

By email and post

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13 November 2024

Hon. Godfred Yeboah Dame

Attorney General and Minister of Justice
Office of the Attorney General And Ministry of Justice
P.O. Box MB60, Accra
Republic of Ghana
minister@mojagd.gov.gh

Request for Urgent Protection of Investments and Reiteration of Request for Urgent Amicable Settlement Discussions

Dear Honourable Minister,

1. We write on behalf of our clients, Future Global Resources Limited ("**FGRL**") and Blue Gold Holdings Limited ("**BGHL**") (together, the "**Investors**").
2. On 14 October 2024, the Investors served the Republic of Ghana ("**Ghana**") with a Notice of Dispute under the UK-Ghana BIT (the "**BIT Notice of Dispute**"). A copy is enclosed for your reference.
3. As explained in the Investors' BIT Notice of Dispute, the Investors own and operate several significant and protected investments in Ghana's territory. These include, amongst other things, the Bogoso Prestea Gold Mine (the "**Mine**"), associated mining leases, mining assets, and shareholdings.¹
4. Against the backdrop of Ghana's mistreatment and unlawful expropriation of those protected investments, the Investors have been forced to initiate a formal dispute against Ghana.² In the interest of avoiding a protracted dispute, the Investors invited Ghana to engage in urgent amicable settlement discussions.³ Pending the initiation of such discussions, the Investors urged Ghana to take action to address their serious concerns over the continued illegal occupation of the Mine and, in particular, to refrain from taking any further actions to aggravate the dispute.⁴

¹ See **Enclosure 1** – Investors' BIT Notice of Dispute, dated 14 October 2024, p. 2 (paras. 3-6).

² See **Enclosure 1** – Investors' BIT Notice of Dispute, dated 14 October 2024, p. 2 *et seq.* (paras. 3-16).

³ See **Enclosure 1** – Investors' BIT Notice of Dispute, dated 14 October 2024, p. 5 (para. 19).

⁴ See **Enclosure 1** – Investors' BIT Notice of Dispute, dated 14 October 2024, p. 6 (paras. 22-23).

5. Regrettably, the Investors' requests for urgent discussions have gone unanswered; Ghana has provided no response to date. Rather, Ghana appears to have taken steps to aggravate this dispute.
6. As explained below, while Ghana maintains its silence, significant amounts of gold tailings (worth millions of dollars)—which belong to the Investors—are now being actively extracted from the Mine on a regular basis by unauthorised parties. This is illegal, and Ghana must immediately desist and take the necessary steps to bring about the same result.
7. Moreover, the Investors understand that Ghana has now taken steps to finalise (if it has not already finalised) the unlawful transfer of the Mine and its associated mining leases to unrelated third parties. The Investors condemn Ghana's actions in the strongest possible terms, and remind Ghana that any such transfer would not only be illegal under Ghanaian law, but would further violate Ghana's obligations under the UK-Ghana BIT.
8. Ghana will be held liable for every loss caused through its abdication of its responsibilities under the UK-Ghana BIT. The Investors maintain their right to initiate arbitral proceedings to pursue compensation for such losses in the event no amicable settlement is reached. In such case, Ghana should readily expect to risk being held liable for significant damages. The Investors accordingly urge you to address their serious concerns as soon as possible.
9. Moreover, the Investors remind you that the World Bank requires you to engage in reasonable efforts to resolve any disputes over expropriations:⁵

"Disputes over Expropriation

*5. The Bank recognizes that a member country may expropriate property of aliens in accordance with applicable legal procedures, in pursuance in good faith of a public purpose, without discrimination on the basis of nationality, and against payment of appropriate compensation. **When there are disputes over expropriations that, in the opinion of the Bank, the member country is not making reasonable efforts to settle and that are substantially harming the country's international credit standing, the Bank considers whether to continue making new loans to or with the guarantee of the member country. Further, the Bank may decide not to appraise proposed projects/programs in such a country unless it has good grounds for believing that the obstacles to lending will soon be removed.**" (emphasis added)*

10. In light of the above, the Investors implore you to carefully consider the remaining contents of this letter and the information detailed therein.

The Investors' assets are being illegally extracted

11. The Investors understand that their assets are now being actively plundered during the Minerals Commission's illegal occupation. The Investors reasonably believe that these events have given rise to considerable additional losses in the millions of dollars.
12. It is the Investors' present understanding that:

⁵ See **Enclosure 2** –World Bank Operating Manual - OP 7.40, p. 2 *et seq.* (Operating Policy 7.40.5).

- (a) members of the Minerals Commission's illegitimate "*Interim Management Committee*" have begun selling significant quantities of specific gold tailings from the Mine to unknown third parties. Attempts to intercept and deter these illegal transactions have been thwarted by local forces, who appear to be aligned with the Minerals Commission. These gold tailings have significant value and form part of the Investors' forward operating plan; and
 - (b) other unauthorised individuals have begun infiltrating the Mine site, which the Ghanaian Military has failed to protect. These individuals have similarly been led into tailings facilities to extract other gold tailings, which have been sold onwards without the Investors' permission or involvement.
13. Each of the above events constitute acts of theft of the Investors' property. The gold tailings in question in each case are assets which rightfully belong to the Investors as products of their own investments. They are in no part the property of the Minerals Commission, nor of its "*Interim Management Committee*", or any other Unauthorised Actors.
14. Ghana's failure to protect these investments—and to instead allow their illegal taking through its own authorities—breaches its obligation to afford full protection and security to the Investors' investments as required by Article 3(1) of the UK-Ghana BIT:

*"(1) Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and **shall enjoy full protection and security in the territory of the other Contracting Party.**" (emphasis added)*

The Investors' assets are being illegally transferred

15. The Investors further understand that on 13 November 2024, Ghana undertook actions to transfer the ownership of the Mine and the Investors' associated mining leases to an unrelated third party entity entitled "*Heath Goldfields Ltd.*". Based on public information, this unlawful transfer has been actioned by the Ministry of Lands and Natural Resources and the Minerals Commission, which has unlawfully seized and occupied the Mine for close to two months now.
16. The above act constitutes further violations of Ghana's obligations under the UK-Ghana BIT. These include, without limitation, Ghana's obligations under:
- (a) Article 3(1), to afford the Investors' fair and equitable treatment and full protection and security;
 - (b) Article 3(2), to not impair the Investors' control over their investments through any unreasonable or discriminatory measures;
 - (c) Article 3(3), to observe obligations which Ghana has entered into with the Investors; and
 - (d) Article 7, to not take any expropriatory measures, or measures having equivalent effect, directly or indirectly, towards the Investors' investments without prompt and adequate compensation.

Request for urgent intervention and urgent amicable settlement discussions

17. In order to avoid any further aggravation of this dispute, deterioration, or taking of the Investors' investments, the Investors urge Ghana to:
 - (a) initiate all necessary actions to safeguard or otherwise ensure the preservation of their assets, pending the resolution of this dispute; and
 - (b) engage in urgent amicable settlement discussions as soon as possible.
18. The Investors reiterate their proposal that such settlement discussions be held with the relevant Ghanaian authorities (including the Office of the Attorney General, the Ministry of Justice, and the Ministry of Land and Natural Resources) and at any mutually agreeable date in either Accra, Ghana or London, United Kingdom.
19. Should this dispute not be resolved by 14 January 2025, the Investors shall exercise their right to initiate international arbitration proceedings pursuant to Article 10 of the UK-Ghana BIT.
20. All of the Investors' rights are reserved, including the right to seek conservatory, injunctive, or interim relief from any court or tribunal.

Yours sincerely,

A handwritten signature in cursive script that reads "Mayer Brown".

Mayer Brown International LLP

Copied to this letter:

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