

Mining

In 28 jurisdictions worldwide

Contributing editors

Michael Bourassa and John Turner



2015

GETTING THE
DEAL THROUGH 

GETTING THE
DEAL THROUGH 

Mining 2015

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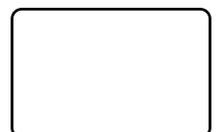


Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

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First published 2004
Eleventh edition
ISSN 1748-3085

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



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Mining industry

1 What is the nature and importance of the mining industry in your country?

Gold accounts for about 97 per cent of all mineral receipts. Ghana's gold output declined from 3,192,648 ounces in 2013 to 3,167,755 ounces in 2014, representing a marginal decline of 0.8 per cent (Ghana Chamber of Mines). Ghana's gold output amounts to 3.5 per cent of global output and Ghana was the 10th leading producer of gold for 2014. The output of the other commercially exploited minerals such as manganese and diamonds, was mixed. While diamonds exported by the Precious Mineral Marketing Company (PMMC) increased by 51.6 per cent (from 159,074 carats in 2013 to 241,120 carats in 2014), total shipments of manganese by the country's sole producer, Ghana Manganese Company, declined from 1,997,911 tonnes in 2013 to 1,353,486 tonnes in 2014. The falling gold price as well as the effect of the curtailment of electricity to the mining companies partly led to a 16.7 per cent decline in total receipts from gold exports.

On account of the greater share of gold in the basket of mineral exports, total mineral receipts in 2014 also declined from US\$4,786,714,504 in 2013 to US\$3,943,427,459. This represents a 17 per cent contraction in mineral revenue relative to 2013. Against this background, the mining industry in Ghana lost its position as the leading contributor of fiscal revenue, mobilised by the Ghana Revenue Authority to public administration, defence and manufacturing sub-sectors, even though its contribution to the national purse improved by 6 per cent in 2014. The mining sector's share in total domestic revenue reduced from 18.7 per cent in 2013 to 15.4 per cent in 2014. In nominal terms, the sector contributed US\$290,801,636.60 to revenue, comprising US\$114,650,732.17, US\$108,421,130.13 and US\$67,502,858.08 in corporate taxes, royalties and PAYE respectively.

Mining companies returned about US\$2.8 billion – representing 77.5 per cent of their mineral revenue – through the Bank of Ghana and the commercial banks in 2014, a figure far in excess of the statutory minimum requirement of 25 per cent. Total mineral export earnings in 2014 represented 3.4 per cent of gross merchandise exports.

The sector directly employs 12,148 people and mining companies voluntarily contributed about US\$20,769,049 to their host communities and also to the general public in 2014. This compares with 17,103 total employees in 2013 (the fall is mainly attributable to the suspension of production at AngloGold Ashanti's Obuasi Mine and phased rationalisation of labour by the Gold Fields Group at the Tarkwa and Damang Mines, as well as Newmont's Ahafo Mine).

The mining sector is also a crucial contributor to the attraction of investments into Ghana. The total investments in the sector within the past 10 years was in excess of US\$7 billion

These investments came from companies that are engaged in gold production, exploration and support services.

2 What are the target minerals?

The main minerals extracted in Ghana are gold, diamond, bauxite and manganese. However, gold currently accounts for over 90 per cent of mining sector revenue and activity in Ghana.

3 Which regions are most active?

The Ashanti Belt, which covers most parts of Ghana's Ashanti and Western Regions is most active, particularly when it comes to gold mining and prospecting. The Sefwi Belt in the north-west of the western region and

the Wa-Laura, Bole and Bui Belts in the northern regions of Ghana are also very active with a lot of gold prospecting activity.

The Kibi Belt in the eastern region is very active with diamond and bauxite mining. There is also gold prospecting activity in this area.

Legal and regulatory structure

4 Is the legal system civil or common law-based?

Ghana's legal system is based on English common law.

5 How is the mining industry regulated?

The mining industry in Ghana is regulated at the state and national level by way of mining laws and agreements.

6 What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws?

The principal laws that regulate the mining industry are the Minerals and Mining Act 2006 (Act 703) (the Minerals and Mining Act) and the following regulations:

- the Minerals and Mining (Compensation and Resettlements) Regulations 2012 (LI2175);
- the Minerals and Mining (Support Services) Regulations 2012 (LI2174);
- the Minerals and Mining (General) Regulations 2012 (LI2173);
- the Minerals and Mining Regulations (Health, Safety and Technical) 2012 (LI 2182);
- the Minerals and Mining (Explosives) Regulations 2012 (LI2177); and
- the Minerals and Mining (Licensing) Regulations 2012 (LI 2176).

These regulations, hereinafter referred to collectively as the 'Minerals and Mining Regulations', replaced the Mining Regulations 1970 (LI 665). The principal regulatory body that administers these laws is the Minerals Commission.

The Minerals and Mining Act aims to:

- develop a national policy on mining and consolidate the disparate laws on mining that existed at the time; and
- increase investment by foreign mining companies in Ghana by removing the uncertainty concerning the availability and conditionality of mining rights as well as the bureaucratic gridlock that provided opportunities for corruption.

Mining legislation is applied equally to Ghanaians and foreign investors, except for provisions relating to small-scale mining of minerals, which is exclusively reserved for Ghanaians.

The Minerals and Mining Regulations (Health, Safety and Technical) 2012 (LI 2182) establishes environmental, safety, machinery and related guidelines for mining operations.

The Minerals Commission was established under the Minerals Commission Act 1993 (Act 450) for the 'regulation and management of the utilisation of the mineral resources of Ghana and the coordination of the policies in relation to them'.

The Minerals Commission is empowered by section 100 of the Minerals and Mining Act to, under the direction of the Minister of Mines; supervise the proper and effective implementation of the Minerals and Mining Act and Regulations.

The Minerals Commission is required by law to formulate recommendations on mineral policy, monitor the implementation of these policies, assess 'stability agreements' and report to parliament, as well as to collect data on national mineral resources.

7 What classification system does the mining industry use for reporting mineral resources and mineral reserves?

In Ghana, any of the recognised international classification systems are acceptable including those from Canada, South Africa and Australia.

The Minerals Commission, however, has guidelines for preparing feasibility study reports.

Mining rights and title

8 To what extent does the state control mining rights in your jurisdiction? Can those rights be granted to private parties and to what extent will they have title to minerals in the ground? Are there large areas where the mining rights are held privately or which belong to the owner of the surface rights? Is there a separate legal regime or process for third parties to obtain mining rights in those areas?

The title or ownership of all minerals, including metallic minerals, is vested in the President of the Republic of Ghana in trust and on behalf of the people of Ghana.

Mineral rights are granted to private parties, which allows them to have the right to mine the minerals in the ground.

There are large areas such as Tarkwa and Obuasi where the mining rights are privately held by relatively large mining companies. Small-scale and artisanal miners are also permitted to exploit the minerals in those areas. Often, the surface rights are owned separately.

9 What information and data is publicly available to private parties that wish to engage in exploration and other mining activities? Is there an agency which collects mineral assessment reports from private parties? Must private parties file mineral assessment reports? Does the agency or the government conduct geoscience surveys, which become part of the database? Is the database available online?

The Minerals Commission has a geological map of Ghana specifying the probable areas where minerals may be found. The Geological Survey Department is the technical entity responsible for carrying out geological surveys and, therefore, also retains similar data.

The mining laws require that records of all mineral rights granted should be maintained and must be open to inspection by members of the public. Copies of such records are available to members of the public on payment of the prescribed fees. The database is not yet available online.

10 What mining rights may private parties acquire? How are these acquired? What obligations does the rights holder have? If exploration or reconnaissance licences are granted, does such tenure give the holder an automatic or preferential right to acquire a mining licence? What are the requirements to convert to a mining licence?

There are three kinds of mining rights in Ghana: reconnaissance licence, prospecting licence and mining lease. Private parties may acquire any or all of them, although the right sequence is to obtain the exploratory licences (reconnaissance and prospecting) and then convert to a mining lease if exploration is successful. The reconnaissance licence allows the holder to engage in initial exploratory work and search for minerals. It gives the holder the right to conduct reconnaissance exercises regarding the reconnaissance area.

However, the holder is not entitled to drill, excavate or carry on any under surface operations. The prospecting licence permits the holder to carry out activities including activities to determine the extent and economic value of any deposit in the prospecting area. The mining lease gives the holder the right to intentionally win minerals, and it includes any operations directly or indirectly necessary or incidental thereto.

The grant of mineral right is based on first come, first served basis as long as the applicant has met the requirements stipulated in the mining law.

A holder of a reconnaissance licence can apply to obtain a mining lease but not on a preferential basis.

From 1 July 2010, the Minerals Commission enacted a new policy concerning the granting of extensions to mineral rights. This is because the Mineral Commission realised that a number of companies were abusing the regime then in place.

Section 34(2) of the Minerals and Mining Act, allows for the term of prospecting licences to be no more than three years. Licence holders are obliged to reduce the area of the prospecting licence upon renewal by section 38(1) of the Minerals and Mining Act. In practice however, the term granted has generally been two years, to ensure companies are kept on their toes.

Following complaints from prospecting licence holders that the two-year term granted was not enough for the completion of their exploration programmes, a further one-year extension was granted without requiring a reduction of the size when holders have demonstrated performance but need time to complete their exploration programmes to enable them make informed decisions to renew the licence.

The Minerals Commission has realised that a number of companies have been abusing this privilege and have continuously requested extensions even though they were in a position to apply for a renewal of the licence. This practice created problems for the Minerals Commission in its management of the mineral title system.

Consequently, since 1 July 2010, the Minerals Commission has been guided by the following policy in granting extensions:

- extensions are limited only to prospecting licences. Reconnaissance licences and mining leases will not be extended; and
- prospecting licences requiring extensions will be granted once for a term of one year, especially for those companies active on the ground.

No extensions will be entertained for non-performing companies.

A holder of a reconnaissance licence or a prospecting licence may apply for one or more mining leases regarding any or all of the minerals that formed the subject of the licence, prior to the expiry of the licence. However, the blocks that constitute the reconnaissance or prospecting area should not form more than three discrete areas (three separate applications should be submitted) with each consisting of either a block or a number of blocks with common sides.

The grant of the mining lease in these circumstances is subject to compliance with all the terms of the licence held prior to the application for the mining lease. The Minister responsible for natural resources is required to grant the application provided all the application requirements have been met within 60 days of receipt of the application. Any dispute between the applicant and the Minister should be resolved through the alternative dispute mechanism provided in the Minerals and Mining Act.

11 What is the regime for the renewal and transfer of mineral licences?

A holder of a reconnaissance licence may, not later than three months before the expiration of the initial term of the licence, apply to the Minister for an extension of the term of the reconnaissance licence in respect of all or part of the reconnaissance area.

The holder of a prospecting licence may, at any time but not later than three months before the expiration of the initial term of the licence, apply to the Minister in the prescribed form for an extension of the term of the prospecting licence, for a further period of not more than three years in respect of all or any number of blocks that are the subject of the prospecting licence.

A holder of a mining lease may, at any time but not later than three months before the expiration of the initial term of the mining lease or a shorter period that the Minister of Lands and Natural Resources allows, apply in a prescribed form to the Minister for an extension of the term of the lease for a further period of up to 30 years in respect of all or any number of contiguous blocks that are the subject of the lease and in respect of all or any of the minerals the subject of the lease.

A mineral right cannot in whole or in part be transferred, assigned, mortgaged or otherwise encumbered or dealt in without the prior written approval of the Minister of Lands and Natural Resources, whose approval should not be unreasonably withheld or given subject to unreasonable conditions.

Where the Minister does not give written approval within 30 days, he or she is required, upon a request by the applicant, to give a written reason for the failure to approve within 14 days of the receipt of the request for the reason.

Any dispute arising from a disagreement over the right to extend the term, transfer, assign, mortgage or otherwise encumber a mineral right

will trigger the dispute resolution (alternative dispute resolution) provision in the law starting first with an attempt at an amicable resolution through mutual discussions.

12 Is there any distinction in law or practice between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties?

Small-scale mining is reserved exclusively for Ghanaians. Beyond this, there is no distinction between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties.

In the mining industry there is no requirement that a foreign party should have a domestic partner. However, the government of Ghana, as per the Minerals and Mining Act, has a 10 per cent free carried interest in all mining undertakings and retains the option to acquire additional interest on terms to be agreed on by the private party and the government.

13 How are mining rights protected? Are foreign arbitration awards in respect of domestic mining disputes freely enforceable in your jurisdiction?

The independence of the judiciary is guaranteed under Ghana's 1992 Constitution and mineral rights are subject to the processes of the courts.

There are also dispute resolution provisions under the Minerals and Mining Act, which make room for the application of internationally accepted rules in any dispute including the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) Rules.

Foreign arbitration awards in respect of domestic mining disputes are freely enforceable in Ghana in accordance with Ghana's Alternative Dispute Resolution law.

14 What surface rights may private parties acquire? How are these rights acquired?

The law allows the mineral rights holder to pay fair, adequate and prompt compensation to the original surface right holder if there is any disturbance to the surface rights of the owner.

The law requires that the mineral rights must be exercised in a manner consistent with the reasonable and proper conduct of the operations concerned so as to affect as little as possible the interest of any lawful occupier of the land in respect of which such rights are exercised.

Also, the lawful occupier of any licensed area has the right to graze livestock upon or to cultivate the surface of such land in so far as such grazing or cultivation does not interfere with the mineral operations in the area.

15 Does the government or do state agencies have the right to participate in mining projects? Is there a local listing requirement for the project company?

The Minister of Lands and Natural Resources has the right of pre-emption to 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 may, by an executive instrument, appoint a statutory body to act as its agent for the exercise of the right of pre-emption.

The government is entitled to a 10 per cent free carried interest in the rights and obligations of the mineral operations where the mineral right is for mining or the exploitation of minerals for which the government is not required to make any financial contribution. The government is not precluded from any other or further participation in mineral operation subject to the agreement of the holder.

There is no special listing requirement for the project company.

16 Are there provisions in law dealing with government expropriation of licences? What are the compensation provisions?

According to article 20 of the 1992 Constitution of the Republic of Ghana, no property of any description, or interest in or right over any property shall be compulsorily taken possession of or acquired by the state unless that possession or acquisition is necessary in the interest of public security, morality, law and order or other public benefit and the necessity for the acquisition or possession is clearly stated so as to provide reasonable justification for 'any hardship that may result to any person who has an interest in or right over the property'. Article 20 further indicates that compulsory acquisition of property by the state can only be made under a law

that makes provision for the prompt payment of fair and adequate compensation and the person adversely affected by such an action has a right of access to the High Court for the determination of his or her interest or right and the amount of compensation to which he or she is entitled.

As a measure against speculative holding of large areas of land the law requires the holder of a prospecting licence, prior to or at the expiration of the initial term, to surrender not less than half the number of blocks (one block is 21 hectares) of the prospecting area so long as a minimum of 125 blocks remain subject to the licence and the blocks form not more than three discrete areas each consisting of a single block, or a number of blocks each having a side in common with at least one other block in that area. The Minister may, based on a written request for relief, exempt a holder from the obligation to surrender land.

17 Are any areas designated as protected areas within your jurisdiction and which are off-limits or specially regulated?

There are some restrictions regarding mining in forest areas and water bodies. Other regulators (the Forestry Commission and the Water Resource Commission) play a role in the grant of mineral rights for exploitation of minerals in those areas.

Otherwise, parties have the right to enter upon and erect camps or temporary buildings including installations and the necessary equipment on any land or in any waters that form part of the area licensed for the purpose of reconnaissance prospecting, mining, transporting, dressing, treating, smelting or refining the mineral recovered by him or her during the mining operations. The grant of the mineral right automatically entitles the holder of the rights to all these surface rights.

Duties, royalties and taxes

18 What duties, royalties and taxes are payable by private parties carrying on mining activities? Are these revenue-based or profit-based?

Private parties carrying on mining activities are required to pay royalty and taxes to the government together with other taxes including: corporate tax, rental charges with respect to the area to which the mining right relates, stamp duty (on instruments and documents) and business operating levies and property rates (to local government authorities in areas of operation). In 2012, corporate taxes were increased from 25 per cent to 35 per cent for mining companies and a uniform regime for capital allowances of 20 per cent for five years for the mining sector. A 10 per cent windfall tax levy on mining companies was announced in 2012, but is yet to be passed into law.

The royalties payments are revenue-based (fixed at 5 per cent of total revenue obtained from mining operations), but corporate taxes are profit-based.

A holder of a mineral right is required to pay an annual ground rent to the owner of the land or successors and assigns of the owner except in the case of annual ground rent in respect of mineral rights over stool lands, which should be paid to the Office of the Administrator of Stool Lands. With effect from 2013, the annual ground rent has been increased from about US\$0.25/km² to US\$18.57/acre, which is equivalent to US\$4,590.99/km².

19 What tax advantages and incentives are available to private parties carrying on mining activities?

The tax advantages and incentives available to private parties carrying on mining activities include reduced customs import duties in respect of plant, machinery, equipment and accessories imported specifically and exclusively for mineral operations (items named in the Mining List); transferability of capital; transferability of dividends, deferment of stamp duty; immigration quotas in respect of the approved number of expatriate personnel; personal remittance quotas for expatriate personnel free from any tax imposed by any enactment for the transfer of external currency out of Ghana and alternative dispute resolution provisions.

20 Does any legislation provide for tax stabilisation or are there tax stabilisation agreements in force?

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 (subject to the ratification of Parliament), to ensure that the holder will not, for a period not exceeding 15 years from the date of the agreement be adversely affected by a new enactment, order, instrument or other action made under a new enactment or changes to an enactment, order,

instrument that existed at the time of the stability agreement and subsequently be adversely affected by subsequent changes to the level of and payment of royalties, taxes, fees and other fiscal imports, as well as laws relating to exchange control, transfer of capital and dividend remittance.

The Minister responsible for natural resources on the advice of the Minerals Commission may enter into a development agreement under a mining lease with a person where the proposed investment by the person will exceed US\$500 million. A development agreement may contain provisions relating to the mineral right or operations to be conducted under the mining lease, the circumstance or manner in which the Minister will exercise a discretion conferred by the Minerals and Mining Act on tax stabilisation as indicated above, and environmental issues and obligations of the holder to safeguard the environment in accordance with any enactment and dealing with the settlement of disputes. A development agreement is subject to ratification by Parliament.

21 Is the government entitled to a carried interest, or a free carried interest in mining projects?

The government is entitled to a 10 per cent free carried interest in the rights and obligations of the mineral operations where the mineral right is for mining or the exploitation of minerals for which the government is not required to make any financial contribution. The government is not precluded from any other or further participation in mineral operation subject to the agreement of the holder.

22 Are there any transfer taxes or capital gains imposed regarding the transfer of licences?

Transfer of chargeable assets including licences and leases are subject to capital gains tax at 15 per cent on any gains arising on the realisation of those assets subject to capital gains tax.

23 Is there any distinction between the duties, royalties and taxes payable by domestic parties and those payable by foreign parties?

There is no distinction between duties, royalties and taxes payable by domestic parties and those payable by foreign parties. However, specific mining companies have stability, development or investment agreements, which protect those mining companies against adverse effects from changes in laws including those regarding the fiscal regime.

The government has established a seven-member stability agreement renegotiation committee with the aim of renegotiating some of the terms of these agreements and to have standard agreements across the industry.

Business structures

24 What are the principal business structures used by private parties carrying on mining activities?

The mining law requires that mining should be carried on only by bodies incorporated, registered or established under the Companies Act or the Incorporated Partnership Act or any other enactment for the time being in force. This is also true of mine-support businesses.

25 Is there a requirement that a local entity be a party to the transaction?

There is no requirement that a local entity be a party to a mining business transaction. However, the government of Ghana is entitled to statutory free carried interest of 10 per cent in all mining undertakings and reserves the right to acquire additional interest on terms to be agreed on by the government and the mining company.

26 Are there jurisdictions with favourable bilateral investment treaties or tax treaties with your jurisdiction through which foreign entities will commonly structure their operations in your jurisdiction?

There are a number of countries with bilateral investment treaties with Ghana such as, China, Denmark, Germany, Malaysia, the Netherlands, Switzerland and the United Kingdom.

Agreements have been signed with the following countries but are awaiting ratification: Benin, Burkina Faso, Egypt, France, Guinea, India, Ivory Coast, Mauritania, South Africa, the United States and Zambia.

Countries with investment agreements pending include Australia, Belgium, Canada, the Czech Republic, Ethiopia, Finland, Indonesia, Israel,

Jamaica, Korea, Morocco, Nigeria, Pakistan, the Philippines, Singapore, Spain, Togo and Turkey.

The United States signed three agreements between 1998 and 2000: the OPIC Investment Incentive Agreement, the Trade and Investment Framework Agreement, and the Open Skies Agreement with Ghana.

Ghana also has tax treaties with a number of countries including: Belgium, France, Germany, Italy, the Netherlands, South Africa, Switzerland and the United Kingdom.

Financing

27 What are the principal sources of financing available to private parties carrying on mining activities? What role does the domestic public securities market play in financing the mining industry?

The principal source of financing available to private parties engaged in mining activities are equity and debt financing from both local and foreign sources.

Currently, only two mining companies (South Africa-based AngloGold Ashanti Ltd and Golden Star Resources Ltd incorporated in Canada with its headquarters in Denver, Colorado) are listed on the Ghana Stock Exchange (GSE), with a significant contribution to market capitalisation. The Ghanaian subsidiaries of both listed companies are, however, not listed on the GSE. The GSE therefore plays an insignificant role in financing the mining industry.

28 Please describe the regime for taking security over mining interests.

A mineral right cannot in whole or in part be transferred, assigned, mortgaged or otherwise encumbered or dealt in, in a manner without the prior written approval of the Minister of Lands and Natural Resources, which approval should not be unreasonably withheld or given subject to unreasonable conditions.

Where the Minister does not give written approval within 30 days, they are required, upon a request by the applicant, to give a written reason for the failure to approve within 14 days of the receipt of the request for the reason.

Any dispute arising from a disagreement over the right to extend the term, transfer, assign, mortgage or otherwise encumber a mineral right will trigger the dispute resolution (alternative dispute resolution) provision in the law.

Restrictions

29 What restrictions are imposed on the importation of machinery and equipment or services required in connection with exploration and extraction?

There are no restrictions on the importation of machinery and equipment or services. Under the mining law plant, machinery, equipment and accessories imported specifically and exclusively for mineral operations benefit from reduced customs import duties of items on the mining list.

30 What restrictions are imposed on the processing, export or sale of minerals? Are there any export quotas, licensing or other mechanisms that prevent producers from freely exporting their production?

There are no restrictions on the processing of minerals. However, a person must obtain a licence in order to be able to export, sell or dispose of any minerals. The licence may be granted with conditions. The application for a licence to sell, export or dispose of minerals by a holder of a mining lease must be accompanied by copies of refining contract and sale and marketing agreements.

31 What restrictions are imposed on the import of funds for exploration and extraction or the use of the proceeds from the export or sale of minerals?

Import of funds for mining activities is subject to the foreign exchange laws of Ghana and the holder of mineral rights is required to transact through entities authorised to deal in foreign exchange, such as the banks. A holder of a mining lease is permitted to retain not less than 25 per cent of net earnings in foreign exchange in an external account for acquiring machinery and equipment, spare parts and raw materials as well as for debt servicing, dividend payment and remittance in respect of quotas for expatriate

personnel. Some mining companies have agreements with the government of Ghana that allows them to retain up to 100 per cent of their net earnings for the same purpose.

A holder of a mining lease is guaranteed free transferability, through the Central Bank of Ghana or in the case of a net foreign exchange earning holder through the external account, in convertible currency of dividends or net profits attributable to the investments of such convertible currency payments in respect of a loan servicing where a foreign loan has been obtained by the holder for his or her mining operations and the remittance of foreign capital in the event of sale or liquidation of the mining operations or any interest therein attributable to foreign investment.

Environment

32 What are the principal environmental laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The principal environmental laws applicable to the mining industry are the Environmental Protection Agency Act 1994 (Act 490) and the Environmental Assessment Regulations 1999 (LI 1652). The Environmental Protection Agency is the regulatory body that administers these laws.

33 What is the environmental review and permitting process for a mining project? How long does it normally take to obtain the necessary permits?

Mining companies are required to be registered with the Environmental Protection Agency (EPA) and obtain an environmental permit prior to commencement of their operations or project.

The applicant is required to submit an application and pay the requisite fees after which the EPA will carry out an initial assessment and issue a screening report for purposes of determining whether the application:

- is approved;
- is objected to;
- requires submission of a preliminary environmental report (PER); or
- requires the submission of an environmental impact statement (EIS).

Where the EPA is of the view that a significant adverse environmental impact is likely to result from the activities of any undertaking, the applicant shall be asked to submit an EIS on the undertaking in order that the environmental impact of the proposed undertaking can be assessed.

Where an EIS is acceptable to the EPA, it will communicate this in writing to the applicant and issue the environmental permit.

The law provides that the EPA should arrive at its decision within 90 days from the date of receipt of the application form. There are exceptions to this time limit including where a hearing is conducted and where a PER is required. The period does not also include the period taken to prepare and submit an EIS.

The environmental permit is valid for 18 months effective from the date of its issue.

A mining company will be required to obtain (upon payment of the requisite fees) an environmental certificate within 24 months of the date of the commencement of operations after the EPA has approved a PER or an EIS and issued an environmental permit.

Companies that have received approval for either their PER or an EIS are required to obtain an environmental management plan (EMP) within 18 months of commencement of operations and thereafter every three years. The EMP is required to set out steps that are intended to be taken to manage any significant environmental impact that may result from the operation of the project or undertaking.

34 What is the closure and remediation process for a mining project? What performance bonds, guarantees and other financial assurances are required?

Mining businesses are required to submit reclamation plans to the Environmental Protection Agency and are further obliged to post reclamation bonds regarding their reclamation plans and based on approved work plan for reclamation.

On the termination of a mineral right, the former holder is obliged to deliver to the Minister or as the Minister directs:

- the records, which the holder is obliged under the Minerals law to maintain;
- the plans and maps of the area covered by the mineral right prepared by the holder or at the holder's instructions; and

- other documents, including in electronic format, if available that relate to the mineral right.

Failure to deliver the above within 30 days from the date of being called upon to do so by the Minister makes the holder criminally liable and the holder will be liable on summary conviction to a fine of not more than the cedi equivalent of US\$10,000 or imprisonment for a term of not more than three years or both.

Health & safety, and labour issues

35 What are the principal health and safety, and labour laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The principal health and safety and labour laws applicable in the mining industry include:

- the Minerals and Mining Act 2006 (Act 703);
- the Minerals and Mining Regulations (Health, Safety and Technical) 2012 (LI 2182);
- the Labour Act, 2003 (Act 651); and
- the Workmen Compensation Act 1987 (PNDCL 187).

The regulatory bodies include the Minerals Commission and the Labour Commission.

36 What restrictions and limitations are imposed on the use of domestic and foreign employees in connection with mining activities?

The Minerals and Mining Act provides that a holder of a mineral right shall give preference in employment to citizens of Ghana to the maximum extent possible and consistent with safety, efficiency and economy. A foreign employee in the mining sector as in any other sector needs a work permit in order to work. Mining companies are required to meet immigration quota requirements regarding the approved number of expatriate personnel. Under the Minerals and Mining Regulations (General) 2012 (LI 2173), mining companies are required to submit a localisation plan for approval by the Minerals Commission regarding measures to ensure the eventual replacement of expatriates by local or domestic employees.

Social and community issues

37 What are the principal community engagement or CSR laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The principal community engagement laws applicable are the Minerals and Mining Act 2006 (Act 703) and the Minerals and Mining Regulations. The Minerals Commission administers the Minerals Development Fund for purposes of developing communities affected by mining.

The Environmental Protection Agency Act 1994 (Act 490) and the Environmental Assessment Regulations 1999 (LI 1652) also have community engagement provisions. The Environmental Protection Agency is the regulatory body that administers these laws regarding community involving programmes and projects to mitigate the effect of mining on the environment.

38 How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?

There are requirements under the mining law regarding the exercise of mining rights in a manner consistent with the reasonable and proper conduct of the operations concerned so as to affect as little as possible the interest of any lawful occupier of the land in respect of which such rights are exercised and the right of the lawful occupier of any licensed area to graze livestock upon or to cultivate the surface of such land in so far as such grazing or cultivation does not interfere with the mineral operations in the area. The law requires companies to make fair, adequate and prompt compensation for any disturbance caused to the surface rights of the owner.

Other than the above, there are no specific laws on the rights of aboriginal, indigenous, currently or previously disadvantaged people. They do not have any significant effect on the acquisition or exercise of mining rights.

Update and trends

Cabinet has approved the National Mining Policy. The Policy is a written declaration of the framework of principles that will guide the government in the management of the mining sector.

Ghana is going through an electricity load management/shedding programme due to a shortfall in electricity supply, and mining companies have been asked to shed about 33 per cent of their electricity demand (up from an initial 25 per cent in December 2014). The supply shortfall is due to a number of reasons including the following:

- a low level of the water intake at the Akosombo Dam, which has affected production levels for the Akosombo and Kpong hydro-electric plants;
- an erratic flow of gas through the West African gas pipeline that fuels the thermal power plants in the Takoradi/Aboadze thermal power enclave. Gas from the newly commissioned Aboadze gas processing plant run by Ghana Gas Company Ltd has been insufficient to bridge the deficit; and
- technical challenges, together with scheduled and unscheduled maintenance of the equipment at the Aboadze power enclave.

A number of new policy and legislative measures with implications for imports were introduced and then suspended as follows:

- the Ghana Standards Authority has deferred the implementation of the Ghana Conformity Assessment Programme (G-CAP) following protests by some importers. The G-CAP is a verification process that confirms whether goods imported into Ghana have met the requirements of applicable standards in their countries of origin. It is not expected to affect any of the items the region imports;
- the Ghana Shippers Authority has indefinitely suspended the implementation of the Advance Shipment Information System (ASHI) following protestations by clearing agents and some importers about the associated costs. The ASHI was aimed at

getting importers to complete electronic documentation ahead of the cargo clearing processes to expedite the clearing time for imported items; and

- the government has announced that the ECOWAS Common External Tariff would become operational in July 2015. When implemented, Ghana would join other member countries in adopting a uniformed tariff system on eligible items imported into the sub-region. It is not expected to change the concessionary tariffs under the Minerals and Mining law.

Parliament has passed the Fees and Charges Amendment Instrument 2014 (LI 2216), which, among other fees, revises the ground rent payable by mining companies to 15 cedis/acre from 36.5 cedis/acre.

The Registrar General's Department has introduced an e-registrar online portal. It is expected to considerably reduce the length of time businesses spend in transactions with the Department.

The following laws are still yet to be passed:

- the Minerals and Mining Amendment Bill to, among other things, allow for seizure of the equipment used in illegal small-scale mining;
- the Mineral Development Fund Bill to make available more financial resources to communities affected by mining;
- the Law on the Extractive Industry Transparency Initiative to give legal force to the initiative by mining companies to make more information available to the resource they contribute to national development through taxation;
- the review of the reclamation bond regime under the environmental laws embarked upon by the Environmental Protection Agency; and
- the initiative by the Water Resources Commission to introduce a licensing regime for construction of dams, including tailings dams.

39 What international treaties, conventions or protocols relating to CSR issues are applicable in your jurisdiction?

Ghana has ratified:

- the International Covenant on Economic, Social and Cultural rights (in 2000);
- the International Convention on the Elimination of All Forms of Racial Discrimination;
- the African Charter on Human and Peoples' Rights; the African Charter on the Rights and Welfare of the Child;
- the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
- the 2001 Stockholm Convention on Persistent Organic Pollutants; and
- the United Nations Framework Convention on Climate Change, which entered into force in 1994, and finalised the Kyoto Protocol related to that convention in 1997 (not yet in force).

Ghana is a party to the 1981 UN Convention on the Law of the Sea, several regional agreements on specific seas, and various other treaties addressing maritime pollution.

Foreign investment

40 Are there any foreign ownership restrictions in your jurisdiction relevant to the mining industry?

Foreign nationals are prohibited from participating in small-scale mining operations. These are reserved exclusively for Ghanaians.

International treaties

41 What international treaties apply to the mining industry or an investment in the mining industry?

International treaties or conventions applicable to investment in the mining industry include the United Nations Commission on International Trade Law, Multilateral Investment Guarantee Agency Convention, Convention for the settlement of Investment Dispute between States and Nationals of other states, United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Convention on Biodiversity, and bilateral investment promotion and protection agreements between Ghana and other countries.

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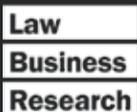
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