PROPOSED AMENDMENTS TO THE MINERALS AND MINING ACT, 2006 (Act 703)			
No.	**Sections of the Act**	**Proposed Amendments**	**Justification/Rationale**
1)	5(6)	Insert as a new subsection as follows" The Minister shall within sixty days after the grant of a mining lease submit the lease to Parliament for ratification.	The delays in submitting leases to parliament for ratification have affected the ability of many companies to raise finance for construction and development. The situation has become a severe risk for Ghana especially after the Exton Cubic decision by the supreme court. Kenya and Ghana are perhaps the only countries that their constitutions require ratification of mining leases which is laudable as it gives additional layer of protection in the exploitation of natural resources. In other jurisdictions across the continent, it is typically an investment or Development Agreement. Kenya has a legislation that require leases must be ratified within a certain period after grant.
2)	9(1)	Insert "any" between "conduct" and " activities" on line 2 of section 9(1) Delete "exploration" on line 3	Reconnaissance and prospecting already stated in the section are considered as exploration activities, so the inclusion of "exploration" is superfluous
3)	11(d)	Insert "having regard to gender" at the end of the provision.	It is to ensure the mainstreaming of gender in the mining industry
4)	14	Amend the heading to include "dealings" dealings has been defined as: "dealings" means farm-in and farm-out, Joint venture, net smelter return, royalty interest other than royalty paid to the Republic and other interests or rights as the Minister may from time to time declare, by notice published in the Gazette, to be dealings in minerals. "Dealt in" includes Dealings	Apart from assignment or transfer of a mineral right, a wide range of dealings in mineral rights such as joint ventures, net smelter, option agreements/farm-ins and farm-outs, royalty interest, share transfer (whether direct or indirect) are common in the industry. In order to adequately capture these dealings, the Commission propose we add "dealings" in the subheading and define "dealings" in the interpretation section to cover all these transactions that take place all the time and in fact may be described as the lifeblood of the mining industry globally.

5)	19(2)	Replace "Department" with "Authority"	The Department is now an Authority
6)	20(3) and 20(4)	Add the following as new provisions: (3) Subject to the constitution and any other written law, the Commission shall make accessible to the public- (a) all mineral rights and any other agreement, licence or permit granted in relation to a mineral right or in accordance with this Act. (b)annual revenues including royalties, corporate taxes and dividends paid to the government by holders of mining leases and licences; and (c)annual production and sale volumes under each lease, licence or permit (4) The Commission shall ensure that any information, records, documents, agreement or any other relevant information under sub section 3 shall be made available to the public on the official website of the Commission.	These are new provisions to enhance transparency and accountability in the mining sector. In any case once these agreements are made available to parliament for ratification, they are already public. Ghana has signed up to the EITI and the new EITI standards call for contract disclosure. Besides petroleum contracts are publicly available in Ghana. Again, countries in Africa such as the DRC, Guinea, Liberia, Sierra Leone, Kenya, Tanzania, Senegal, Malawi, and Mozambique have made mining contracts public.
7)	29(1)(a)	add "consumables and spare parts of plant, machinery and equipment" as part of the list of items to enjoy exemptions and replace "exemption" with "concessionary rate"	Consumables are widely used in industry and form a key part of the cost of operations of the mines.
8)	33, 35 and 44	Replace "extension", "extended" or "extend" with "renewal", "renewed" or "renew" as the case may be	The use of extension, extended or extend and renewal, renew or renewed (see for instance the term "renewal" is used in heading for section 44, but the term "extension" is used in the main text of section 44. The choice of "renewal" is to ensure consistency.

9)	34(4), 35(3), 36(4), 39(3),42(2)	Delete references to section 27 and replace them with High Court	Exposes the State to international arbitration
10)	35(7)-new provision	35(7) A prospecting licence shall not be renewed more than twice after the initial term of three years. In that case, the total number of years a company can hold a prospecting licence shall not be more than nine (9) years Each renewal may be granted for any period of not more than three (3) years.	There is the need to limit the number of renewals after the initial term to two terms, making 9 years in total. First it is in line with international practice and second to prevent the abuses that characterise the current indefinite duration in Act 703. Examples of the duration of exploration/prospecting licences to support this argument are: South Africa(5,3=8), Namibia (3,2,2=7), Kenya (3,3,3=9yrs), Burkina Faso (3,3,3=9), Uganda (3,2,2=7yrs), Ivory Coast (4,3,3+10), DRC (5,5=10yrs), Tanzania (4,3,2=9yrs), Sierra Leone (4,3,2=9), Mali (3,2,2=7 and one yr for feasibility making 8), Zambia (4,3,3=10), Senegal (4,3,3=10yrs).
11)	38(3)	Amend section for disputes to be referred to High Court	Exposes the Republic to International Arbitration for Prospecting Licence for which no meaningful exploration has been carried out or done to expose the State to such high level of risks as this is not a mining lease.
12)	41(1)	Reduce the upper limit for a mining lease to fifteen (15) years and renewable for any period not exceeding 10 years as the original thirty-year term is no longer fashionable	The grant of thirty-year is no longer common. Examples drawn from countries across Africa indicate any period between 20 and 25 years. Kenya (25 years renewable not exceeding 15 years), Burkina Faso (20 years renewable every five years), Ivory Coast (20 years renewable 10 years), Mali (12 years and may be renewable every 10 years)
13)	42(3)- A new provision	A holder of a mining lease shall sign a community development agreement (CDA) with the communities that may be impacted by mining operations of the holder within six months after the grant of a mining lease in a manner as prescribed in regulations.	Currently, community development initiatives or programmes are voluntary, and mining companies are not under any obligation to implement them. Yet any expenditure made under the various CSRs being carried out are treated as costs and claimable or deductible under the tax laws of Ghana. This provision seeks to formalise it to put Ghana at par with other countries. Examples of countries that have made

			CDAs mandatory include Kenya, Sierra Leone South Africa, DRC. Guinea, Mali, Senegal, Burkina Faso, Tanzania, Ivory Coast among others. The details will then be set out in regulations which will provide a framework as to how the CDAs will be managed.
14)	48(1)	Reduce the upper limit of the stability period of 15 to any period not exceeding 5 years to cover the capital recovery period for the investment. Other factors can also be considered in determining the number of years for stability such as value addition, new and size of the projects and nature of mineral.	It is highly recommended that the stability period should not exceed 5 years for several reasons. In the first place the whole idea of stability has to do with risks, in particular project finance. Most mining projects are financed by either debt and/or equity and the financiers always require the assurance that the loan will be paid. Government on the other hand can alter the fiscal regime at any time and this potentially can affect the project economics. A five-year duration is recommended because most mining projects typically have a payback or capital recovery period average between 2 and 5 years (depending on the price of the metal, cost of producing a ton/ounce and the level of investment. DRC has reduced stability from 10 to 5yrs in a new law passed in June 2018, Kenya has proposed a period of 5 years. An upper limit of five
15)	48(1)(a)	Highly recommended that the provision Should be deleted	This provision potentially allows stability over non-fiscal issues/matters which are no longer tenable or fashionable in the global mining business. In other words, non-fiscal issues such as labour, environment, health and safety should not be covered by stability. Once new EHS standards are introduced, companies should comply and meet the new standards or requirements. In any case, the expenditure required to meet these new EHS standards are treated as costs which are recoverable under the tax laws of Ghana.

16)	48(2)(3)-new provision	It is critical to have a standard stability agreement which should be used. It is critical that the contents should be prescribed in regulations	It is important to limit the issues/matters that may be covered in a stability agreement/contract. The absence of standardization provides room for a case-by-case negotiation resulting in the multiplicity of agreements. The best way to do that is set out the terms and conditions in a legislation
17)	49	It is recommended that Development Agreements should be abolished.	It is highly recommended that Development Agreements (DAs) should be abolished. In the first place, the DAs have outlived their usefulness in particular in the context of Ghana. Ghana has a strong mining history and has a robust mining regime. Therefore, Ghana cannot be compared and placed on the same footing with emerging jurisdictions or countries that do not have a strong mining history. The DAs which also go by other names such as mineral agreements, mining agreements, investment agreements, etc were primarily introduced by the World Bank and the IMF that wrote/drafted many of the mining laws across Africa famously called first (Ghana, 1986), Mali, Guinea, Zambia, Tanzania and third (DRC, 2002) generation mining codes. These mining laws/codes were written at the time, prices were very low, and many countries were desperate for foreign investment. The pendulum swung in favour of mining companies. They were recommended and widely used for the privitisation of state-owned copper mines in the late 1990s and the early 2000s in Zambia. Zambia that signed 11 DAs became the first country in Africa to formally abolished DAs in 2008 essentially for the same reasons that have confronted Ghana over the years. That is the DAs were poorly negotiated and secondly there was no regard to the fact that costs, revenues and profits will not remain the same through the life of a mine.

18)	50(1), (3) (4) and (5) are new provisions	50(1) Insert "having regard to gender" in section 50(1). 50(3) training of Ghanaians, research and development, transfer of technology transfer and the 50(4) The Commission shall establish and maintain a database of Ghanaians (drawn from within and outside of Ghana) with the relevant training, skills, knowledge and experience including specialists or experts across the mining industry value chain. (5) The Commission shall ensure dissemination of the information on the database through its website, in the media or such other effective means as may be available from time to time.	(1) The inclusion of gender is in line with the policy to maintain the mainstream gender. (2) The scope of 50(2) is primarily limited to the replacement of expatriates. However, we need to widen the scope to include the training of Ghanaians and the development of succession plans, research and development and technology transfer. The details of how these are to be achieved shall be set out in regulations. (3) Sub sections (4) and (5) are new provisions and they are basically intended to assist the mining companies access the pool of talents/skills of Ghanaians that are available across the world. Such a database will lessen the challenges on the Commission of having to approve the recruitment of expatriates.
19)	62(1)(2)(3) and 63	Replace "Department" in these sections with "Authority"	The Geological Survey Department is now an Authority
20)	68	Include "fails to comply with an obligation under a mineral right" as an additional ground for suspension or cancellation	This is to ensure the companies that default on the terms of their mineral rights are held to account
21)	70(1)(a)	Insert new a section as 70(1)(a) as follows: "all immovable assets of the holder under the mining lease shall vest in the Republic on the effective date of the termination of the lease". In that case sub sections "a) and "b" of the original text will now be renumbered as "b" and "c" consecutively	This provision is to ensure that immovable assets such as buildings which are capitalized and the cost recovered are returned to the state. The case of resolute Amansie following the decommissioning of the Obotan mine is a typical example.
22)	Section 81	Amend the heading to the section to include "medium"	To make provision for the introduction of medium scale operations

23)	92 (2) and 92(3)	Include a representative of small-scale miners. Suggestions for including other representations may be considered	The contribution of small-scale mining over the years and the challenges of illegal mining have made it imperative to include the miners in the governance process. It is also to allow the Committee to co-opt such persons as it may deem fit
24)	96	Should be deleted	The use of mercury must be banned as Ghana is a signatory to the Minamata Convention which calls for the phasing out of the use mercury in mining
25)	Insert a new provision as section 99 to deal with medium scale mining operations.	A person shall not engage in or undertake a medium scale mining operation for a mineral unless there is in existence in respect of the mining operation a licence granted by the Minister	It has become imperative that a medium scale mining licence be introduced to deal with mining operations that are not too large but bigger than a typical small scale operation. The size/number of blocks, duration, requirements, obligations, renewal among others shall be prescribed in Regulations
26)	106 and 108	Penalties enhanced by removing the upper limit	The current level of fines or penalties have outlived their usefulness
27)	Interpretation section	Exclude "building" from the interpretation of "mining plant"	Following the exclusion of immovable assets from the definition of mining plant as stated in 70(1(a) above, the term "mining plant" needs to be redefined to exclude building.