

Mining

in Ghana

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Table of contents

MINING INDUSTRY

Standing

Target minerals

Regions

LEGAL AND REGULATORY STRUCTURE

Basis of legal system

Regulation

Classification system

MINING RIGHTS AND TITLE

State control over mining rights

Publicly available information and data

Acquisition of rights by private parties

Renewal and transfer of mineral licences

Duration of mining rights

Acquisition by domestic parties versus acquisition by foreign parties

Protection of mining rights

Surface rights

Participation of government and state agencies

Government expropriation of licences

Protected areas

DUTIES, ROYALTIES AND TAXES

Duties, royalties and taxes payable by private parties

Tax advantages and incentives

Tax stabilisation

Carried interest

Transfer taxes and capital gains

Distinction between domestic parties and foreign parties

BUSINESS STRUCTURES

Principal business structures

Local entity requirement

Bilateral investment and tax treaties

FINANCING

Principal sources of financing

Direct financing from government or major pension funds

Security regime

RESTRICTIONS

Importation restrictions

Standard conditions and agreements

Mineral restrictions

Import of funds restrictions

ENVIRONMENT

Principal applicable environmental laws

Environmental review and permitting process

Closure and remediation process

Restrictions on building tailings or waste dams

HEALTH & SAFETY, AND LABOUR ISSUES

Principal health and safety, and labour laws

Management and recycling of mining waste

Use of domestic and foreign employees

SOCIAL AND COMMUNITY ISSUES

Community engagement and CSR

Rights of aboriginal, indigenous or disadvantaged peoples

International law

ANTI-BRIBERY AND CORRUPT PRACTICES

Local legislation

Foreign legislation

Disclosure of payments by resource companies

FOREIGN INVESTMENT

Foreign ownership restrictions

INTERNATIONAL TREATIES

Applicable international treaties

UPDATE AND TRENDS

Recent developments

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MINING INDUSTRY**Standing****What is the nature and importance of the mining industry in your country?**

According to data from the Ghana Chamber of Mines, the minerals and mining sector was the foremost source of direct domestic revenue paid to the Ghana Revenue Authority (GRA) in 2017. Corporate income tax receipt of mining companies was 969.6 million cedis, mineral royalty revenue was 702.4 million cedis, employee income tax (pay-as-you-earn) was 487.9 million cedis in 2017, compared to 399.9 million cedis in 2016. Other forms of taxes collected by the GRA in the mining sector, which are officially classified as self-employed, amounted to 780,000 cedis in 2017. Overall, the total mining fiscal receipts paid to the GRA increased by 31 per cent year on year, from 1.65 billion cedis in 2016 to 2.16 billion cedis in 2017.

Gold accounts for approximately 97 per cent of all mineral receipts. According to the Minerals Commission, total gold output in Ghana increased to 3.79 million ounces in 2016, compared with 3.6 million ounces in 2015.

This 5 per cent increase in gold production was the result of increased purchases of gold from small-scale producers, which more than offset the reduction in gold production from large-scale mining businesses. In specific terms, whereas the production by the large-scale producers declined by 1 per cent to 2.55 million ounces, the purchases of gold from small-scale miners increased by 20 per cent to 1.23 million ounces in 2016. In 2015, the output of the small-scale sector was 1 million ounces while that of the large-scale sector was 2.5 million ounces.

The small-scale mining sector is estimated to contribute to about 32 per cent of gold production. Notwithstanding the challenging environment, the minerals and mining industry continues to be a significant contributor to the country's development.

Ghana maintained its position as the world's 10th largest gold producer, accounting for 3 per cent of global gold output in 2015. Diamond purchases by the Precious Minerals and Marketing Company decreased by 28 per cent and total manganese shipments by the country's sole producer, the Ghana Manganese Company, declined by 5 per cent.

The falling gold price and the effect of the electricity supply deficit to the mining companies partly led to a 10 per cent decline in gold exports. According to the GRA, in 2016, the mining and quarrying sector resumed its position as the leading source of direct domestic revenue after being supplanted by the financial and insurance sector during 2015. Total fiscal receipts attributable to the mining and quarrying sector increased by 22 per cent from about US\$320 million in 2015 to US\$392 million in 2016. The contribution of the mining sector constitutes about 16 per cent of direct domestic revenue.

The 2016 mining fiscal revenue outturn represents approximately 16 per cent of direct domestic revenue acquired by the GRA and 5 per cent of total government revenue (including grants). Further, the fiscal revenue performance of the mining and quarrying sector, which excludes payments of ground rent and dividends to the state, compares favourably with the oil and gas sector's contribution of 972.5 million cedis reported in the 2016 Budget Statement and Economic Policy.

The Bank of Ghana (Ghana Central Bank), indicates that the minerals sector continues to be the leading export earner and improved upon its share in gross merchandise exports from 32.2 per cent in 2015 to 45.5 per cent in 2016, whereas cocoa and crude oil contributed 22.3 per cent and 12.5 per cent respectively. This indicates that the proceeds from mineral exports was twice that of cocoa and more than three times that of crude oil in 2016.

In addition to the mining sector's contribution to the reduction in the depreciation as against other currencies in 2016, the 41 per cent increase in mineral exports was the primary reason for the balance of payments surplus achieved for that year. In a report in January 2017, the Bank of Ghana's Monetary Policy Committee stated: 'For the first time since 2011, the provisional balance of payments in 2016 recorded a surplus. This largely reflected an improvement in the

Mining

trade balance driven by a rise in gold export receipts and a fall in oil import prices’.

The total workforce employed by mining companies was 11,628 as at the end of 2016, compared to 9,939 for 2015, indicating an increase of 16 per cent. Out of the total number of employees, 190 are foreign expatriates and the rest are Ghanaians.

The mining sector is also crucial for attracting foreign investment. Total investments in the sector during the past 10 years exceeded US\$10 billion, coming from companies engaged in gold production, exploration and support services.

Target minerals

What are the target minerals?

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

There has been no growing interest in minerals used in battery technology or renewable energy.

Regions

Which regions are most active?

The Ashanti belt, which covers most parts of Ghana’s Ashanti and Western regions, is the most active mining region; particularly for gold 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 are also active, particularly for gold prospecting.

The Kibi belt in the Eastern Region is active with diamond and bauxite mining, with gold prospecting undertaken too.

LEGAL AND REGULATORY STRUCTURE

Basis of legal system

Is the legal system civil or common law-based?

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

Regulation

How is the mining industry regulated?

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

What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws? Were there any major amendments in the past year?

The principal laws regulating the mining industry are:

- the Minerals and Mining Act 2006 (Act 703), as amended by the Minerals and Mining (Amendment) Act 2015 (Act 900) (the Minerals and Mining Act);
- the Minerals Development Fund Act 2016 (Act 912); and

Mining

- the Minerals Income Investment Fund Act 2018 (Act 947) and the following regulations:

The above Minerals and Mining Regulations replaced the Mining Regulations 1970 (LI 665).

The principal regulatory body administering 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 and 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) establish 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 Lands and Natural Resources, 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; and
- collect data on national mineral resources.

Classification system

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

State control over mining rights

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?

Mining

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

Mineral rights are granted to private parties giving them the right to mine the minerals in the ground.

There are large areas such as Tarkwa and Obuasi where the mineral rights are privately held by 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.

Publicly available information and data

What information and data are 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 also retains similar data.

Private parties granted mineral rights are required to keep records of:

- any minerals discovered;
- results of any geochemical or geophysical analysis;
- results of any study, survey, test, or other work undertaken in the area covered by the licence; and
- interpretation and assessment of such tests and surveys, among others.

The subject matter of the records depends on the type of mineral right granted. And, the holder of the right is required to keep these records at an address notified to the Minerals Commission. The holder of the mineral right is also required to permit officials of the Commission to inspect and make copies of the records.

The holder of a mineral right may also be required to furnish the Commission or the Geological Survey Department with reports kept as part of the required records. All records kept are, however, confidential and as such, persons to whom they are disclosed are prohibited from divulging information contained in them.

Also, copyright in the information contained in the reports passes to, and resides in, Ghana, when the person who prepared the reports ceases to hold the mineral rights in respect of which the records were kept, or is not granted any other mineral right in substitution, over the same area.

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.

Acquisition of rights by private parties

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?

Mining

Ghana has three kinds of mining rights:

- reconnaissance licence;
- prospecting licence; and
- mining lease.

Private parties may acquire any or all of them, although the correct procedure is to obtain the exploratory licences (reconnaissance and prospecting) and then convert them into a mining lease following a successful exploration. 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 granting of mineral rights is based on a 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 may 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 was because the Minerals 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 committed.

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 in the size of prospecting area, if the holders demonstrated performance but needed time to complete their exploration programmes and enable them to make informed decisions with regard to renewing their licence.

The Minerals Commission realised that a number of companies abused this privilege and 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 policies in granting extensions:

- only prospecting licences may be extended (reconnaissance licences and mining leases will not be extended);
- an application for extension of a prospecting licence will be granted once, and for a term of one year, especially for those companies active on the ground; and
- 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 is required to be resolved through an alternative dispute resolution

mechanism specified under the Minerals and Mining Act.

Renewal and transfer of mineral licences

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

Under the Minerals and Mining Act, the holder of a reconnaissance licence may, not later than three months before the expiry of the initial term of the licence, apply to the Minister of Lands and Natural Resources for an extension of the term of the reconnaissance licence in respect of all or part of the reconnaissance area. However, since July 2010, the Minerals Commission now generally declines applications to extend reconnaissance licences, based on the policy measure in question 10.

The holder of a prospecting licence may, at any time but not later than three months before the expiry 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.

Also, the holder of a mining lease may, at any time, but not later than three months before the expiry of the initial term of the mining lease or a shorter period that the Minister of Lands and Natural Resources allows, apply in the 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 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 to give a written reason within 14 days of receipt of a request by the applicant for the reasons for refusal of the application.

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) provisions in the Minerals and Mining Act starting first with an attempt at an amicable resolution through mutual discussions.

Duration of mining rights

What is the typical duration of mining rights?

A reconnaissance licence may be granted for a period not exceeding 12 months. It may be extended, if the Minister of Lands and Natural Resources is satisfied that it is in the public interest to do so, for periods not exceeding 12 months at a time. A prospecting licence may be granted for an initial term not exceeding three years and may be extended for a further period of not more than three years.

A mining lease may be granted for an initial period of 30 years or for a lesser period that may be agreed on with the applicant. It may be extended for a further period of up to 30 years. These extensions are also subject to the payment of applicable fees. Under the Minerals and Mining Act, mineral rights may be cancelled where the mineral rights holder:

- fails to make the required payment on the due date;
- becomes insolvent or bankrupt; or
- knowingly makes a materially false statement to the minister in connection with the mineral right.

The Minister of Lands and Natural Resources may cancel mining leases where the holder has, without good cause,

failed to carry out its mining programme for two or more years.

Acquisition by domestic parties versus acquisition by foreign parties

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 and foreign parties.

In the mining industry there is no requirement that a foreign party should have a domestic partner. However, the Ghanaian government, 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 an additional interest on terms to be agreed on by the private party and the government.

Protection of mining rights

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 within the United Nations (UN) Commission on International Trade Law rules. Foreign arbitration awards in respect of domestic mining disputes are freely enforceable in Ghana in accordance with Ghana's Alternative Dispute Resolution Act 2010 (Act 798).

Also, the holder of a mining lease may enter into a stability agreement with the Minister, as part of the mining lease.

A stability agreement guarantees the holder of the mining lease that it will not be adversely affected by changes in the laws as existing at the time of entering into the agreement. Also, a stability agreement offers protection against additional obligations being imposed on the holder of a mining lease, by new laws or actions taken under those new laws.

Adverse changes specifically mentioned under the Minerals and Mining Act include:

- changes in the level and payment of custom duties or other duties required to be paid on imports;
- changes in the level and payment of royalties, taxes, fees and other fiscal imports; and
- changes in laws relating to exchange control, transfer of capital and dividend remittance.

The power of the Minister to suspend or cancel a licence is also limited.

Surface rights

What types of surface rights may mining rights holders request and acquire? How are these rights acquired? Can surface rights holders oppose these requests?

The grant of an application for a mineral right gives the mineral rights holder authority over the land and entitles the rights holder to enter the land subject of the grant. However, the scope of the rights holder's authority over the land, with respect to surface rights, depends on the mineral right granted.

Mining

The holders of a reconnaissance and prospecting licences are permitted to enter the land and erect camps or temporary buildings. However, whereas holders of prospecting licences are permitted to make boreholes and excavations, holders of reconnaissance licences are prohibited from engaging in drilling or excavation.

Also, the holder of a prospecting licence may engage in any other activity ancillary or incidental to prospecting. With regard to mining leases, the holder of a mining lease has the right to erect equipment, plant and buildings for the purposes of mining, transporting, dressing, treating, smelting or refining the minerals specified under the lease and recovered during the mining operations.

The holder of a mining lease is also permitted to stack or dump mineral waste or product in accordance with its Environmental Impact Assessment approved by the Environmental Protection Agency and may conduct any other activity which is incidental or ancillary to the mining operations.

Under Ghanaian law, water resources are vested in the nation and not the owner of the surface right. Thus, the holder of a mineral right may require a water use permit to use a water resource within the area subject to the mineral right. Water use permits are issued by the Water Resources Commission. And, the water use permit issued will only grant the right to use the water for purposes ancillary to the mineral operations.

The holder or owner of surface rights is only entitled to an annual ground rent, compensation for disturbance of surface rights, or resettlement. A surface rights holder cannot object to the exercise of surface rights granted to the holder of a mineral right by the Minister. The law allows the mineral rights holder to pay fair, adequate and prompt compensation to the original surface rights 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 being exercised.

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

However, where the mineral operations are to be conducted under a Mining Lease and the rights holder has demarcated a mining area within the leased area, the lawful occupier of land within the mining area cannot exercise any surface rights. The lawful occupier may only erect a building or structure within the mining area with the consent of the holder of the mining lease or the Minister.

Participation of government and state agencies

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 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 before they are sold (the right of pre-emption). 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. Also, the Minerals and Mining Act gives the Minister the right to require a mining company to issue shares in the company to the nation for no consideration. The rights attached to the shares is subject to agreement between the Minister and the mining company.

There is no special listing requirement for the project company.

Government expropriation of licences

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

Under article 20 of Ghana's 1992 Constitution, 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 in order 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 expiry of the initial term, to surrender not less than half the number of blocks (one block is 21 hectares) of the prospecting area as 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 of Lands and Natural Resources may, based on a written request for relief, exempt a holder from the obligation to surrender land.

Protected areas

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

Some restrictions exist regarding mining in forest areas and water bodies. Other regulators (the Forestry Commission and the Water Resources Commission) play a role in the granting 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

Duties, royalties and taxes payable by private parties

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 royalties 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).

Mining

In 2012, corporate taxes were increased from 25 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.

Tax advantages and incentives

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 the following:

- 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, or 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.

Tax stabilisation

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 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 of Lands and 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 exceeds 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 of Lands and Natural Resources 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.

Carried interest

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.

Transfer taxes and capital gains

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

Any gain made on the assignment or other disposal of an interest in a mining right is included in ascertaining the income of a mining company from a mining operation, which is taxed at a rate of 35 per cent, computed by an operation-to-operation basis.

Also, an instrument transferring a mineral right is required to be stamped. And, stamp duty is charged on the consideration paid for the transfer, at a rate of up to one per cent, depending on the term transferred.

Distinction between domestic parties and foreign parties

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

Principal business structures

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 1963 (Act 179) or the Incorporated Partnership Act 1962 (Act 152) or any other enactment in force for the time being. This is also true of mine-support businesses.

Local entity requirement

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 Ghanaian government 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.

Bilateral investment and tax treaties

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?

Numerous countries have bilateral investment treaties with Ghana, including China, Denmark, Germany, Malaysia, the Netherlands, Switzerland and the United Kingdom.

Countries where agreements have been signed but are awaiting ratification include Benin, Burkina Faso, Egypt, France, Guinea, India, the 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, South Korea, Morocco, Nigeria, Pakistan, the Philippines, Singapore, Spain, Togo and Turkey.

The United States signed the following three agreements with Ghana between 1998 and 2000:

- the Overseas Private Investment Corporation Investment Incentive Agreement;
- the Trade and Investment Framework Agreement; and
- the Open Skies Agreement.

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

FINANCING

Principal sources of financing

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 sources 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 and Golden Star Resources, incorporated in Canada, with its headquarters in the United States) 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 no significant role in financing in the mining industry.

Direct financing from government or major pension funds

Does the government, its agencies or major pension funds provide direct financing to mining projects?

No.

Security regime

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, the Minister is required, upon a request by the applicant, to give a written reason for the failure to approve within 14 days of receipt of the request for the reason.

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

RESTRICTIONS

Importation restrictions

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 if said items are on the mining list.

Standard conditions and agreements

Which standard conditions and agreements covering equipment supplies are used in your jurisdiction?

There is freedom of contract between supplier and buyer governed by private contractual principles and the sale of goods laws. However, common requirements include the requirement to supply equipment that is environmentally friendly and fit for purpose. Dispute resolution is typically through arbitration.

Mineral restrictions

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 a refining contract and sale and marketing agreements.

Import of funds restrictions

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 Ghanaian foreign exchange laws and the holder of mineral rights is required to transact through entities authorised to deal in foreign exchange, such as 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

Principal applicable environmental laws

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.

Environmental review and permitting process

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.

Mining

The law provides that the EPA should arrive at its decision within 90 days from the date of receipt of the application. There are exceptions to this time limit including where a hearing is conducted and where a PER is required. Also, the period does not 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 EIS are required to obtain an environmental management plan (EMP) within 18 months of commencement of operations and every three years thereafter. 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.

Closure and remediation process

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 EPA and are further obliged to post reclamation bonds regarding their reclamation plans and based on the 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 following:

- 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 equivalent of US \$10,000 or imprisonment for a term of not more than three years, or both.

Restrictions on building tailings or waste dams

What are the restrictions for building tailings or waste dams?

The Minerals and Mining (Health, Safety & Technical) Regulations 2012 (LI 2182) primarily govern the construction of tailings storage facilities including hazard classes, embankments, tailings storage facility impoundment, tailings discharge system and safety arrangements for tailings storage facilities.

These facilities are monitored by the Chief Inspector of Mines. As per LI 2182, the design and construction of tailings storage facilities must be done by a qualified engineer approved by the Chief Inspector of Mines.

Each mine with a tailing dam is required to appoint an independent engineer to conduct yearly annual dam safety audits. Although there are no specific requirements for emergency drills with the local communities, tailings facilities are only permitted to be sited in areas where failure of the embankment is not likely to result in a threat to human life.

HEALTH & SAFETY, AND LABOUR ISSUES

Principal health and safety, and labour laws

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.

Management and recycling of mining waste

What are the rules related to management and recycling of mining waste products? Who has title and the right to explore and exploit mining waste products in tailings ponds and waste piles?

The Minerals and Mining Regulations (Health, Safety and Technical) include provisions on the management and handling of waste products. It places the obligation and the right to explore and exploit waste products in tailings ponds and waste piles on the minerals' rights holder.

Use of domestic and foreign employees

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 employment preference to Ghanaian citizens as far as possible and be 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 in Ghana. Mining companies are required to meet immigration quota requirements regarding the approved number of expatriate personnel. Under the Minerals and Mining Regulations (General), 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

Community engagement and CSR

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 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 and the Environmental Assessment Regulations 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.

Rights of aboriginal, indigenous or disadvantaged peoples

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 or currently or previously disadvantaged people. These requirements have no significant effect on the acquisition or exercise of mining rights.

International law

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

Ghana has ratified the following:

- 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 Stockholm Convention on Persistent Organic Pollutants 2001; and
- the UN 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 party to the UN Convention on the Law of the Sea 1981, several regional agreements on specific seas and various other treaties addressing maritime pollution.

ANTI-BRIBERY AND CORRUPT PRACTICES

Local legislation

Describe any local legislation governing anti-bribery and corrupt practices.

There is no single comprehensive or consolidated anti-bribery and corruption legislation. However, there are many statutes, including the 1992 Constitution, which criminalise bribery and corrupt practices, and identify probity and accountability as some of the values that all persons are to uphold. Other pieces of legislation include the following:

- the Whistleblowers' Act 2006 (Act 720), which provides for the manner in which individuals may in the public interest disclose information that relates to unlawful or other illegal conduct or corrupt practices;

Mining

- the Criminal Offences Act 1960 (Act 29), which criminalises extortion and financial crimes;
- the Financial Administration Act 2003 (Act 654), which prohibits bribery by or of an officer or person acting in office connected with the collection or management of disbursement of public or trust money;
- the Anti-Money Laundering Act 2008 (Act 749), which, together with the Anti-Money Laundering Regulations prohibits money laundering, establishes a Financial Intelligence Centre, and provides for records, and information and compliance related to anti-money laundering in Ghana;
- the Economic and Organised Crime Act 2010 (Act 804), which establishes an economic and organised crime office to monitor, investigate and prosecute economic and organised crime; and
- the Public Procurement Act 2003 (Act 663), which seeks to harmonise public procurement processes in public service and ensure that public procurement is carried out in a fair, transparent and non-discriminatory manner.

Foreign legislation

Do companies in your country pay particular attention to any foreign legislation governing anti-bribery and foreign corrupt practices in your jurisdiction?

Yes. The Foreign Corrupt Practices Act of 1977 and the UK Bribery Act of 2010 legislate those companies with parent companies listed on stock exchanges in the United States and United Kingdom respectively.

Disclosure of payments by resource companies

Has your jurisdiction enacted legislation or adopted international best practices regarding disclosure of payments by resource companies to government entities in accordance with the Extractive Industries Transparency Initiative (EITI) Standard?

There is currently a Ghana EITI draft bill in Parliament for consideration.

FOREIGN INVESTMENT

Foreign ownership restrictions

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

Applicable international treaties

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 UN Commission on International Trade Law;
- the Multilateral Investment Guarantee Agency Convention;
- the Convention of the Settlement of Investment Disputes between States and Nationals of Other States;
- the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards;

- the Convention on Biodiversity; and
- bilateral investment promotion and protection agreements between Ghana and other countries.

UPDATE AND TRENDS

Recent developments

What were the biggest mining news events over the past year in your jurisdiction and what were the implications? What are the current trends and developments in 2019 in your jurisdiction's mining industry (legislation, major cases, significant transactions)?

Publication of the third edition of the Local Procurement List pursuant to the Minerals and Mining (General) Regulations, 2012 (LI 2173). The List sets out the goods and services with Ghanaian content that are to be procured in Ghana by mining companies. The third edition of the Procurement List makes it mandatory for all mining companies to procure fuel from wholly owned Ghanaian companies whose shareholders and directors are exclusively Ghanaian.

According to a letter dated 30 July 2018, the Minister of Lands and Natural Resources informed the Ghana Chamber of Mines of the government's intention to exercise its right of pre-emption to acquire 30 per cent of all gold mined in Ghana. The Ghana Chamber of Mines is engaging the government to consider the most suitable means of addressing the issue to prevent any potential or unintended negative effects affecting mining companies.

The government lifted the ban on small-scale mining on 17 December 2018. According to the government, the two-year ban was lifted because the Inter-Ministerial Committee on Illegal Mining had successfully developed a comprehensive policy framework to regularise small-scale mining across Ghana.