment Promotion Centre Act.

- 3.3 What is the procedure for obtaining a licence? How long does this typically take?

Sections 5 and 89 of Minerals and Mining (Licensing) Regulations, 2012 (L.I 2176) states the processes and requirements needed to be submitted to obtain an exploration license. An application for an exploration license (Reconnaissance and Prospecting) shall

be made in person by the applicant to the Commission as set by the Commission providing the following information:

- a. Particulars of the Company comprising,
 - i. Registered name
 - ii. Registered residential and postal addresses
 - iii. Official telephone and facsimile numbers, and
 - iv. Official email address
- b. Certified copies of documents of incorporation that show that the applicant is a body incorporated under the Companies Act, 2019 (Act 992), or the Incorporated Private Partnerships Act, 1962 (Act 152), or registered under any other enactment in force.
- c. A certified copy of the company's regulations and details of shareholding and Directors.
- d. The number of blocks and the Cadastral coordinates delineating the area being applied for;
- e. The mineral to be reconnoitred/prospected for;
- f. Particulars of the qualifications and experience of the management and other members of the technical team in charge of the reconnaissance/prospecting operations;
- g. The work programme describing the type and scope of the work to be conducted, including the expenditure on reconnaissance/prospecting.
- h. Particulars of the financial resources available to the applicant for the proposed reconnaissance / prospecting operations.
- i. Evidence of payment of the applicable fees.

An applicant for exploration license shall before the application conduct a search in the Cadastral map and Cadastre registers to determine the availability of the area. Once submitted, the application shall be subjected to internal review and consideration by the Commission. It typically takes six (6) months for the grant of an application.

- 3.4 Who can own mining rights in your jurisdiction? Do specific requirements or restrictions apply to foreign operators?

Mineral rights are granted to private parties (be it a Ghanaian or a foreigner), granting them the right to engage in mining activity within the designated area stated in the licence. In the Ghanaian mining industry, there is no specific requirement for a foreign entity or person to have a Ghanaian partner. However, small-scale mining is exclusively reserved for Ghanaians. Aside from this exception, there is no distinction (discrimination) in the application of the law for the granting of mining rights that may be granted to a Ghanaian as against a foreign party or entity.

- 3.5 What fees and other charges are incurred in obtaining a licence?

These include the following:

- a. Incorporation fees for the setting up of the company as well as the fees for meeting the minimum capital requirement as provided for by the Ghana Investment Promotion Centre.

- **Application Fees to the Minerals Commission before the grant of a licence or any extension**
- **Environmental permit fees to be paid to the Environmental Protection Agency**

3.6 What is the duration of a licence? What is the process for renewal?

A reconnaissance license is granted for an initial period of not more than twelve months. An extension of reconnaissance license may be extended once only for a period not exceeding twelve months.

A prospecting license is granted for an initial period, not exceeding three (3) years. A prospecting license shall be extended for a further period not more than three years in respect of all or any number of blocks the subject of the prospecting license.

The holder of an exploration license may not later than three months before the expiration of the initial term of the license, apply to the Minister for an extension of the term initially granted in respect of all or part of the reconnaissance/prospecting area. Where the holder of an exploration license has materially complied with the obligations imposed by Act 703 with respect to the holding of the license and the activities to be conducted under the license, the Minister shall extend the term of the license per the dictates of the law.

3.7 What are the operator's rights and obligations under the licence?

A holder of a reconnaissance license has the exclusive right to carry on reconnaissance in the reconnaissance area for the minerals to which the reconnaissance license relates and to conduct other ancillary or incidental activity. A reconnaissance license holder has the right to erect camps or temporary buildings. A holder of a reconnaissance license shall not engage in drilling or excavation.

The holder of a Prospecting license has exclusive rights under the license to prospect for minerals in respect of which the license is granted, make boreholes and excavation that may be necessary for the prospecting purposes, erect camps and put up temporary buildings necessary for the prospecting operations and conduct other activity ancillary or incidental to the prospecting obligation.

The holder of a reconnaissance license shall perform the following obligation under the license:

- Commence reconnaissance operation within one month after the date of issue of the license or some other further period specified in the license;**
- Carry on reconnaissance operations under the approved programme of reconnaissance operations;**
- Submit quarterly to the Minerals Commission, geological and financial reports, and other information relating to the reconnaissance operations as may be required.**
- Comply with the terms and conditions of any Environmental Permit that relates to the operations to be carried out under the license;**

- e. Report any mineral discovery to the Commission within thirty (30) days after discovery;
- f. On or within the thirty days after the end of the term of the license, remove any camps or temporary buildings or installations that the holder erected to carry out reconnaissance operations; and
- g. Within ninety (90) days, repair or make good any damage caused to the surface of the land to the satisfaction of the Environmental Protection Agency and the Minerals Commission.

Minerals obtained in the course of reconnaissance operations shall remain the property of the Republic and except for a reasonable quantity that may be kept for sample, assay, analysis or other examination, shall be disposed of by the holder of the license or by any other person without the written consent of the Minerals Commission.

It is also critical to note that a holder of a reconnaissance license shall not conduct any prospecting or mining operations in the area, which is the subject of the license or in any other area.

The holder of the prospecting license is enjoined by law to perform the following obligations;

- i. Commence prospecting operation within three months after the date of issue of the license or at a time specified by the Minister responsible to Lands and Natural Resources.
- ii. Demarcate and keep demarcated the prospecting area in the prescribed manner;
- iii. Carry on prospecting operation under the Programme of prospecting operations.
- iv. Notify the Minister through the Minerals Commission of the discovery of a mineral to which the prospecting license relates within thirty days from the date of discovery.
- v. Notify the Minister through the minerals Commission of the discovery of mineral deposit which is of possible economic value within thirty days from the date of discovery
- vi. Fill back or otherwise make sure of the satisfaction of the Commission, a borehole or excavation made during prospecting operations.
- vii. Unless the Commission otherwise stipulates, remove within sixty days from the date of exploration of the prospecting license a camp, temporary building or machinery erected or installed and make good to the satisfaction of the commission damage to the surface of the land occasioned by the removal;
- viii. Subject to the condition of prospecting license, expend on prospecting not less than the amount specified in the prospecting license, and
- ix. Submit reports of other documents to persons at prescribed intervals and supporting documents containing the required information.

- 3.8 Are there any requirements for relinquishment of an exploration licence or part of the area covered by an exploration licence?

A holder of mineral right (exploration license) who wants to relinquish or surrender a mineral right or wishes to surrender all or a part of the land subject to the mineral right shall apply to the Minister for a certificate of surrender not later than two months before the date on which the holder wishes the surrender to take effect.

A certificate of surrender shall not be issued to an applicant if the following conditions exist;

- a. If an applicant is in default of any of the impositions under the Laws and Regulations;**
- b. If an applicant fails to give records and reports in relation to the applicant's mineral operations;**
- c. If the Minister is not satisfied that the applicant will surrender the land in a condition which is safe and accords with good mining practice, or**
- d. In respect of land, if the remaining area of the land after the surrender would not be less than one block.**

Where a certificate of surrender is issued under this section, the Minister shall, where only part of the land subject to the Mineral right is surrendered, amend the relevant license accordingly or cancel the mineral right where the surrender is in respect of the whole area covered by the mineral right.

- 3.9 Can licence be transferred? If so, how and subject to what consents? Do any restrictions or taxes apply to direct or indirect transfers?

Yes, under the Minerals and Mining Act, a holder of mineral right shall not in whole or part transfer, assign, mortgage or otherwise encumber or engage in any manner without the prior approval in writing of the Minister responsible for Lands and Natural Resources, which approval shall not be unreasonably withheld or given subject to unreasonable conditions.

Where the Minister does not give a written decision to the applicant within thirty (30) days, the Minister shall be mandated on the request from an applicant to give written reasons to the applicant. The Minister is by law mandated within Fourteen (14) days on receipt of the request by the applicant to give reasons for refusal of the application.

A dispute arising as a result of an application by an applicant to transfer, assign, mortgage, or otherwise encumber a mineral right will be subjected to Alternative Dispute Resolution (ADR) mechanisms under the Minerals and Mining Act with initial efforts geared towards mutual dissensions to reach an amicable settlement.

Any instrument (e.g. Deed of Transfer) that purports to effectuate the transfer of a mineral right is subject to a stamp duty charged on the consideration paid under the transfer instrument at a rate up to one (1%) per cent.

Also, any monetary gains arising out of an assignment in a mineral right is considered as an income of the mining company and therefore subject to corporate tax at a rate of 35%.

3.10 Does an exploration licence give any priority when applying for mining, right?

No, there is no provision under any of the Substantive Laws and Regulations listed above that grants preferential treatment or priority to holders of an exploratory license when they apply for a mineral lease. The grant of a mineral right/lease is based on a first-come, first-served basis so long as the applicant for the mineral rights or lease has met the laid down requirement specified in the Act. A holder of a reconnaissance/Prospective license can apply to convert his license to a mining lease subject to meeting the requirements stated under L.I 2176 for the grant of a mining lease.

4. Mining rights

4.1 How is ownership of mining rights determined in your jurisdiction?

For the avoidance of doubt, the Constitution of the Republic of Ghana states it more succinctly, that title or ownership of every mineral in its natural state under or upon any land in Ghana, rivers, streams, watercourses throughout Ghana, the exclusive economic zone and any area covered by the territorial or continental shelf is the property of the Republic of Ghana and is vested in the President for and on behalf of and in trust for the people of Ghana.

Mineral rights in whatever form and shape are granted to private parties who meets the requirements under the applicable laws to undertake the exploration of the minerals in the ground affected by the grant.

However, any transaction, contract or undertaking involving the grant of a right or concession by or on behalf of any person including the Government of Ghana, to any other person or body of persons howsoever described, for the exploitation of any mineral, water or other natural resources of Ghana shall require Parliamentary Ratification (P.R.).

4.2 What are the key requirements in order to apply for mining, right?

Under the Minerals and Mining Act 2006, (Act 703), the following key requirements must be satisfied by an applicant before an application for mineral lease can be made;

- a. Particulars of the applicant, stating, among other things, the applicant's registered name, registered residential and postal addresses, official telephone, and official email address.**
- b. Provision of certified copies of documents of incorporation showing that the applicant is a body corporate incorporated under the Companies Act, 2019 (Act 992), or the Incorporated Private Partnerships Act, 1962 (Act 152) or registered under any other enactment in force.**

- c. A certified copy of the company's regulations and details of shareholders and Directors.
- d. The number of blocks and the Cadastral co-ordinates delineating the area being applied for;
- e. The mineral to be mined;
- f. Particulars of the qualifications and experience of the manager and other members of the mining operations;
- g. A feasibility report to be prepared according to the Minerals Commission guidelines;
- h. Particulars of the financial resources available to the applicant for the proposed mining operations;
- i. Evidence of payment of the applicable fees.
- j. Particulars of the applicant's proposal with respect to the employment and training in the mining industry of Ghanaians; and
- k. In the case of conversion from a previous reconnaissance license or prospecting license, a certified copy of the license.

4.3 What fees and other charges are incurred in obtaining mining, right?

These include the following:

- a. Incorporation fees for the setting up of the company as well as the fees for meeting the minimum capital requirement as provided for by the Ghana Investment Promotion Centre.
- b. Application Fees to the Minerals Commission before the grant of a licence or any extension
- c. Environmental permit fees to be paid to the Environmental Protection Agency

4.4 What is the duration of mineral right? What is the process for renewal?

A mining right or lease shall be for an initial term of thirty (30) years or a lesser period that may be agreed upon with the applicant. The area in respect of which a mining lease may be granted shall not be less than one block or more than three hundred (300) contiguous blocks each having a side in common with at least one other block, the subject of the grant. The holder of a mining lease may not later than three months before the expiration of the initial term of thirty (30) years apply for a renewal of a further period of up to thirty (30) years in respect of all or any number of contiguous blocks the subject of the lease in the first instance and in respect of all, or any of the minerals the subject of the lease.

An applicant for the application of renewal of a mining lease shall meet and be supported by the following;

- a. A certified copy of the mining lease;
- b. The Cadastral co-ordinates delineating the area that is the subject matter of the application for exclusion in the case of reclamation in the perimeter of the original polygon.
- c. A comprehensive technical and financial report in respect of the expired term and

- a programme of mining operations for the proposed extension, including financial particulars, prepared according to the Commission's guidelines;
- d. Annual reports of the applicant for the previous two years, including audited accounts;
 - e. Particulars of the qualifications and experience of the manager and other members of the technical team in charge of the mining operations, in case of a change in the team;
 - f. Particulars of the applicant's proposals with respect to the employment and training in the mining industry and
 - g. Evidence of payment of the applicable fees.

Once the application for renewal meets the above requirement, the application shall be subjected to internal evaluation and consideration by the Minerals Commission, which will either end in the grant of the extension or rejection of the application for renewal.

- 4.5 Who can own mining rights in your jurisdiction? Do specific requirements or restrictions apply to foreign operators?

Mineral rights are granted to private parties (be it a Ghanaian or a foreigner), granting them the right to engage in mining activity within the designated area. In the Ghanaian mining industry, there is no specific requirement for a foreign entity or person to have a Ghanaian partner. However, small-scale mining is exclusively reserved for Ghanaians. Aside from this exception, there is no distinction (discrimination) in the application of the law for the granting of mining rights that may be granted to a Ghanaian as against that that may be issued to a non-Ghanaian or entity.

- 4.6 Do any indigenous ownership requirements apply in your jurisdiction?

No, there is no requirement in the substantive Laws and the applicable Regulations that demands, that a foreign entity should have a domestic partner. However, the government of Ghana under section 43 of the Minerals and Mining Act has a ten (10) per cent carried interest in rights and obligations of the mineral operations in respect of which the Government shall not make a financial contribution. Additionally, the government is not precluded from further participation in the mineral operation through the acquisition of additional interest. The latter arrangement must be agreed upon by the private holder.

- 4.7 What role does the state play in the mining industry in your jurisdiction?

The role of the state is to regulate the mining industry by sponsoring favourable laws and regulations and also the execution of mining agreements. Successive governments have since the era of the Economic Recovery Program (ERP) in 1963, engineered macro-economic policy reforms for the mining industry to boost investor interest and confidence in the mining sector. For instance, between 1984 and 1995, there were significant institutional development and policy changes that offered generous incentives to investors to reflect the new paradigm.

- 4.8 Are there requirements for the government to enter into a mining development (or similar) agreement in addition to the licences/permits? When is this required or available?

Yes. The government can enter into mining development under the following circumstances;

- a. The exercise of pre-emption right**
- b. Acquisition of ten (10) per cent carried interest**
- c. Acquisition of special share.**

Pre-emption right

Under the exercise of pre-emption right, the government through the Minister responsible for Lands and Natural Resources has the right to buy all minerals raised, won or obtained in Ghana and from any area covered by territorial waters, the exclusive economic zone or the continental shelf and products derived from the refining or treatment of these minerals. The government, under the Minerals and Mining Act, may, by an Executive Instrument (E.I.), appoint a statutory body to act as its agent for the exercise of the right of pre-emption.

Carried Interest (10%)

Where a mineral right is granted for the mining or exploitation of a named mineral, the government shall be entitled to a ten per cent carried interest in the rights and obligations of the mineral operations in respect of which the government shall not make a financial contribution. Notwithstanding the initial ten per cent carried interest held by the government, nothing precludes the government from acquiring further participation in the mineral operations that may be agreed with the holder.

Acquisition of Special Share

Under the special share acquisition principle, the Minister may, by notice in writing to a mining company, require the mining company to issue, to the Republic a special share by whatever name called in the company for no consideration. A special share shall constitute a separate class of shares and shall have the rights that shall be agreed between the Minister and the Company.

- 4.9 Can mining rights be transferred? If so, how and subject to what consents? Do any restrictions or taxes apply to direct or indirect transfers?

Yes, under the Minerals and Mining Act, a holder of mineral right shall not in whole or part transfer, assign, mortgage or otherwise encumber or engage in any manner without the prior approval in writing of the Minister responsible for Lands and Natural Resources, which approval shall not be unreasonably withheld or given subject to unreasonable conditions.

Where the Minister does not give a written decision to the applicant within thirty (30) days, the Minister shall be mandated on the request from an applicant to give written reasons for the applicant. The Minister is by law mandated within Fourteen (14) days on receipt of the request by the applicant to give reasons for refusal of the application.

A dispute arising as a result of an application by an applicant to transfer, assign, mortgage, or otherwise encumber a mineral right will be subjected to Alternative Dispute Resolution (ADR) mechanisms under the Minerals and Mining Act with initial efforts geared towards mutual dissensions to reach an amicable settlement.

Any instrument (e.g. Deed of Transfer) that purports to effectuate the transfer of a mineral right is subject to a stamp duty charged on the consideration paid under the transfer instrument at a rate up to one (1%) per cent.

Also, any monetary gains arising out of an assignment in a mineral right is considered as an income of the mining company and therefore subject to corporate tax at a rate of 35%.

4.10 Can security be taken over mining rights?

Yes, to the extent that any security taken or anticipated must receive the approval of the Minister responsible for Lands and Natural Resources. It is provided by the Minerals and Mining Act that, a mineral right cannot in whole or in part be transferred, assigned, mortgaged or otherwise encumbered or dealt in a manner without the prior approval in writing of the Minister which approval shall not be unreasonably withheld or given subject to unreasonable conditions.

Where the Minister fails to give written approval within thirty days of receipt of the application for approval, the Minister shall upon a request of an applicant give written reasons to the applicant within fourteen days of receipt of the request.

A dispute arising between the Minister and an applicant or holder in respect of a decision of the Minister to withhold approval upon request shall be referred to the dictates of Alternative Dispute Resolution mechanisms provided for under the Minerals and Mining Act and any other enactment in force for resolution of disputes.

4.11 What provisions apply with regard to closure or abandonment of mining right?

The Minerals and Mining Act and Regulations L.I 2173 makes adequate provision for the suspension or abandonment of a mineral right. It provides that where a holder of a mining lease proposes to suspend or discontinue mining operations, the holder shall cause to be prepared to the satisfaction of the Minerals Commission an accurate plan of the mining operations as at the time of discontinuance or suspension and shall submit that plan to the Minerals Commission in accordance with the law before the mining operations are discontinued or suspended.

The Minerals and Mining Act demands that the holder of a mining lease shall notify the Minister three months in advance where the holder proposes to suspend production from the mine and shall, in each case, give reasons for the suspension. The suspension of production shall not exceed twelve months, and the holder may apply in writing to the Minister for an extension for the period not exceeding twelve months.

In situations where the suspension, curtailment or discontinuance of mining operations is approved, the Minerals Commission may grant, on behalf of the Minister a certificate for the period and subject to the conditions determined by the Minister. A certificate of cessation or suspension obtained through fraud or misrepresentation is void, and the lease shall be revoked without prejudice to any penalty specified in these Regulations.

5. Surface rights

5.1 Does the law of your jurisdiction distinguish between mining rights and surface rights? If so, how does an owner of mining rights acquire surface rights?

There is no distinction in law between mining rights and surface rights in Ghana. The grant of a mineral right under our law gives the holder of the mineral right authority over the land. It entitles the mineral rights holder specific surface rights depending on the type of mineral rights granted under our Laws and Regulations.

A holder of reconnaissance license has the exclusive right to carry on reconnaissance in the reconnaissance area for mineral with the attached rights to enter the land and erect camps or temporary buildings.

Also, a holder of a prospecting license may engage in any other activity ancillary or incidental to prospecting. The holder of a prospecting licence has the right to make boreholes and excavation that may be necessary for prospecting purposes.

In contrast, the holder of a reconnaissance licence is prohibited from engaging in drilling or excavation as it pertains to the holder of a prospecting licence.

With regard to a mining lease, the holder of a mining lease has the right to enter upon the land the subject of the mining lease to erect equipment, plant, and buildings for mining, transporting, dressing, treating, smelting or refining the specified minerals recovered by the holder during the mining operations. The holder is also permitted under the mining lease granted to stacks or dump a mineral or waste product as approved in the holder's Environmental Impact Statement (EIS) and to conduct the incidental or ancillary activity.

5.2 Where surface rights are acquired, what are the operator's rights and obligations as regards the landowner? And what are the landowner's rights and obligations as regards the operator?

Where the mineral right is granted, the holder of the mineral rights is mandated under the Minerals and Mining law to provide the landowners with compensation packages. The owner or lawful occupier of any land subject to a mineral right is entitled to and may claim from the holder of the mineral right compensation for the disturbance of his rights as the lawful occupier. A claim for compensation shall be copied to the Minister responsible for Lands and Natural Resources and the government agency responsible for land valuation. The amount of compensation shall be determined by agreement between

the parties. Still, if the parties are unable to reach an agreement as to the amount of compensation, the matter shall be referred by either party to the Minister, who shall, in consultation with the land valuation department of the Lands Commission determine the compensation payable by the holder of the mineral right. The Minister shall ensure that inhabitants who prefer to be compensated by way of resettlement as a result of being displaced by a proposed mineral operation are settled in suitable alternative land, with due regard to the economic well-being and social and cultural value, and the resettlement is carried out in accordance with the relevant town planning laws

The landowner, on the other hand, owes the mineral right holder certain obligations. The landowner of the land within the mining area shall not erect a building or structure without the consent of the holder of a mining lease or if the consent is unreasonably withheld, without the consent of the Minister. Also, the landowner shall not upgrade to a higher value crop within the mining area without the consent of the holder of the mining lease, or if the consent is unreasonably withheld, without the consent of the Minister of Lands and Natural Resources.

However, notwithstanding the above, the landowner within an area subject to a mineral right shall retain the right to graze livestock upon or to cultivate the surface of the land if the grazing or cultivation does not interfere with the mineral operations in the area.

- 5.3 Please give an overview of the process for any mandatory acquisition of surface rights (e.g., process and time to enforce).

The 1992 Constitution of the Republic of Ghana makes provisions for the compulsory or mandatory acquisition of property by the state inclusive of surface rights where the acquisition or possession is necessary in the interest of defence, public safety, public order, public health, town and Country planning or the development or utilization of property in such a manner as to promote the public benefit.

Compulsory acquisition of property by the state under the Constitution shall only be made under a law which makes provision for prompt payment of fair and adequate compensation; and a right of access to the High Court by any person who has an interest in or right over the property whether direct or an appeal from any other authority, for the determination of his interest or right and the amount of compensation to which he is entitled.

The Minerals and Mining Act of Ghana provides for mandatory acquisition of surface rights. Once a mineral right is granted, the right of the previous landowner to the surface ceases. The landowner is immediately expected to be adequately compensated by the Mineral Rights holder. The compensation package allowable under the Act must be prompt and adequate. The compensation to which the landowner or lawful occupier may be entitled may include compensation for;

- a. Deprivation of the use of a particular use of the natural surface of the land or part of the land.**
- b. Loss of or damage to immovable properties.**

- c. In the case of land under cultivation, loss of earnings or sustenance suffered by the owner or lawful occupier, having due regard to the nature of their interest in the land.
- d. Loss of expected income, depending on the nature of crops on the land and their life expectancy.

However, no claim for compensation lies, whether under the Minerals and Mining Act or any other Act for the following;

- a. In consideration for permitting entry to the land for mineral operations.
- b. In respect of the value of a mineral in, on or under the surface of the land, or
- c. For loss or damage for which compensation cannot be assessed according to the legal principle in monetary terms.

The compensation shall be promptly paid to the landowner. It should, therefore, not be more than two months as the grant of the mineral right cuts the landowner's livelihood. The landowner who is dissatisfied with the terms of compensation offered by the holder of a mineral right or as determined by the Minister shall have recourse to the High Court by way of review of the compensation package determined by the Minister under the Minerals and Mining Act.

- 5.4. Are any native title issues applicable, either at the exploration licence stage or when a mining right is issued?

There are no native title issues applicable to mining operations either at the exploration stage or during the period of mining lease. Aside the mandatory requirement that's responsible mining should be undertaken taking into consideration the lives of residents of the surrounding areas, payment of prompt and adequate compensation to the native affected by the mining, the right of the lawful owner to graze livestock upon or cultivating the surface of such land in so far as such grazing or cultivation does not interfere with the rights of the mineral holder in the mining area.

- 5.5 Are any other rights needed to use the land (e.g., zoning permissions or planning requirements)?

Yes. Water Resources right is required to use the land under Ghanaian law, and all water resources are vested in the state and not the owner of the surface right or the holder of the mineral right. It is, therefore, incumbent on the holder of a mineral right to secure water use right to water resources falling within the mining area to use those water resources. The Water Resources Commission of Ghana issues water Use Permits.

6. Environmental issues

- 6.1 What environmental authorizations are required to undertake prospecting, exploration, and mining activities in your jurisdiction? Do these vary depending on the type of mineral or the location of the activity?

The Environmental Protection Agency is the body charged with the responsibility to en-

sure that environmental safety precaution is adhered to by mineral rights holders during the mining phase. The Environmental Protection Agency was established under the Environmental Protection Agency Act, 1994 (Act 490). In accordance with section 18 of the Minerals and Mining Act, and the Environmental Assessment Regulation, 1999 (L.I 1652) of the Environmental Protection Agency, a holder of a mineral right requires an environmental permit from the Environmental Protection Agency in order to undertake any mineral operations. Environmental Assessment Regulations, 1999 (L.I 1652) is the main legal framework used by the Environmental Protection Agency for regulating and monitoring mineral operations.

The Regulation requires the applicant to prepare a scoping report setting out the scope or extent of the environmental impact assessment to be carried out by the applicant and includes a draft term of reference, which indicates the essential issues to be addressed in the environmental impact statement. A holder of a mineral right granted an environmental permit is required to submit an annual environmental report in respect of the mineral operations to the Agency.

6.2 What environmental obligations must the operator observe while the mine is operational?

An operator is expected to observe environmental obligations related to water pollution, nature/ecological conservation, air pollution, noise and vibration, soil contamination, changes in social cultural and economic patterns. At the exploration level, companies register and, upon review by the Environmental Protection Agency, are given permits to enable them to operate. An environmental permit is required for even small-scale mining licenses. A preliminary environmental assessment or an environmental impact assessment is carried out to obtain an environmental permit depending upon the anticipated level of impact of the mining operations to be carried out.

6.3 What environmental obligations must the operator observe in relation to the closure of the mine?

Mining operators are required to submit reclamation plans to the Environmental Protection Agency and are also mandated to post reclamation bonds. The reclamation bonds are based on the reclamation plans submitted, inclusive of the work plan for reclamation. The reclamation plan must consider issues relating to nature/ecological conservation, water pollution, and noise pollution.

It is crucial to consider, that upon the termination of a mineral right, the holder of the mineral right is mandated to deliver to the Minister of Lands and Natural Resources or as the Minister may direct, the following:

- a. The records which the holder is obliged under the Mineral law to maintain;
- b. The plans and maps of the area covered by the mineral right;
- c. Other documents including in electronic format, if available that relate to the mineral right.

6.4 What are the potential consequences of a breach of these requirements – both for the operator itself and for directors, managers, and employees?

Persons and individuals that flout the environmental requirements are liable to a fine or imprisonment for a term not exceeding one year or both.

6.5 Which bodies are responsible for enforcement of environmental obligations?

The Environmental Protection Agency (EPA), the Ministry responsible for the Environment, the Ministry responsible for Lands and Natural Resources, the Forestry Commission, and the Water Resources Commission have key roles to play in the enforcement of environmental regulation of the mining sector.

6.6 What is the regulators' general approach in regulating the mining sector from an environmental perspective?

The Minerals Commission takes environmental Regulation in mining very seriously. The regulators' general approach is evinced in Ghana's Mineral and Mining Policy. The environmental regulation objective is "to achieve a socially acceptable balance, within the environmental regulatory framework, between mining and the physical and human environment and to ensure that all participants in the mining sector observe internationally accepted standards of health, mine safety, and environmental protection."

7. Health and safety

7.1 What key health and safety requirements apply to operators in your jurisdiction?

- a. **The key requirements are set out mainly in the Minerals and Mining Act, 2006 (Act 703), Minerals and Mining (Health, Safety, and Technical) Regulations, 2012 (L.I. 2182), and the Workmen's Compensation Act, 1987 (PNDCL 187) of Ghana.**
- b. **Holders of a Reconnaissance Licence and a Prospecting License are required to submit to the Inspectorate Division of the Minerals Commission of Ghana an Exploration Operating Plan in accordance with Regulations 6 and 7 of L.I. 2182 which has to be approved by the Inspectorate Division and also updated every year. The Exploration Operating Plan must contain, among others:
 - i. a detailed description of planned activities;
 - ii. a detailed time schedule;
 - iii. the equipment to be used;
 - iv. a detailed reclamation plan; and
 - v. a detailed budget of planned operations.**
- c. **Holders of a Mining Lease are required to submit to the Inspectorate Division of the Minerals Commission of Ghana a Mining Operating Plan in accordance with Regulations 8 and 9 of L.I. 2182. The Mining Operating Plan must contain among others a detailed description of the
 - mining methods;
 - processing procedures;
 - manner of handling of reagents, chemicals, and fuel; explosives, in accordance with the Minerals and Mining (Explosives) Regulations (L.I. 2177)
 - manner of dealing with waste rock and disposal of tailings.
 - processes of waste management; and**

- mine infrastructure.
- a narrative which addresses the environmental aspects associated with the proposed mine and which includes, at a minimum
 - i. an estimate of the quantity of water to be used and pollutants that may enter receiving waters;
 - ii. a detailed design for the impoundment, treatment or control of runoff water and drainage from workings to reduce soil erosion and sedimentation and to prevent the pollution of receiving waters;
 - iii. a description of measures to be taken to prevent or control fire, soil erosion, subsidence, pollution of surface and groundwater, pollution of air, damage to fish or wildlife or other natural resources and hazards to public health and safety;
- d. Owners and Managers of Mines are required to submit to the Inspectorate Division of the Minerals Commission of Ghana an Emergency Response Plan in accordance with Regulation 11 of L.I. 2182 which should be capable of being implemented at any time that there is an emergency at the mine. The Emergency Response Plan must:
 - contain a description and assessment of emergency scenarios and risks;
 - provide for the establishment of an emergency coordination centre;
 - provide for emergency notification procedures and communication system; equipment and resources; and scenarios and response procedures;
 - provide for:
 - » clean-up, remediation, the procedure for returning to normal operation;
 - » training of staff; and
 - » periodic emergency and evacuation drills of staff.
- e. Owners or Managers of Mines are also required to submit Monthly, or Quarterly Returns to the Chief Inspector of the Minerals Commission in accordance with Regulation 28 of L.I. 2182. The returns must include an accident report, an occupational health report, and an environmental report.

7.2 What reporting requirements apply with regard to mining accidents in your jurisdiction?

- a. Owners or Managers of Mines are required under Regulations 26 and 27 of L.I. 2182 to report accidents and dangerous occurrences related to the operations in the mine to the Chief Inspector of the Minerals Commission of Ghana.
- b. Accidents that must be reported include loss of life, fracture to the skull or limb or spine, electrical shock or burns or injury to two or more persons.
- c. Dangerous occurrences that must be reported include the explosion of gas, an explosion caused by electricity, the uncontrolled initiation of explosive, an outbreak or occurrence of fire, a rock burst, a mad rush in or flooding of a portion of the underground workings of the mine or a case of unconsciousness arising from heatstroke or inhalation of fumes or poisonous gas.

7.3 What are the potential consequences of a breach of these requirements – both for the operator itself and for directors, managers, and employees?

a. According to Regulation 56 of L.I. 2182, a person who contravenes any provision of L.I. 2182 in the case of a body corporate, partnership, co-operative, association or group is liable to a fine of US\$10,000.00 and in the case of an individual, a penalty of not more than US\$5,000.00

7.4 What best practices in relation to health and safety should operators consider adopting in your jurisdiction?

Operators should adopt the practices provided for in the Minerals Commission Act, L.I. 2182 as well as International Best Practices

7.5 Which bodies are responsible for enforcement of health and safety obligations?

The Minerals Commission of Ghana

7.6 What is the regulators' general approach in regulating the mining sector from a health and safety perspective?

The Minerals Commission takes matters of health and safety very seriously, and the health and safety objectives of the Commission are provided succinctly in the Minerals and Mining Policy of Ghana as follows:

- a. To protect the physical environment;**
- b. To protect mining workers; and**
- c. To protect the general public**

8. Processing, refining, and export

8.1 What requirements and restrictions apply with regard to the processing or refining (beneficiation) or minerals?

- a. The requirements are set out in the Minerals and Mining Act, 2006 (Act 703)**
- b. Upon the grant of a Mining Lease, a mining operator pursuant to Section 46 of the Minerals and Mining Act, 2006 (Act 703) has the right to, among others, erect equipment, plant, and buildings to refine the specified minerals recovered by the holder during the mining operations.**

8.2 What requirements and restrictions apply to the export of minerals?

- a. The requirements are set out in the Minerals and Mining Act, 2006 (Act 703) and the Minerals and Mining (General) Regulations, 2012 (L.I. 2173)**
- b. Section 6 of Act 703 provides that a person shall not export, sell or otherwise dispose of a mineral unless the person applies for a licence and is granted such a licence to do so.**
- c. Regulation 3 of L.I. 2173 sets out the conditions for the grant of a licence to export minerals in Ghana:**
 - The application must be accompanied by a refining contract and a sales and**

marketing agreement.

- The holder of the licence to export shall provide to the Minerals Commission particulars of the quantity and grade of the mineral to be shipped and access for samples to be taken prior to the shipment of the minerals.
- After shipment, the holder of a licence to export must not later than 30 days after the shipment of minerals submit to the Minerals Commission certified true copies of the refinery returns
- The holder of a licence to export must also submit monthly and annual returns to the Minerals Commission.

d. Regulation 5 of L.I. 2173 provides that the shipment of diamonds shall be in accordance with the Kimberley Process Certificate Act, 2003 (Act 652).

9. Taxes and royalties

9.1 What taxes, royalties, and similar charges are levied on mining operators in your jurisdiction? How are these calculated?

a. Companies engaged in mining in Ghana are required to pay a corporate tax of 35% on profit.

The year of assessment is the calendar year.

i. Deductions allowed include:

- capital allowance for the year
- bad debts
- tax losses brought forward for a specified number of years
- Repairs and improvements under certain conditions
- Losses incurred in the realization of business or investment assets and liabilities
- Incentives for hiring recent graduates
- Financial costs under certain conditions

ii. Deductions not allowed include domestic and excluded expenditure

b. Companies engaged in mining in Ghana subject to any stability agreement with the Government are subject to a mineral royalty rate of 5% of the total revenue earned from the minerals obtained from mining operations by a holder of a mining lease.

c. A holder of a mining lease must pay annual ground rent to the owner of the land or the land owner's successors and assigns in accordance with the Minerals and Mining (Ground Rent) Regulations, 2018 (L.I. 2357). Ground rents in respect of stool lands in Ghana must be paid to the Office of the Administrator of Stool Land. The ground rent is set at a rate of US\$18.57/acre.

d. Other levies such as Stamp Duties, business operating fees, and property rates are also payable by holders of a mining lease.

9.2 Are any tax incentives available for mining operators?

Yes. These include the following:

- a. **Benefits such as on-site accommodation provided by an employer engaged in mining are generally not taxable.**
- b. **There are special import duty exemptions in relation to plant, machinery, equipment, and accessories strictly for mining operations for holders of a mining lease in Ghana.**

9.3 What other strategies might mining operators consider to mitigate their tax liabilities?

Holders of a mining lease in Ghana may be entitled to enter into stability agreements with the Government of Ghana so that for a period not exceeding 15 years from the date of the Agreement the holder will not be affected negatively by a new enactment or law which may modify the royalties, taxes and other similar taxes.

9.4 Have there been any significant changes to the tax rates applicable to mining companies in the last three years?

There have not been significant changes.

10. Disputes

10.1 In which forums are mining disputes typically heard in your jurisdiction?

The forum of mining disputes depends on the kind of disputes that occur:

- a. **Where a dispute arises between a holder of a mineral right and a non- Ghanaian, the matter must first be resolved amicably between the two parties. If the amicable settlement fails the dispute may be resolved by using any of the following mechanisms:**
 - **In accordance with international machinery for the resolution of investment dispute as agreed to by the parties, or**
 - **The matter may be submitted to arbitration in accordance with the following;**
 - » **Firstly, the framework of a bilateral or multilateral agreement on investment protection to which Ghana and the Country of which the holder of the mineral right is a national are parties, or**
 - » **If no agreement contemplated above exists, the rules of procedure for arbitration of the United Nations Commission on International Trade Law, UNCITRAL Rules.**
- b. **Where a dispute arises between a Ghanaian holder of a mineral right and the Government of Ghana in respect of a matter expressly stated under Act 703, such a dispute shall be referred for resolution, and if same is not resolved amicably within 30 days of the dispute arising or a longer period as agreed between the parties, the dispute may be submitted by a party to the dispute to arbitration for settlement in accordance with the Alternative Dispute Resolution Act, 2010 (Act 798) or any other enactment of such nature that may be in place.**
- c. **In addition to the above-mentioned avenues, each agreement granting a mineral right shall contain provisions on the method of resolution of disputes that may arise under the agreement.**

10.2 What issues do such disputes typically involve? How are they typically resolved?

- a. **Disputes in the mining industry in Ghana take several forms:**
 - **Labour disputes**
 - **Environmental disputes**
 - **Disputes between holders of mineral rights and sub-contractors.**
- b. **The disputes are resolved either by the Courts of Ghana or through arbitration.**

10.3 Have there been any recent cases of note?

An Australian Mining Company recently served notice of intent to proceed to International Arbitration on the Government of Ghana.

11. Trends and predictions

11.1 What changes have there been to the mining landscape in your jurisdiction in the last five years?

- a. **There was recently a ban on small scale mining in Ghana due to increased activities of illegal mining activities. This ban has since been lifted.**
- b. **In 2018, the Ministry of Lands and Natural Resources of Ghana communicated to the Ghana Chamber of Mines the intention of the Government of Ghana to exercise its pre-emption rights pursuant to Section 7 of the Minerals and Mining Act, 2006 (Act 703) to acquire 30% of all gold mined in Ghana. The Ghana Chamber of Mines is currently negotiating with the Government of Ghana to address the issue.**

11.2 How would you describe the current mining landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

- a. **The mining sector in Ghana is a lucrative one, and there are several opportunities for investment.**
- b. **There are no known new developments anticipated in the next 12 months.**

12. Tips and traps

12.1 What are your top tips for mining operators in your jurisdiction, and what potential sticking points would you highlight?

- a. **It is advisable for prospective mining operators in Ghana to seek legal advice in Ghana from lawyers with the requisite knowledge in mining law before making an application for mineral rights in Ghana. This is necessary, especially in the case where a foreign entity seeks to enter into a joint venture with a Ghanaian company having a mineral right in Ghana.**
- b. **Mining operators must take cognizance of the fact that the Minerals Commission requires some level of local content in the operations of a holder of a mineral right.**

This is espoused more particularly in the Minerals and Mining (General) Regulations, 2012 (L.I. 2173).

NOTES ON CONTRIBUTOR



Mr David Yaw Danquah is the founder and Managing Partner of Legalstone Solicitors LLP, a boutique law firm in Ghana with a concentration on Corporate and Commercial, Mining and Infrastructure, Debt Recovery and Restructuring, Real Estate and Construction Law, and Commercial Arbitration.

He heads the firm's practice areas of focusing are Corporate and Commercial, Mining and Infrastructure, Debt Recovery and Restructuring, and Commercial Arbitration.

David has advised on numerous investment and mining-related transactions. He also has assisted countless international entities in establishing their operations in Ghana, and through his firms, offers support services to those entities. He has an impeccable record of providing technical savvy and exceptional client services.

David is a graduate of Kwame Nkrumah University of Science and Technology (KNUST), Kumasi, where he received his Bachelor's Degree in Law (LL. B) and the Ghana School of Law, where he studied and received a Post Graduate Qualifying Certificate in Law (PQCL). He holds a Certificate in Negotiation Mastery from Harvard University. Presently, he is pursuing an LL.M Degree in International Dispute Resolution at the prestigious Queen Mary University of London, United Kingdom.

David is a member of the Ghana Bar Association, Association of International Petroleum Negotiators (AIPN) and Institute of Energy Law (IEL) based in Houston, U.S.

LEGALSTONE SOLICITORS LLP

Website:

www.legalstonesolicitorsllp.com

Email:

info@legalstonesolicitorsllp.com
david@legalstonesolicitorsllp.com

Ghana Post GPS:

GA-417-3770