

**STATEMENT ON THE DEVELOPMENT AGREEMENTS BETWEEN
THE REPUBLIC OF GHANA AND GOLD FIELDS GHANA LIMITED**

This statement is in response to misrepresentations in the media concerning the Development Agreements signed between the Republic of Ghana and Gold Fields Ghana Limited ("GFG") and Abosso Goldfields Limited ("AGL") (Altogether "Goldfields") which was ratified by Parliament on 17 March 2016.

BACKGROUND

Under the Government of Ghana's privatisation programme in the 1990s, Gold Fields Limited ("GFL") acquired the State Gold Mining Company's Tarkwa Goldfields Limited under a project development agreement in 1992. GFL subsequently acquired a majority interest in AGL in 2001. Currently, GFL holds 90% interest in both GFG (which owns the Tarkwa mine) and AGL (which owns the Damang mine). The Government of Ghana owns the remaining 10% interest in both companies.

NEGOTIATIONS FOR DEVELOPMENT AGREEMENT

In 2004, Government commenced discussions with Goldfields in respect of negotiations for a development agreement. This followed the execution of two investment agreements between the Government of Ghana and Newmont Ghana Gold Limited ("Newmont") in 2001. The Government entered into these discussions based on proposals by Goldfields to meet the minimum investment threshold of US\$500 million required by Government for such agreements, which was subsequently adopted in section 49 of the 2006 Minerals and Mining Act (Act 703).

Since 2004, several meetings have been held between Government's tripartite team (comprising representatives from the Ministry of Finance, Attorney-General's Department and the Ministry of Lands and Natural Resources) and Goldfields, without concluding a development agreement. A key source of disagreement was that Government was unwilling to grant the company the same terms as Newmont, because unlike Newmont, which developed a new mine, Goldfields acquired an existing mine together with significant assets.

Government Negotiation Team

In January 2012, the Inter-Ministerial Task Team assigned to review the Newmont investment agreement established a Government Negotiating Team ("GNT") to renegotiate the Newmont investment agreement and any other existing stability agreements between the Government of Ghana and mining companies operating in the country. The GNT, chaired by Prof. Akilagpa Sawyer included experts in taxation and finance as well as representatives from the Attorney-General's Department, Ministry of Finance, and Ministry of Lands and Natural Resources. The team successfully renegotiated the Newmont investment agreements. It was the Government and GNT's understanding that since Goldfields had not been granted either a development agreement or a stability agreement, GNT did not have the mandate to continue the negotiations began with Goldfields in 2004. Indeed, a letter from the Chairman of the GNT to Goldfields in response to a request by Goldfields to enter into negotiations with GNT, stated that Goldfields' request fell outside the remit of the GNT, as GNT had been mandated to renegotiate **only** existing investment/development agreements and not to negotiate any new ones. The Chairman of GNT, Prof. Akilagpa Sawyer correctly noted in the letter that the responsibility for the grant of new development

agreements was the sole preserve of the Minister and consequently referred Goldfields' request to the Minister to confirm. The Minister confirmed this in writing addressed to Prof. Sawyer.

Resumption of negotiations

Following this correspondence, the Ministry of Lands and Natural Resources reconvened the tripartite committee to resume negotiations with Goldfields for a development agreement. Mindful of GNT's expertise, comments were invited and received from the GNT. The tripartite committee duly considered GNT's comments and concluded the negotiations with Goldfields culminating in the approval and ratification of the two agreements by Cabinet and Parliament, respectively.

JUSTIFICATION FOR THE GRANT OF DEVELOPMENT AGREEMENTS TO GOLDFIELDS

Section 49 of the Minerals and Mining Act, 2006 (Act 703) provides that the Minister of Lands and Natural Resources, on the advice of the Minerals Commission may enter into a development agreement with the holder of a mining lease whose proposed investment in the mining project will exceed US\$ 500 million. As noted, Government began negotiations with Goldfields in 2004, for a development agreement. At that time, Goldfields proposed to exceed the Government's US\$ 500 million minimum threshold for a development agreement. Since the acquisition of the Tarkwa and Damang mines to date, Goldfields has invested about US\$2.5 billion in the mining operations. Over the remaining period of its mining leases (i.e. about 11 years), Goldfields proposes to invest about US\$ 2.55 billion in the company's mining operations. It has been duly ascertained that

Goldfields has the financial and technical capacity to meet the proposed investment requirements. Furthermore, based on Goldfields' past and proposed investment in its operations, which exceeded the minimum investment threshold, the company clearly qualified for a development agreement.

CONSIDERATIONS IN GRANTING THE DEVELOPMENT AGREEMENTS

In granting the fiscal and other incentives under the development agreement, the Government was keen to ensure a win-win situation for both parties. The objective was to review the front end costs of the company to enable the company make the proposed US\$2.55 billion investment in the mining operations and to maximise benefits such as local content development, dividend payments, infrastructure development, etc. other than only taxes and other payments that could affect the required investment in the mines.

Also, the Government took into account Goldfield's good corporate citizenship, including the following:- that since 1993, Goldfields had paid more than US\$1 billion in income taxes, royalties and dividends; Goldfields was the second largest taxpayer after Ghana Commercial Bank in 2015 (having paid altogether about US\$444 million in direct and indirect taxes); Goldfields employs about 6,000 Ghanaians; the company's workforce comprises 99% Ghanaians; and the company's Corporate Social Responsibility (CSR) Foundation has invested more than US\$30 million in community development projects. Other considerations included that: current depressed gold prices and high input costs posed financial and operational challenges for Goldfields; without a review of the existing fiscal conditions and providing stability of the terms, Goldfields' investments and operations were clearly at risk; Goldfields had not been granted a development

agreement since 2004 even though at that time it proposed to invest, (and subsequently invested) more than the minimum investment threshold; the negative impact on the economy of not supporting Goldfields to continue producing and developing the mine was considerable (i.e. more workers were going to be laid off); the effective tax rate for mining firms in Ghana is comparatively high in Africa; the Government as shareholder of Goldfields was persuaded that the incentives granted under the development agreement would result in benefits to the company and its shareholders; and the benefits to the country of retaining Goldfields' investments, especially in a depressed global market thus ensuring were considerable and far outweighed any fiscal benefits that would accrue to the company from the grant of the development agreements.

SPECIFIC ISSUES RAISED IN THE MEDIA

Proposed new investments

It has been asserted that the Goldfields development agreements are based on Goldfields' past investments while section 49 requires that a development agreement should be based on proposed (new) investments to be made by Goldfields. As noted, the tripartite committee and the relevant agencies of the Ministry of Lands and Natural Resources reviewed Goldfields' proposals to invest a total amount of US\$2.55 billion in their two (2) mines over the next 11 years and found the proposals to be satisfactory. In doing so, Goldfields' past investments of about US\$ 2.5 billion were also taken into account as evidence of financial and technical capacity to make the proposed new investments.

Newmont template

It has also been argued that any development agreement based on Newmont's investment agreements is bound to be "sub-optimal" as is the case with Goldfields' development agreements. It should be noted however, that most of the issues addressed in mining agreements are similar. Therefore, in terms of a framework, it is important that there is consistency between Newmont's agreements and subsequent development agreements. Indeed, the Minister is currently working on deriving from the recently ratified agreements a standard framework or template, which will serve as a precedent for development and stability agreements.

It should be noted that as no two mining projects are the same the specific details of concessions and requirements in mining agreements may vary, subject to certain legal requirements. Specific formulae, amounts and rates may also vary depending on the circumstances of each project and the parties involved. For instance, whilst dividends paid to affiliates are taxed in the Goldfields agreements, they are exempt in the Newmont agreements. Similarly, the Government maintains a 10% free carried interest in Goldfields for which it is entitled to dividends. No such equity exists under the Newmont agreement. Notwithstanding the differences, novel concepts in the Newmont agreements such as guaranteed advanced payments to Government have been adopted in the GFGL agreement.

Additionally, Goldfields has also committed \$15 million to the construction of the Tarkwa Damang road, which represents a direct benefit to the country and is akin to an advance payment.

Royalty

Again, it has been contended that the rates of royalty negotiated under the Goldfields agreements are “sub-optimal” as they are not as competitive as the Newmont rates which themselves could have been better, but for the fact that Government was negotiating from a weak position. As noted previously, the royalty rates provided under the Goldfields agreement were arrived at after considerable analysis and consideration including the proposed investments to be made by Goldfields and current market prices. Under the sliding scale mechanism, Goldfields will pay 3% if the gold price is below US\$1,300/oz., and 3.5% and 4.0% if the prices rises to US\$ 1,499.99 and US\$ 2,299.99, respectively. A maximum of 5% is payable if the gold price exceeds US\$2,300/oz. Any other minerals produced in the Tarkwa and Damang mines are liable to the current 5% rate of royalty as provided in section 25 of Act 703 as amended by the Minerals and Mining (Amendment) Act, 2010 (Act 794).

Serious give-aways without justification

The contention that the net-benefit of the Goldfields agreements are not favourable to Government is not supported by the facts. The proposed US\$ 2.55 billion investment secured by the agreements will lead to increased revenues for Government beyond the perceived current losses to the state. Apart from other typical benefits such as royalties and taxes, additional benefits include dividend payments for Government’s 10% interest in the mines as well as benefits to be derived from local businesses linked to Goldfields’ operations and local content development.

Whereas Newmont has never ever paid dividends to the Ghana Government due to the removal of the 10% Ghana government's free carried interest pursuant to the terms of the development agreement entered into with Newmont, Goldfields, has, on the other hand, been paying significant dividends over the years to government based on government's 10% interest.

Undermining the role of GNT

It is not true that the role of GNT has been undermined by the Minister by virtue of the two development agreements which have been entered into with Goldfields. As noted, GNT was established specifically to renegotiate the Newmont agreement and other existing stability agreements. The GNT itself having recognized its lack of mandate, declined to negotiate new development agreements with Goldfields and properly referred Goldfields' request to the Minister. Its role could therefore not have been undermined as it was not intended to take over the role of the institutions mandated to negotiate such agreements. If that had been the case, the law would have been amended accordingly. The assertion that the Minister undermined GNT's role is false. The Minister, as a matter of fact, took into consideration GNT's comments/position on various issues as valuable inputs in the negotiations with Goldfields.

Therefore, GNT's complaint that its role has been undermined or that it has been circumvented is without any basis whatsoever in law or in fact.

Distinction between stability agreements and development agreements

A distinction must be made between a development agreement and a stability agreement. A stability agreement (see section 48 of Act 703) requires that existing

laws and fiscal imposts applicable to a mining project may be stabilised or frozen for up to fifteen years to protect a mining lease holder from adverse effects of new laws or imposts. A development agreement (section 49) is an opportunity for a mining lease holder to negotiate stability and other terms in exchange for a significant level of investment, i.e. investments exceeding US\$ 500 million. Typically, more favourable fiscal terms are granted under a development agreement, which are stabilised for the duration of the mining lease. Thus, while any mining lease holder may be granted a stability agreement, only holders who propose to and show evidence of capacity to invest over US\$ 500 million are considered for a development agreement.

CONCLUSION

Apart from the increased investments assured by the agreements, certain improvements in existing legal provisions were also negotiated in the Goldfields agreements. For example, whereas section 30(2) of Act 703 allows companies to retain up to 100% of their net earnings from the sale of minerals abroad, the two development agreements on the other hand require Goldfields to remit at least 30% of its gross sales proceeds into the country. Additionally, the requirement of taxes on inputs produced locally to promote local content development and provisions in the agreements thus ensuring arm's length transactions, are important for developing linkages and to protect against transfer pricing and revenue leakage. Furthermore, the provision for periodic review of the terms of the agreements when there are profound changes such as in local or global conditions of mining, is designed to ensure that Government is able to negotiate more beneficial terms where possible.

Last but not least, it is important to note that not only has Goldfields abandoned plans to lay off some more workers but also, the investment of US\$2.55 billion which will result in the creation of more jobs represents a major boost to Ghana's economy as a whole at a time of low commodity prices.

The Ministry is satisfied that careful considerations were made in concluding the Goldfields development agreements and that on balance the benefits to the country are worth the concessions given to Goldfields.



ISSUED AND SIGNED BY THE MINISTER OF LANDS AND NATURAL RESOURCES

6th MAY 2016