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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The key legislation regulating mining in Ghana is the 1992 Constitution of Ghana, the Minerals and Mining Act, 2006 (Act 703) as amended by the Minerals and Mining (Amendment) Act, 2015 (Act 900) and the Minerals and Mining (Amendment) Act, 2019 (Act 995), and the Minerals Commission Act, 1993 (Act 450). Other substantive enactments that regulate mining are the Minerals Development Fund Act, 2016 (Act 912), the Minerals Income Investment Fund Act, 2018 (Act 978) as amended by the Minerals Income Investment Fund (Amendment) Act, 2020 (Act 1024), and the Kimberley Process Certificate Act, 2003 (Act 652).

The following subsidiary legislation further regulates different aspects of the mining sector: a) Minerals and Mining (General) Regulations, 2012 (L.I. 2173); b) Minerals and Mining (Support Services) Regulations, 2012 (L.I. 2174); c) Minerals and Mining (Compensation and Resettlement) Regulations, 2012 (L.I. 2175); d) Minerals and Mining (Licensing) Regulations, 2012 (L.I. 2176); e) Minerals and Mining (Explosives) Regulations, 2012 (L.I. 2177); f) Minerals and Mining (Health, Safety and Technical) Regulations, 2012 (L.I. 2182); g) Minerals and Mining (Ground Rent) Regulations, 2018 (L.I. 2357); h) Minerals and Mining (Mineral Operations - Tracking of Earth Moving and Mining Equipment) Regulations, 2020 (L.I. 2404); i) Minerals and Mining (Local Content and Local Participation) Regulations, 2020 (L.I. 2431); and j) Income Tax (Minerals Income Investment Fund Exemptions) Regulations, 2020 (L.I. 2433).

1.2 Which Government body/ies administer the mining industry?

The Ministry of Lands and Natural Resources and the Minerals Commission administer the mining industry in Ghana.

The Minerals Commission was established under the Minerals Commission Act, 1993 (Act 450) with the statutory purpose of “regulation and management of the utilisation of the mineral resources and the coordination of the policies in relation to them”.

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

Other sources of law affecting the mining industry include environment-related laws such as the Environmental Protection Act, 1994 (Act 490) and its subsidiary legislation and other natural resources-related laws such as the Forestry Commission Act, 1999 (Act 571), the Water Resources Commission Act, 1996 (Act 522), the Ghana Geological Survey Authority Act, 2016 (Act 928), and their subsidiary legislation. Others are the Lands Act, 2020 (Act 1036), the Local Governance Act, 2016 (Act 936), and the Land Use and Spatial Planning Act, 2016 (Act 925).

Additionally, the following legislation regulates the administrative aspects of mining operations: the Companies Act, 2019 (Act 992); the Incorporated Partnership Act, 1962 (Act 152); the Ghana Investment Promotion Centre Act, 2013 (Act 865); the Income Tax Act, 2015 (Act 896); the Labour Act, 2003 (Act 651); and the Workmen’s Compensation Act, 1987 (PNDCL 187).

2 Recent Political Developments

2.1 Are there any recent political developments affecting the mining industry?

In January 2022, a truck transporting explosive material to a mining site exploded near the town of Appiatse, causing extensive damage to life and property. Thirteen people lost their lives and around 100 sustained varying degrees of injury. Subsequent investigations established that the supplier of the explosives was in breach of the regulations governing the manufacture, storage and transportation of explosives. Due to the gravity of the incident, the company was handed an administrative fine of USD 1 million, exceeding the statutory limit of USD 10,000. In addition, the company was ordered to pay the Cedi equivalent of USD 5 million to the Government.

2.2 Are there any specific steps the mining industry is taking in light of these developments?

The Minister of Lands and Natural Resources established a Ministerial Committee of Inquiry comprising representatives

of various stakeholders in the industry. The mandate of the Committee was, among other things, to undertake a general review of the health and safety regime in the mining industry and make recommendations for reforms as it deemed fit.

3 Mechanics of Acquisition of Rights

3.1 What rights are required to conduct reconnaissance?

The two types of rights applicable are: a) a reconnaissance licence; and b) a restricted reconnaissance licence.

A reconnaissance licence is granted for an initial period of not more than 12 months and may be renewed, not later than three months before the expiry of the initial term of the licence, for a further period of not more than 12 months.

A restricted reconnaissance licence is a reconnaissance licence issued in respect of reconnaissance for industrial minerals, including basalt, clay, granite, gravel, gypsum, laterite, limestone, marble, rock, sand, sandstone, slate talc, salt and other minerals as the Minister of Lands and Natural Resources may from time to time declare, by notice published in the Gazette, to be industrial minerals.

3.2 What rights are required to conduct exploration?

The two types of rights applicable are: a) a prospecting licence; and b) a restricted prospecting licence.

A prospecting licence is granted for an initial period of not more than three years and may be renewed, not later than three months before the expiry of the initial term of the licence, for a further period of not more than three years.

A restricted prospecting licence is a prospecting licence issued in respect of industrial minerals.

3.3 What rights are required to conduct mining?

The three types of rights applicable are: a) a mining lease; b) a restricted mining lease; and c) a small-scale mining licence.

A mining lease is granted for an initial period of 30 years and may be renewed before the expiry of such period for a further period of not more than 30 years.

A restricted mining lease is a mining lease issued in respect of industrial minerals.

A small-scale mining licence is granted for an initial period of not more than five years and may be renewed on expiry for a further period that the Minister of Lands and Natural Resources may determine.

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

The same procedures are generally applicable to different minerals. However, the law provides some modifications with respect to radioactive minerals and industrial minerals.

3.5 Are different procedures applicable to natural oil and gas?

Yes, different procedures apply.

4 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

4.1 What types of entity can own reconnaissance, exploration and mining rights?

Generally, only companies incorporated in Ghana are granted rights to undertake reconnaissance, exploration or mining operations. Non-citizens may apply for a mineral right in respect of industrial minerals if the proposed investment in the mineral operations is at least USD 10,000. A small-scale mining licence may only be issued to an individual who is a Ghanaian that has attained the age of 18 years and is registered by the Minerals Commission in an area designated for small-scale mining operations.

4.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

As noted above, a foreign entity will not be granted rights in Ghana unless a separate company is incorporated in Ghana.

Additionally, all companies in Ghana with foreign participation must register with the Ghana Investment Promotion Centre under the Ghana Investment Promotion Centre Act, 2013 (Act 865).

This act prescribes certain minimum capital requirements for the operation of foreign entities in Ghana. A wholly foreign-owned entity must invest a minimum of USD 500,000 in cash or goods/equipment, whilst a foreign entity which partners with a Ghanaian entity must invest a minimum of USD 200,000 in cash or capital goods relevant to the investment, or a combination of both by way of equity participation. The Ghanaian partner must have at least 10% equity participation in the joint enterprise.

4.3 Are there any change of control restrictions applicable?

A person who intends to become a controller of a mining company must serve a written notice of his intention on the Minister of Lands and Natural Resources. The person may become a controller of the mining company only if the Minister issues a written notice of no objection or fails to issue a notice of no objection within two months from the date of service of the notice on the Minister.

The Minerals and Mining Act, 2006 (Act 703) defines a controller as a person who is entitled to exercise or control the exercise of more than 20% of the voting power at any general meeting of the mining company or its subsidiary, either alone or with associates.

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

Small-scale mining licences may only be issued to Ghanaian citizens. They must be at least 18 years old, and must be registered by the office of the Minerals Commission in an area designated for small-scale mining operations.

A restricted reconnaissance licence, restricted prospecting licence or restricted mining lease may only be granted to a Ghanaian person.

A non-citizen may apply for a mineral right in respect of industrial minerals, provided the proposed investment in the mineral operations is at least USD 10,000.

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

The Government has a 10% free carried interest in the rights and obligations of the mineral operations. This does not preclude the Government from any other or further participation in mineral operations that may be agreed with the holder.

Furthermore, the Minister of Lands and Natural Resources may, through a written notice to the mining company, require the mining company to issue the Republic a special share for no consideration. A special share shall constitute a separate class of shares and shall have the rights that are agreed between the Minister and the company.

5 Processing, Refining, Beneficiation and Export

5.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

There are no specific laws regulating the processing of minerals. However, a person must obtain a licence to export, sell or dispose of any mineral.

An application by the holder of a mining lease for a licence to export, sell or dispose of gold or other precious minerals produced by the holder must be accompanied by a refining contract and a sales and marketing agreement. If the applicant is not a holder of the mining lease, he must satisfy the Minister of Lands and Natural Resources that: the business plan or particulars of the programme of the proposed operations include the refining or polishing of the minerals in Ghana before export and the purchase of only refined or polished minerals for export; and a percentage of the minerals determined by the Minister is supplied to local refineries, to ensure regular supply to local users.

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

A licence is required from the Minister of Lands and Natural Resources to export, sell or dispose of a mineral. The licence issued is not transferable.

The Kimberley Process Certificate Act, 2003 (Act 652) regulates the import and export of rough diamonds. A person who intends to export rough diamonds must be issued with a Kimberley Certificate by the Minister or any person authorised by the Minister.

6 Transfer and Encumbrance

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

A mineral right can only be transferred, assigned, mortgaged or otherwise encumbered with the prior written approval of the Minister of Lands and Natural Resources.

6.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Yes, mining rights are capable of being mortgaged with the written approval of the Minister of Lands and Natural Resources.

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

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

Yes, rights to conduct reconnaissance, exploration and mining can be subdivided with the approval of the Minerals Commission.

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

Yes, they are.

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

The holder of a right to explore or mine a primary mineral may apply to the Minister of Lands and Natural Resources to amend the mineral right to include a secondary mineral.

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

Yes, to the extent that such exercise will enable them to fulfil their obligations under the issued licence.

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

No, there are not.

8 Rights to Use Surface of Land

8.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

No, the mineral rights are issued in respect of the minerals and do not automatically extend to include ownership rights of the surface of the land. The mineral rights are subject to the limitations on surface rights that apply under an enactment or as reasonably determined by the Minister of Lands and Natural Resources.

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

The lawful owner has a right to graze livestock or cultivate the land if the grazing or cultivation does not interfere with the mineral operations in the area. The lawful owner is also entitled

to compensation from the holder of the mineral right for the disturbance of the rights of the owner. The amount of compensation shall be determined by agreement between the parties but 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 of Lands and Natural Resources who shall, in consultation with the Government agency responsible for land valuation, determine the compensation payable by the holder of the mineral right. A landowner may also be compensated by way of resettlement.

8.3 What rights of expropriation exist?

The State can compulsorily acquire land that is subject to a mineral right. Compulsory acquisition must be made under a law that 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 land for the determination of his interest or right and the amount of compensation to which he is entitled.

Additionally, the Minister of Lands and Natural Resources has a right of pre-emption over 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 over products derived from the refining or treatment of these minerals.

9 Environmental

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

An environmental permit issued by the Environmental Protection Agency (“EPA”) is required prior to the commencement of mining operations. Where the mining lease covers a total area in excess of 10 hectares, an environmental impact assessment must be submitted to the EPA prior to the grant of an environmental permit.

A water use permit issued by the Water Resources Commission will be required where the contemplated activities under the licences involve the use or diversion of water from a river, stream, underground reservoir, etc.

A holder of a mineral right may also have to obtain approvals/permits from the Forestry Commission where applicable, though the Minister of Lands and Natural Resources asked the Forestry Commission in March 2021 to stop the issuance of all permits in forest reserves.

9.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

The manager of a mine must, among other things, ensure that tailings are discharged into a tailings storage facility with more than one point of discharge, and that the location of the tailings storage facility meets specific minimum standards and is not likely to result in a threat to human life and/or the environment.

Before closing a mine site, the holder of a mining lease shall satisfy the Chief Inspector of Mines that each source of potential pollution and component of the mining project that is to be closed are designed to be stable in the long term. The holder of a mining lease is also required to post a reclamation bond based on an approved work plan for reclamation.

In the case of mining operations, the holder of mining rights who undertakes said operations must, prior to beginning its operations, and as part of the application process for an environmental permit, enter into a reclamation security agreement with the EPA. This usually requires the holder of the mining rights to pay specified amounts to an interest-yielding account for the duration of the mining operations. Where the mineral rights holder defaults in reclaiming the mined land, the EPA will call on the monies paid in respect of the bond to reclaim the land. A certificate of final completion is issued to the holder of the mining rights upon completion of works to reclaim the disturbed land, and after inspection by the EPA.

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

Before closing a mine site, the holder of a mining lease must ensure that emission of polluted water, air or dust does not occur from the closed mine site, and submit a mine closure plan to the Inspectorate Division of the Minerals Commission for approval. He/she must also rehabilitate the mining areas that are no longer required for mining operations. The holder of a mining lease is also required to post a reclamation bond based on an approved work plan for reclamation.

In the case of mining operations, the holder of the mining rights who undertakes mining operations must, prior to beginning its operations, and as part of the application process for an environmental permit, enter a reclamation security agreement with the EPA. Please see question 9.2 above.

9.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

A person who intends to engage in mining operations must obtain prior written approval, in the form of a written permit, from the District Planning Authority. The District Assembly must consult public agencies and local communities in the determination of an application for a permit prior to the adoption of an approved District Development Plan.

10 Native Title and Land Rights

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

Persons who have native title to land or other statutory surface use rights may continue exploitation and use of the land, provided their use does not interfere with the mineral rights holder. Additionally, those with native title or other statutory surface use rights are entitled to compensation from the holder of the mining lease.

11 Health and Safety

11.1 What legislation governs health and safety in mining?

The Minerals and Mining (Health, Safety and Technical) Regulations, 2012 (L.I. 2182) contain detailed provisions on health and safety.

The Minerals and Mining (Explosives) Regulations, 2012 (L.I. 2177) regulate the conveyance, storage, possession, manufacture and use of explosives for mining, quarrying and civil works; and substances used for the manufacture of explosives.

Additionally, the Labour Act, 2003 (Act 651) and its subsidiary legislation, and the Environmental Protection Act, 1994 (Act 490) and its subsidiary legislation contain provisions on health and safety generally, which may be applied to mining operations.

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

Yes, some of the key obligations are as follows:

- a) The manager of a mine must, in relation to the mine, take the steps that are necessary to ensure that adequate ventilation is supplied to places where persons are travelling or working underground. The manager of a mine shall ensure that the quality of air is continuously monitored to enable the detection of carbon monoxide in main return airways. The manager must also ensure that the data relating to the monitoring is transmitted to the central control room at the surface.
- b) A person who engages in the procurement, transportation, storage, use and disposal of cyanide products for gold processing purposes shall appoint a qualified person to be responsible for any activity that involves the cyanide products. The manager of a mine is responsible for the safe procurement and transportation of cyanide products to the mine site.
- c) The manager of a mine or the holder of a small-scale mining licence must organise and maintain a rescue brigade in each mine. Each rescue brigade shall consist of not less than five fully trained persons, including one person who shall act as captain of the brigade.

Following the explosion in January 2022 that involved a truck transporting explosive materials by road to a gold mine site and caused extensive damage to life and property (see question 2.1 above), the Ministry of Lands and Natural Resources introduced several new measures with which transporting companies must comply, such as:

- a) Trucks used by a company to transport explosives must meet specific system requirements to ensure maximum visibility to surrounding vehicles and pedestrians, and to monitor driver alertness and speed.
- b) Trucks transporting explosives must be accompanied by escort vehicles, which must also be inspected and meet certain specifications.
- c) Competent persons accompanying explosives must be trained in an approved Code of Safe Working Practice and must carry the Code with them.

12 Administrative Aspects

12.1 Is there a central titles registration office?

The Minerals Commission is required to maintain a register of mineral rights in which shall be promptly recorded applications, grants, variations and dealings in, assignments, transfers, suspensions and cancellations of rights. The register shall be open to public inspection on payment of a prescribed fee, and members of the public shall be given a copy of the records upon request to the Commission and the payment of a prescribed fee.

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

An aggrieved person who considers that their rights may have been breached by the Minister of Lands and Natural Resources or other Government officials in respect of any of the licences issued under the mining laws, may apply to the High Court under Ghanaian administrative law.

Additionally, the principal mining legislation provides for alternative dispute resolution for disputes arising between the holder of a mineral right and the State.

13 Constitutional Law

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

The Ghanaian Constitution provides that every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, or water courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the Republic of Ghana, which is vested in the President on behalf of, and in trust for the people of Ghana.

Additionally, 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 for the exploitation of any mineral, water or other natural resource of Ghana, is subject to ratification by Parliament.

However, Parliament may by resolution, supported by the votes of at least two-thirds of the Members of Parliament, exempt any particular class of transactions, contract or undertaking from the requirement of Parliamentary ratification.

13.2 Are there any State investment treaties which are applicable?

Ghana has signed and ratified bilateral investment treaties with Burkina Faso, China, Denmark, Germany, Malaysia, the Netherlands, Serbia, Switzerland and the United Kingdom.

14 Taxes and Royalties

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

Yes, the corporate income tax payable for mineral operations is 35% of the chargeable income derived from mineral operations for each year of assessment. To ascertain the assessable income from mineral operations of a person, each separate mineral operation is treated as an independent business. The tax liability for the business is calculated independently for each year of assessment.

The holder of a mineral right may be granted the following:

- a) exemption from payment of customs import duty in respect of plant, machinery, equipment and accessories imported specifically and exclusively for the mineral operations;
- b) exemption of staff from the payment of income tax on furnished accommodation at the mine site;
- c) immigration quota in respect of the approved number of expatriate personnel; and
- d) personal remittance quota for expatriate personnel free from tax imposed by an enactment regulating the transfer of money out of the country.

The Minister of Lands and Natural Resources may, as a part of a mining lease, enter into a stability agreement with the holder of the mining lease, to ensure that the latter will not be adversely affected by subsequent changes to the level of and payment of royalties, taxes, fees and other fiscal imports. A stability agreement shall not exceed 15 years and is subject to ratification by Parliament.

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

Yes, 5% of the total revenue earned from mining operations is payable to the State.

15 Regional and Local Rules and Laws

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

No, there are not.

15.2 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?

The Africa Mining Vision and its Action Plan seek to use Africa's mineral resources to reduce the continent's poverty and accelerate its social and economic development. The Africa Mining Vision was adopted by African Heads of State to create an opportunity for African states to actually benefit from their mineral resources.

The Economic Community of West African States ("ECOWAS") Directive on the Harmonisation of Guiding Principles and Policies in the Mining Sector and the ECOWAS Mineral Development Policy provide guidelines to promote the development of an efficient mineral sector in the region.

16 Cancellation, Abandonment and Relinquishment

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

Yes, a holder of a mineral right may surrender all or part of the land subject to a mineral right. The holder may apply to the Minister of Lands and Natural Resources for a certificate of surrender not later than two months before the date on which the holder wishes the surrender to take effect. The grant of the certificate of surrender will be dependent on whether the holder has satisfied its obligations under the licence.

16.2 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?

Yes, prior to the expiration of its initial term, a holder of a prospecting licence is required to surrender at least half the number of blocks of the prospecting area, provided a minimum of 125 blocks remain the subject of the licence and the blocks form not more than three discrete areas, each consisting of: a) a single block; or b) a number of blocks, each having a side in common with at least one other block in that area.

A holder of a prospecting licence may apply to the Minister of Lands and Natural Resources for exemption, either wholly or in part, where a delay in the issuance of permits occasioned by a Government agency or institution affected the holder's ability to discharge its obligations under the prospecting licence. The application must be made at least one month before the expiration of the licence (or within a shorter timeframe where the Minister allows it) and the exemption, if granted, may not be for a period of more than 12 months.

16.3 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?

Yes, the State (through the Minister of Lands and Natural Resources) may suspend or cancel a licence issued in respect of exploration or mining if the holder fails to comply with the conditions indicated in its licence.

Additionally, the State may cancel an exploration or mining right if the holder:

- a) fails to make any required payment to the Republic or another person on the due date;
- b) becomes insolvent or bankrupt, enters into an agreement or scheme of composition with the holder's creditors, or takes advantage of an enactment for the benefit of its debtors or goes into liquidation, except as part of a scheme for an arrangement or amalgamation;
- c) makes a statement to the Minister in connection with the mineral right which the holder knows or ought to have known to be materially false; or
- d) for any reason, becomes ineligible to apply for a mineral right under the Minerals and Mining Act, 2006 (Act 703).

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