



REPUBLIC OF GHANA

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**REPORT ON THE ANALYSIS OF THE RISK OF CORRUPTION AND ANTI-CORRUPTION RISK ASSESSMENT OF THE PROCESSES LEADING UP TO THE REQUEST FOR APPROVAL AND APPROVAL OF THE TRANSACTION AGREEMENTS AND TAX EXEMPTIONS GRANTED BY PARLIAMENT THEREUNDER IN RELATION TO THE GOLD ROYALTIES MONETISATION TRANSACTION UNDER THE MINERALS INCOME INVESTMENT FUND ACT, 2018 (ACT 978) AND OTHER RELATED MATTERS THERETO**

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## **1.0 INTRODUCTION**

On 14<sup>th</sup> August 2020 Parliament approved five (5) Agreements and tax exemptions in relation to the Gold Royalties Monetization Transaction under the Minerals Income Investment Fund Act, 2018 (Act 978). These Agreements are variously referred to as the Agyapa Royalties Agreements, the Agyapa Royalties Transactions or the Transaction Documents. The Minister for Finance submitted a memorandum dated 13<sup>th</sup> August 2020 to Parliament for consideration and approval of the Transaction Documents and Parliament within twenty-four (24) hours had purported to have examined, recommended the agreements for approval by a majority decision of the Committee on Finance of the governing party, and subsequently again, by another unanimous decision of the governing party of the House, approved all the agreements conditionally on 14<sup>th</sup> August 2020. The minority party in Parliament is said to have staged a protest of a walkout and not participated in the vote to approve the Transaction Documents.

## **2.0 NATIONAL DEBATE AND DISPUTE AS TO THE PROBITY, TRANSPARENCY, AND ACCOUNTABILITY OF THE AGYAPA ROYALTIES LIMITED TRANSACTION DOCUMENTS, AND THEIR RISK OF CORRUPTION AND ANTI-CORRUPTION ASSESSMENT.**

It would appear that the inability of Parliament to consider and approve the Transaction Documents in a bi-partisan manner further gave rise to acrimony between the supporters of the proposers of the Transaction Documents and its opponents including groups of extractive minerals civil society, anti-corruption organizations, and other members of the public. The proponents of the approvals asserted the legality of the approval process while its opponents asserted lack of transparency, accountability, substantial due process and legality of the processes leading up to the approval granted by Parliament. The nation appeared divided over the handling of its sovereign extractive minerals gold patrimony with threats of abrogating the Agreements by future Governments.

In view of the elaborate provisions in the 1992 Constitution and other laws made to protect the extractive mineral resources of the nation for and on behalf of the Chiefs and people of Ghana, this Office as a specialized independent, preventive, investigative, prosecutorial and assets recovering anti-corruption agency established by this Government decided under the Office of the Special Prosecutor Act, 2017 (Act 959) to undertake an analysis of the risk of corruption, and anti-corruption assessment of the processes originating what became known as the Transaction Documents and leading up to the partisan approval by Parliament of the Transaction Documents. It is the expectation of this Office that the results of its independent analysis of the risk of corruption and anti-corruption assessment of the Transaction Documents as approved will unite the nation and avoid the resource curse of conflicts experienced in other African countries.

The Special Prosecutor accordingly decided on 10<sup>th</sup> September 2020 to invoke the mandate of this Office pursuant to Sections 2(c), 4, 29, 69, and 73 of the Office of the Special Prosecutor Act, 2017 (Act 959) and Regulation 31 of the Office of the Special Prosecutor (Operations) Regulations, (L. I. 2374) enjoining the Office to execute the object of prevention of corruption in

addition to investigating and prosecuting corruption and corruption-related offences. This Office has the mandate to undertake measures to prevent corruption which includes analysis of the risk of corruption, anti-corruption assessment of legislation and draft legislation, publicizing detected acts of corruption, identifying deficiencies in administration of instructions, regulations and procedure, and individual interest, including greed, lack of ethicalness and legal awareness, amongst others. This Office, therefore, decided to make a request to Parliament to be provided with information and documents related to or in connection with the approval by Parliament of the Agyapa Royalties Transactions on 14<sup>th</sup> August 2020 to assist this Office execute its prevention of corruption mandate.

Consequently, in letter with reference number OSP/SCR/2B/39/20 dated 10<sup>th</sup> September 2020 this Office gave notice of request to the Clerk to Parliament for information and production of documents in relation to the Agyapa Royalties Agreements that had been approved by Parliament on 14<sup>th</sup> August 2020. Parliament promptly responded to the notice of request from this Office on 15<sup>th</sup> September 2020 in its letter with reference number PS/LS/038/SPO01 of even date. The Public Procurement Authority, the Registrar-General's Department, and the Ministry of Finance also responded to notices of request from this Office. Parliament provided further and better particulars requested by this Office on 25<sup>th</sup> September 2020. A further notice of request for outstanding information and documents was made to the Ministry of Finance on 28<sup>th</sup> September 2020 with a reminder to it to abide the result of this Office's analysis of the risk of corruption, and anti-corruption assessment before listing the transaction on the IPO. The Ministry responded on 29<sup>th</sup> September 2020 to the letter with further particulars without making any undertaking to suspend the IPO listing.

This Office in another letter with reference number OSP/SCR/22/35/20 dated 1<sup>st</sup> October 2020 acknowledged the Ministry of Finance letter of 29<sup>th</sup> September 2020, asked for further particulars, and queried the lack of an acknowledgement of receipt of this Office's letter of 28<sup>th</sup> September 2020 in spite of the Ministry's letter of 29<sup>th</sup> September 2020 written after this Office's letter of the previous day had been received by the Ministry. The Ministry in letter No. MOF/OLA/PLCDA.3 dated 1<sup>st</sup> October 2020 formally acknowledged this Office's letter dated 28<sup>th</sup> September 2020 and admitted that its letter dated 29<sup>th</sup> September 2020 was consequent "upon receipt of your letter dated 28<sup>th</sup> September 2020 whereby you requested additional relevant information...". The Ministry for the first time assured this Office that it will abide the outcome of the analysis of the risk of corruption, and anti-corruption assessment by this Office: "Kindly note that this Ministry does not intend to proceed with the IPO ahead of the results of the corruption risk assessment by your Office." There have since 1<sup>st</sup> October 2020 been several more exchanges of correspondence between this Office and the Ministry of Finance seeking its cooperation to make available all the information and documents covered under the notice of request dated 14<sup>th</sup> September 2020. A letter submitting information and documents on foreign transactions payments was received at the secretariat of this Office at 3:32 in the afternoon on Friday 9<sup>th</sup> October 2020 with a promise to deliver a last batch on 13<sup>th</sup> October 2020. On 13<sup>th</sup> October 2020 two letters dated 12<sup>th</sup> October 2020, and 13<sup>th</sup> October 2020 respectively were hand delivered by the Ministry to this Office in fulfilment of the promise.

This analysis of the risk of corruption and anti-corruption assessment report is the outcome of the analysis of the risk of corruption and anti-corruption assessments of legislation, identification of deficiencies and individual interest undertaken by the Special Prosecutor in execution of the functions of this Office using the Transaction Documents submitted with the memorandum of the Minister for Finance dated 13<sup>th</sup> August 2020 to Parliament requesting for approval of the Transaction Documents and tax exemptions granted thereunder in relation to the Gold Royalties Monetization Transaction under the Minerals Income Investment Fund Act, 2018 (Act 978) as a basis in the performance of the mandate of the Office.

## 2.1 The Importance of Gold as a National Patrimony Held By the President of the Republic In Trust for the Chiefs and People of Ghana.

The Ministry of Finance has since 2011 conceived of the establishment of a “National Vehicle To Hold All Of the Government’s Gold Interests” and the Transaction Documents submitted by the Minister of Finance on 13<sup>th</sup> August 2020 for consideration and approval by Parliament is just a continuation of how to actualize an existing policy of the Government of Ghana. The subject of the establishment of such a National Vehicle was first conveyed by the then Minister for Finance by letter with reference number MOF/OLA/LCAH dated 10<sup>th</sup> May 2011 to the then Attorney-General and Minister for Justice. The then Attorney-General assigned Attorneys led by a Chief State Attorney with considerable expertise in extractive mineral resources to join a Ministry of Finance Committee to brainstorm on the new policy initiative.

On 6<sup>th</sup> October 2011 the then Attorney-General by letter with reference number D54/SF.110 volunteered an opinion to the then Hon. Minister of Finance on the importance of complying strictly with the letter and the spirit of Articles 175, 176, 257(6), 267(6), and 269 of the 1992 Constitution, the Minerals and Mining Act, 2006 (Act 703), particularly sections 25 thereof, the Office of the Administrator of Stool Lands Act, 1994 (Act 481), the Financial Administration Act, 2003 (Act 654) and the Companies Code, 1963 (Act 179) in making a decision on the policy intentions at the time. The then Attorney-General’s opinion as his letter stated was intended to ensure transparency and accountability in the process initiated by the Ministry of Finance for which no feedback had been provided to the then Attorney General as was the normal practice.

The Attorney-General at the time, underscored in paragraph 3 of his letter of opinion the importance of the mineral resources of the nation as trust property and a patrimony of the citizens of Ghana when he stated that:

“The President is the trustee of all mineral resources in their natural state in Ghana for and on behalf of the people of Ghana. Consequently, all such mineral resources are vested in him (see Article 257(6) of the Constitution). Pursuant to Article 269 Parliament established the Minerals Commission under the Minerals Commission Act, 1993 (Act 450) to be responsible for the regulation and management of the utilization of the extractive minerals sector and to co-ordinate policies in relation to them. The Minerals and Mining Act, 2006 (Act 703) regulates minerals and mining rights, and incidental matters. Under section 25 of Act 703, royalties are to be paid in respect of mineral rights to the Republic. Government is also entitled to a ten percent free carried interest in a

mineral right for mining or exploration in respect of which no financial contribution is paid by government and which does not preclude the government from any other or further participation in mineral operations as may be agreed with the holder of the mineral right. Within the scheme of the Minerals and Mining Act the Minister responsible for Mines is given extensive supervisory functions for and on behalf of the President who is the trustee. To ensure that the President's delegated powers are properly exercised in accordance with the President's trust mandate, section 100 of Act 703 requires the Minister to exercise his powers and discretion after obtaining the advice and recommendations of the Commission.

Article 267 of the Constitution also provides elaborate mechanism and procedure for dealing with Stool and Skin lands and property. The Office of the Administrator of Stool Lands has pursuant to this article been set up to manage revenues and moneys from Stool and Skin lands under the Office of the Administrator of Stool Lands Act, 1994 (Act 481). Under article 267(6) ten percent of the revenue accruing from stool lands are to be paid to the Office of the Administrator of Stool Lands and to be distributed to the named beneficiaries in percentages indicated therein. The revenue from stool lands includes royalties. It is pursuant to these that various stools, traditional authorities and District Assemblies are paid portions of royalties by government. I believe that it is because of the interests of the stools and skins in the extractive mineral revenues of the Republic that the Minister for Lands and Forestry has been working on a Minerals Development Fund Bill for submission to Cabinet to provide financial resources for the benefit of mining communities and provide for the management of the fund, amongst other things. The Bill contains provisions on investment of some of the funds and related matters. Ministerial and Parliamentary oversight is clearly stated."

The letter of the then Attorney-General after discussing the financial requirements imposed by Articles 175, and 176 of the 1992 Constitution, and the Financial Administration Act, 2003 (Act 654) stated further as follows:

"It is important to remember that the longstanding constitutional convention developed under successive Ghanaian Constitutions and Governments, due to the fiduciary nature of the receipts for extractives resource revenue, is to pay such moneys into the Consolidated Fund for purposes of accountability to the people's elected representatives in Parliament. It may, therefore, be prudent that the setting up of any special fund by Parliament to hold the Republic's gold interest is subjected to some bi-partisan consensus if such a scheme is to stand the test of time."

The Attorney-General's letter dated 6<sup>th</sup> October 2011 winded up as follows:

"Conclusions

It is my advice that before the Ministry of Finance and Economic Planning takes any further step in this matter, it should hold discussions with the Ministry of Lands and Forestry to enable the two ministries brainstorm on the appropriate mechanism to achieve

the objects contemplated in your letter under reference. The Minerals Development Fund Bill can serve as a basis of these discussions.

It is my hope that you will find the foregoing opinion useful to you in coming to a decision as to the most efficacious mechanism and processes to use in establishing the entity to hold the nations gold interests without sacrificing the inalienable patrimony of the citizens of Ghana entrusted into the trusteeship of the President.”

The Minerals Development Fund Bill referred to in the Attorney-General’s opinion dated 6<sup>th</sup> October 2011 was eventually enacted as the Minerals Development Fund Act, 2016 (Act 912) spelling out the Object of the Fund, Sources of money for the Fund, Application of the Fund, Disbursement of the Fund, Accounts and Audit and above all Annual reports ending up in Parliamentary oversight. The Governing body of the Fund shows the multi-stakeholder nature of the ownership and management of the mineral resources of Ghana including particularly, in my view, a representative of the Ministry of Finance not below the rank of a Director, the Chief Director of the Ministry of Lands and Natural Resources, the Chief Executive Officer of Minerals Commission, the Secretary to the Lands Commission, the Administrator of Stool Lands, a representative of the Ghana Chamber of Mines, and a traditional ruler from a mining community nominated by the National House of Chiefs. The Minister responsible for Mines and the Ministry of Lands and Natural Resources are the responsible Minister and Ministry under Act 912.

The transitional provisions in section 28 of the Minerals Development Fund Act, 2016 (Act 912) provided, inter alia, that the Ministry of Finance and any other institution was to cease to administer the Minerals Development Fund accounts previously operated by them.

Incidentally, this letter which was written nine years ago and forgotten came into the possession of the Special Prosecutor who was the then Attorney-General in an email sent to him by one of the lawyers to the Transactions Documents on 6<sup>th</sup> September 2020. With necessary changes to take care of changes brought about in the existing law by the establishment of the Public Financial Management Act, 2016 (Act 921) and Minerals Income Investment Fund Act, 2018 (Act 978) this letter is of relevance today as it was then when it was written because of its advocacy for transparency and accountability in accordance with the Constitution and the existing laws in any future attempt to establish a National Vehicle To Hold Ghana’s Gold Interest. Probity, transparency, and accountability in public office constitutes the bedrock of good governance in minimizing the potential risks of legislative and executive actions to promote corruption by making the enterprise of corruption and corruption-related offences a very high risk endeavour for the citizen.

### **3.0 THE PROCESSES LEADING TO THE DECISION TO SEEK ADVISORS FOR THE ESTABLISHMENT OF A SPECIAL PURPOSE VEHICLE**

A thorough analysis of the risk of corruption and anti-corruption assessment of legislative and executive action on the Transaction Documents must of necessity begin from the inception of the processes leading to the selection, evaluation, and terms of the contracts and appointment of the



Transaction Advisor(s) and other service providers which are fundamental to the probity, transparency, and accountability of the unitary national outcome sought to be achieved by the Government for the Chiefs and people of Ghana in its gold royalties monetization policy. Before then, it is intended to consider what considerations informed the beginning of the appointment processes for the transaction advisor(s) leading up to the approval by Parliament of the Transaction Documents on 14<sup>th</sup> August 2020.

### 3.1 Background to the submission of the Memorandum of the Ministry of Finance dated 13<sup>th</sup> August 2020 Requesting For Parliamentary Approval Of The Transaction Documents.

The origin of the processes leading up to the submission and approval of the Transaction Documents and their legislative framework begun as narrated by the Ministry of Finance when the Government assumed the reigns of the governance of Ghana in 2017. In 2017, the Ministry of Finance (MoF) received a few unsolicited proposals from various entities which sought to offer debt financing ranging between US\$500mn and US\$700mn in exchange for a percentage of the Republic's gold royalties going forward. The Ministry of Finance after reviewing the proposals came to the conclusion that the proposals provided numerous advantages and opportunities to the Republic. However, because of the technical nature of the transaction the Ministry required the expertise of an independent transaction advisor to guide the government on the best approach to structure and execute the transaction (Emphasis supplied). Consequently, government decided to adopt a policy measure that sought to monetize future gold royalties to support development projects.

The new policy direction was reflected in the 2018 National Budget and Economic Policy Statement which can be found at page 156 of the Statement under the heading "Partial Monetization of Ghana's Gold Resources" stating inter alia, as follows:

"Mr. Speaker, gold is one of Ghana's major exports. However, unlike other countries, Ghana has not been able to leverage her gold deposits to attract additional funding for accelerated growth and development and minimize exposure to the volatile gold prices. Government, in 2018, will adopt a policy for leveraging the future wealth of this resource to support current development needs."

It was in accordance with this policy that the Ministry initiated a procurement process to secure the services of a Transaction Advisor to advise Government on the best way to go about achieving the above policy objective. It follows from the foregoing that applying the letter and spirit of the 1992 Constitution of probity and accountability in public office would have required the search for and appointment of an independent, impartial, and neutral Transaction Advisor to advise the Government on its policy affecting such a sovereign national extractive mineral resource which the Constitution vests in the President during his tenure to hold in trust for and on behalf of the totality of Chiefs and people making up the Republic of Ghana. Mineral resource conflicts in Africa leading to civil wars have resulted from failures in or lack of commitment to the substance of corruption prevention and corruption based on moral and legal rules of probity, transparency, and accountability. It is, therefore, imperative for the survival of the Fourth Republic that Ghana avoids mineral resource conflicts by a complete adherence to the dictates of

probity, transparency, and accountability in policy decisions on how its gold mineral resource must be managed for the collective good of citizens.

#### **4.0 THE SELECTION PROCESS FOR THE TRANSACTION ADVISORS, APPOINTMENT OF SERVICES PROVIDERS, UNDERWRITERS AND TERMS OF CONTRACTS.**

The information and documents submitted to this Office by the Ministry of Finance show unsolicited proposals submitted by Artemis Natural Resources Corporation of Toronto on 18<sup>th</sup> July 2017, Canada; Tripleflag Mining Finance Ltd of Toronto, Canada on 25<sup>th</sup> September 2017; Petrodel Investors Advisers Limited of Nevis on 26<sup>th</sup> September 2017; Imara Corporate Finance of South Africa on 16<sup>th</sup> October 2017; Petrodel Investors Advisers Limited of Nevis on 19<sup>th</sup> October 2017; Natixis Global Market Commodities of Paris, France on 27<sup>th</sup> October 2017; and Tripleflag Mining Finance Limited of Toronto, Canada on 2<sup>nd</sup> October 2017.(Emphasis supplied)

The Ministry of Finance in letter with reference number DMD/FIRU/TFMF/2017/3 dated 6<sup>th</sup> October 2017 signed on behalf of the Minister by Hon. Charles Adu Boahen, Deputy Minister, and addressed to Mr. Adjenim Boateng Adjei, Chief Executive Officer, Public Procurement Authority (PPA) referred to four (4) named financial institutions who were willing to offer Government a receivable backed credit facility and stated that given the specialized nature of the transaction structure and the limited time available for Government to reach a financial close, Government had decided to use the Restrictive Tendering method to procure one of the firms for the transaction. The Ministry was, therefore, requesting through the letter in line with Section 38 (1) of Act 663 the approval of the Public Procurement Authority to engage the following firms by direct invitation: (i) Tripple Flag; (ii) Navara Capital Limited; (iii) Stanbic Bank; and (iv) Petrodel Investor Limited. The absence of the name of Imara Corporate Finance from this list needs to be noted.

After exchanges of letters between the two institutions the Chief Executive Officer of the PPA in letter with reference number PPA/CEO/1173/10/17 dated 13<sup>th</sup> October 2017 referred to the Ministry's letter with reference number DMD/FIRU/TFMF/2017/3 of 6<sup>th</sup> October 2017 and stated that in order to facilitate the processing of the application the Ministry was to kindly furnish the Authority the documents mentioned in the Minister's letter under reference which did not accompany the letter and to state: "(1) The exact list of firms to be invited to tender for the procurement activity as well as their statutory documents including their valid VAT, SSNIT and Tax Clearance Certificates and their business certificates. (2) An estimated value of the services to be provided." The PPA letter of 13<sup>th</sup> October 2017 asking for the list of firms to be invited to tender is suspicious because the list was provided in the Ministry's letter referenced by the Chief Executive Officer of the PPA in his letter.

The Deputy Minister of Finance then writes two (2) letters with reference number DMD/FIRU/TFMF/2017/4 and reference number DMD/FIRU/TFMF/2017/5 both undated in

November 2017 on the subject matters “Re: Request For Approval For Direct Invitation – Financial Proposals” and “Re: Request For Direct Invitation -Technical Advisor” respectively to the Chief Executive Officer of the PPA. The Chief Executive Officer of the PPA acknowledged receiving both letters on 14<sup>th</sup> November 2017. The name of IMARA Corporate Finance appears for the first time on the Ministry of Finance’s letter DMD/FIRU/TFMF/2017/4 undated in November 2017 for Financial Proposals. IMARA Corporate Finance is also listed for the first time as number 6 in the second letter of even date with reference number DMD/FIRU/TFMF/2017/5 for a Technical Advisor.

This is how the Ministry of Finance obtained approval from the Public Procurement Authority to include Imara Corporate Finance Limited (Pty) in the PPA letter with reference number PPA/CEO/1403/11/17 dated 16<sup>th</sup> November 2017 to secure the services of a Transaction Advisor through a restricted tendering process for eight firms, namely, (i) JP Morgan, (ii) Goldman Sachs, (iii) Imara Corporate Finance, (iv) Citi Bank, (v) Morgan Stanley, (vi) Barclays Bank, (vii) Standard Chartered Bank, and (viii) Rothschild & Co. pursuant to its letter with number DMD/FIRU/TFMF/2017/5 received on 14<sup>th</sup> November 2017 for a Technical Advisor. There was no request for Databank Financial Services Limited (Databank) of Ghana to the PPA and the above approvals consequently did not include Databank.

According to the evaluation report, a request for proposals (RFP) was sent electronically to the eight (8) short listed international financial institutions on 22<sup>nd</sup> December 2017 with a closing date of 8<sup>th</sup> January 2018, a clause of which stipulated “that collaboration with eligible Ghanaian firms with complementary capabilities shall be favourably considered”. The Ministry received only two (2) responses to the RFP, both of which had local partners. The Ministry of Finance’s letter for approval and the approval granted by the PPA to the Ministry of Finance dated 16<sup>th</sup> November 2017 did not make the approval subject to any collaboration with eligible Ghanaian firms for the RFP to be favourably considered. The insertion of this condition was opaque and contrary to the PPA approval for the purpose of the prevention of corruption and for suspected violations of the Public Procurement Authority Act which may constitute corruption and corruption-related offences.

The two (2) brokerage firms which purportedly met the Ministry of Finance’s unilateral collaborative condition were, namely, (1) Imara Corporate Finance/Databank (South Africa/Ghana) and Morgan Stanley/ Boulders Advisors (London/Ghana). The evaluators adjudged Imara Corporation Finance/Databank the winners of the bid. The joint proposal by Imara and Databank as Transaction Advisors for the Partial Monetization of Ghana’s Gold Royalties was dated 8<sup>th</sup> January 2018. The Morgan Stanley/Boulders Advisors proposals were somehow not submitted to this Office for analysis and assessment. At the end of the evaluation Imara Corporate Finance was ranked first, followed by Morgan Stanley in terms of strengths and weaknesses.

There is no indication that Morgan Stanley had made an earlier unsolicited proposal as Imara Corporate Finance had done on 16<sup>th</sup> October 2017. Imara, of South Africa, had submitted an unsolicited proposal like the other seven (7) non- African companies which had also submitted unsolicited proposals. Imara, the South African company for some reason was the only one of the eight unsolicited proposals shortlisted, albeit belatedly, for restricted tendering and public procurement authority approval for the first time in the Ministry of Finance's letters dated 16<sup>th</sup> November 2017. The period between 22<sup>nd</sup> December 2017 and 8<sup>th</sup> January 2018 for the submission of proposals with a rider not contained in the Public Procurement Authority approval that "collaboration with eligible Ghanaian firms with complementary capabilities shall be favourably considered" certainly made it impossible for the European and American based short-listed companies to meet the RFP requirement within the seventeen days provided. In between the seventeen days were the Christmas and new year holidays. No rational explanation is provided for the exercise of discretion to include the rider of collaboration with a Ghanaian firm at such short notice in the request for proposals (RFP).

Imara Corporate Finance of South Africa, the only unsolicited proposal company shortlisted managed to collaborate with no less a company than Databank Financial Services Limited of Ghana which everybody in Ghana knows is a company in which the Minister of Finance has a business interest to submit a joint bid. It is interesting to note that Morgan Stanley got paired with Boulders Advisors a Ghanaian company known to have been engaged by the Ministry of Finance in aspects of the processes in the liquidation of some non-performing banks in Ghana. The Request for Proposals (RFP) process from the Ministry of Finance with a rider for collaboration with eligible Ghanaian firms smells of bid rigging by the Ministry of Finance for the proposals from Imara Corporate Finance Limited (Pty) of South Africa using Databank as a decoy on a closer examination, analysis and assessment of the terms and conditions of the Mandate Agreement purportedly signed between the Ministry of Finance on behalf of the Republic of Ghana and Imara Corporate Finance/Databank (South Africa/Ghana).

The Minister of Finance is not the only person with a business interest in Databank who was involved in the processes enabling the selection of the Transaction Advisors contrary to the PPA approval leading up to the preparation, documentation, the recommendations, obtaining executive approvals and the submission of the Transaction Documents to Parliament for approval on 14<sup>th</sup> August 2020. One Felicia Ashley now with the Ministry of Finance is reported to have taken up her new public office at the Ministry of Finance following the appointment of the Minister of Finance in 2017 with whom she previously had worked with as the Vice President and Head of Human Capital and Administration of the Databank Group, one of the partners of the Transaction Advisors. She was and is the Director for Human Capital and General Administration Division at the Ministry of Finance. By virtue of her position she oversees the entire General Administration function of the Ministry of Finance with responsibility spanning General Services, HR, Procurement, IT, Security, Accounts and Transport. The engagement of Transaction Advisors involved the procurement processes for which she had oversight responsibility. One cannot undertake a thorough analysis of the risk of corruption, and anti-corruption assessment of deficiencies in legislation, administration of instructions, regulations or procedures without taking the foregoing factors into account as they affect the transparency and

accountability of the bidding process to select impartial and neutral Transaction Advisors to advise the Republic on its important natural resources such as extractive mineral resources and gold royalties.

It was within the foregoing analysis of the risk of corruption, and anti-corruption assessment surrounding environment that the Ministry of Finance on 6<sup>th</sup> June 2018 in Accra, Ghana, purported to have signed a Mandate Agreement with Imara and Databank which is recited as having been made on 1<sup>st</sup> May 2018 in flagrant violation of Sections 7, 25(3) and (4) of the Public Financial Management Act, 2016 (Act 921). The Deputy Minister (F) (Hon. Charles Adu Boahen) purportedly signed for and on behalf of the Republic, Jayne Backhouse – Director signed for Imara, and one Franklin A. Hayford signed for Databank. The contract was for a period of twelve (12) months from 01 May 2018 and may be renewed in writing based upon agreement by both parties. In spite of the form of the Mandate Agreement, it is according to the PPA approval an agreement between the Republic of Ghana and Imara Corporate Finance (Pty) Limited of South Africa. Databank Financial Services Limited was never part of the procurement application process and approval to be a party to the Mandate Agreement pursuant to the PPA approval.

The Deputy Minister who purported to have committed the budgetary appropriation of the Ministry of Finance to payments from the public purse under the Mandate Agreement dated 6<sup>th</sup> June 2018 by signing the contract on behalf of the Ministry for the Republic had no authority to do so because he was not and is not the Principal Spending Officer of the Ministry of Finance as a covered entity under the Sections of the Public Financial Management Act, 2016 (Act 921) referred to above. The Chief Director of the Ministry is the Principal Spending Officer under Act 921. The implications and consequences for the usurpation of the authority of the Principal Spending Officer of the Ministry by the Deputy Minister in committing the Republic to this opaque Mandate Agreement is patently obvious for any anti-corruption assessment to need any further comment.

Be that as it may, an examination, analysis and assessment of the Mandate Agreement revealed how the procurement process in spite of the seeming approval by the Public Procurement Authority was manipulated by the Ministry of Finance by adding an unapproved rider for collaboration with a Ghanaian firm to the RFP and thereby seriously lowered the risk to corruption. It consequently made corruption prevention and corruption a low risk enterprise for the Transaction Advisors and the Ministry of Finance in the performance of their fiduciary duties to the Republic of Ghana. How could the Republic of Ghana acting at arms-length enter into an Agreement containing a provision that: “Fees and Expenses rendered in terms of Evaluation and Recommendation Phase in Clause 2.1 is to be paid by MoF to the Transaction Advisors as follows: Clause 3.1.1 a fixed retainer of US\$15,000 (Fifteen Thousand US Dollars) per month, payable quarterly in advance to Imara from 01 May 2018, for a maximum of 12 months, such fee to be offset against the success fee; 3.1.2 a fixed Success Fee of US\$4,000,000 (Four Million US Dollars), payable to Imara on the Completion Date and adjusted for the retainer paid in terms of

Clause 3.1.1; Clause 3.1.3 for the purposes of this Clause 3.1.”? (underlining is mine for emphasis). Clauses 3.4 and 8 also disclose how the Ministry of Finance and its opaquely appointed Transaction Advisors attempted to set the procurement process and the parliamentary approval process at naught in the appointment of services providers and/or underwriters in an unaccountable manner.

In the first place the involvement of Imara Corporate Finance Limited (Pty) of South Africa in the Mandate Agreement as approved by the Public Procurement Authority made the Mandate Agreement an international business or economic transaction needing approval from Parliament under Article 181(5) which was never sought or given. See Attorney-General v Faroe Atlantic Co Ltd [2005-2006] SCGLR 271. Secondly, the whole of the fees for the contract purportedly won by Imara Corporate Finance of South Africa with its decoy Databank of Ghana is to be paid in United States Dollars to Imara in South Africa. The Mandate Agreement does not say how and when the decoy, Databank of Ghana, was to be paid by Imara for a contract purportedly won and performed jointly. This opaque arrangement in the contract negotiation process not arising out of the Public Procurement Authority approval is what makes the analysis of the risk of corruption, and anti-corruption assessment conclude that the process of the selection of the Transaction Advisor(s) discloses reasonable suspicion of bid rigging, and corruption activity including the potential for illicit financial flows and money laundering in the arrangement of how the fees payable to Databank as the decoy which was not approved under the Public Procurement Authority Act, 2003 (Act 663) as amended by the Public Procurement Authority (Amendment) Act, 2016 (Act 914) (Act 663 as amended) are to be made. There was thus a zero-chance arising out of individual interests at the Ministry of Finance and Imara/Databank of expecting impartiality and neutrality on the part of the Transaction Advisor(s) in advising the Republic of Ghana as a national corporate entity representing the unitary interest of its Chiefs and people.

The manipulation of the request for proposals in a manner inconsistent with the PPA approval to enable Imara Corporate Finance Limited (Pty) of South Africa to win the bid with Databank Financial Services Limited and the individual interests of the Minister of Finance and Felicia Ashley, with administrative responsibility for procurement in the Ministry, who came along with the Minister from Databank to the Ministry of Finance in 2017 turned what would otherwise have been an objective search for an independent Transaction Advisor into an opaque bid rigging exercise on the part of the Ministry of Finance. With Databank Financial Services Limited surreptitiously brought on board as a decoy with Imara Corporate Finance Limited (Pty) of South Africa, the Minister of Finance in letter with reference number MOF/HM/ROYALTIES/04/18 dated 29<sup>th</sup> April 2018 on the subject matter of “Consultancy Services For The Partial Monetisation Of Gold Royalties” granted approval under his signature “to the evaluation report in accordance to Section 16(1) of the Public Procurement Act (Act 663) 2003 as amended.” It cannot, therefore, be said with unambiguity that the Minister was unaware of the manipulation of the request for proposals (RFP) and the evaluation process which brought Databank on board in the circumstances already analyzed and assessed to have been opaque and unaccountable for good governance and lowering the risk of corruption. The RFP in the form it was made with a short return date which made it possible to bring on board Databank with Imara as winners of the

bid and the purported unlawful signing of the Mandate Agreement on 6<sup>th</sup> June 2018 by a Deputy Minister blurred the lines between the Ministry of Finance seeking an independent Transaction Advisor and the Ministry of Finance acting by itself as the Transaction Advisor through its foreign surrogate Imara Corporate Finance Limited (Pty) of South Africa. In an analysis of the risk of corruption, and anti-corruption assessment this is a fundamental issue of individual interest, greed, lack of ethicality and morality in public office and not simply of conflict of interest merely.

It is with the foregoing lenses that this analysis of the risk of corruption, and anti-corruption assessment leads one to the conclusion that the contention of the Ministry of Finance soon to be quoted lack integrity in stating that: “Imara Corporation Finance and Databank were engaged as transaction advisors after going through a restricted tendering process.” The Ministry contends that as a result of the advice of the transaction advisor and based on the fact that Royalties are deemed to be a tax which go into the consolidated fund, it was agreed that the best way to approach the transaction was to draft a Bill for consideration and passage by Parliament. The proposed Bill, was to establish the Minerals Income Investment Fund (MIIF), grant it the necessary powers to establish a special purpose vehicle that would monetize income accruing to Government. The Deputy Minister for Finance, Hon. Charles Adu Boahen, from the analysis of the risk of corruption, and anti-corruption assessment appears to have been the Deputy Minister who oversaw the bid selection process for the engagement of a Transaction Advisor. By overseeing the manipulation of the selection process contrary to the PPA approval to bring in Databank Financial Services through the side door as a decoy he would have appeared to have compromised the Minister of Finance’s objectivity in supervising the actualization of Government’s policy in the handling of the Special Purpose Vehicle (SPV) establishment Transactions from then on.

The Ministry of Finance representing the Republic of Ghana became the Transaction Advisor through its foreign surrogate Imara Corporate Finance and the Transaction Advisors became the Ministry of Finance with the authority to determine the future of the nations’ Gold Monetization policy. This appears to be the only reasonable explanation for the Ministry of Finance infringing on the provisions of Part VI of the Public Procurement Act, 2003 (Act 663) as amended by unlawfully delegating to the Transaction Advisors in clause 2 .2.1 of the Mandate Agreement the statutory authority and functions of the procurement entity tender committee of the Ministry as its only gazetted covered entity. This also provides the only reasonable explanation for the Ministry violating the Public Financial Management Act, 2016 (Act 921) by unlawfully ceding to the surrogate Transaction Advisor(s) the authority and functions of the Chief Director as the Principal spending Officer of the Ministry to commit the Ministry’s budgetary appropriation by signing contracts engaging and appointing consultants and other services providers. Probity, transparency, and accountability had been sacrificed for individual interests, greed, and all caution thrown to the wind, thereby lowering the risk of corruption and making corruption a low incentive activity.

The Ministry of Finance by its stratagem pretended to follow the form of the Constitution and legislation governing the procurement processes and not their substance that require fairness, transparency and accountability in the selection and appointment of the independent Transaction Advisor(s) who turned out to be indeed the Ministry's surrogates. The absence of any evidence of the approval of the Mandate Agreement by Parliament under Article 181(5) of the Constitution makes the appointment of the Transaction Advisors also unconstitutional, null and void, and sins against any positive analysis of the risk of corruption, and anti-corruption assessment in their handling of the Transactions.

#### 4.1 Corruption Risk Assessment of Mandate Agreement with the Transaction Advisors – Conditions and Terms

The Transaction Advisor(s) were purportedly appointed exclusively to independently advise and assist the Government of Ghana on the Transaction as set forth. There are three (3) phases to the Agreement. The first phase is contained in Clause 2.1 Evaluation and Recommendation Phase which includes the presentation of a detailed written report to the MoF reviewing all the options regarding the most suitable structure for the Transaction after taking into consideration the MoF's objective and including the detailed breakdown of the roles and responsibilities of the Transaction Advisors in the subsequent phases based on the recommended transaction structure for the review and sign-off by MoF prior to the commencement of the next Phase. The second phase is contained in Clause 2.2, the Documentation and Preparation Phase. The third phase is contained in Clause (3), the Execution Phase. The fourth phase is in Clause 2.4, the Further Advice Phase.

Clause 2.2 which kicked in after the completion of Phase 1 and after the MoF had indicated its preferred structure is the Documentation and Preparation Phase which includes under Clause 2.2.1 for the Transaction Advisor to "Identify and recommend to the MoF for appointment, a list of other services providers and/or underwriters that may be required to complete the Transaction." Clause 2.2.2 then requires the Transaction Advisors to "assist MoF and/or its nominees with the preparation, in conjunction with such legal, accounting, technical and any other adviser as the Transaction Advisors may consider appropriate as per Clause 2.2.1, the documentation required for the Transaction."

The Fees and Expenses rendered in terms of the Evaluation and Recommendation Phase in Clause 2.1 is to be paid by MoF to the Transaction Advisors as follows: Clause 3.1.1 a fixed retainer of US\$15,000 (Fifteen Thousand US Dollars) per month, payable quarterly in advance to Imara from 01 May 2018, for a maximum of 12 months, such fee to be offset against the success fee; Clause 3.1.2, a fixed Success Fee of US\$4,000,000 (Four Million US Dollars), payable to Imara on the Completion Date and adjusted for the retainer paid in terms of Clause 3.1.1; Clause 3.1.3 for the purposes of this Clause 3.1. "Completion Date" means the day on which the fulfilment or waiver of the last outstanding condition precedent as stipulated in the relevant agreements occur and funds are received by MoF for the Successful implementation of the Transaction. (Emphasis supplied).

The Mandate Agreement opaquely entered into with Imara/Databank contrary to the approval given by the PPA and without Parliamentary approval has entered its fourth stage without the



fees payable under the terms of the Agreement for the second and third phases having been disclosed for purposes of transparency and accountability. It may be surmised that the Documentation and Preparation Phase has passed and the Transaction Advisors have been paid per the contract except that the amount of United States Dollars involved have not been disclosed. One may surmise also that with the purported approval of the Transaction Documents by Parliament on 14<sup>th</sup> August 2020 the third phase called Execution Phase has also been concluded leaving the fourth phase which is the Further Advice Phase. It may also be of interest that a notice of request from this Office dated 7<sup>th</sup> October 2020 specifically asking for such disclosure drew a blank from the documents produced by the Ministry in its last letters dated 9<sup>th</sup>, 12, and 13<sup>th</sup> October 2020, raising a reasonable suspicion of corruption activity.

A deeper analysis of the risk of corruption, and anti-corruption assessment of the Mandate Agreement arising from stonewalling by the Deputy Minister (F) led to the discovery that Hon. Charles Adu Boahen, the Deputy Minister (F), who appeared from the analysis of the risk of corruption, and anti-corruption assessment to have been the overseeing Deputy Minister for this procurement process for the Transaction Advisors and purportedly signed the Mandate Agreement for and on behalf of the Republic of Ghana knew or ought to have known that he could not commit the Republic to any contract let alone sign the Mandate Agreement in the name of the Republic. Sections 7, 25(3) and (4) and 102 of the Public Financial Management Act, 2016 (Act 921) vested the power and authority to commit the Ministry of Finance to any contract for and on behalf of the Republic in the Principal Spending Officer who is the Chief Director of the Ministry of Finance.

All the parties to the Mandate Agreement are deemed to have known the law but ignored it with impunity in signing and implementing the Mandate Agreement which is null and void ab initio as violating the Public Financial Management Act, 2016 (Act 921) and the Public Procurement Authority Procurement Act, 2003 (Act 663) as amended. This conduct which appears to have been in furtherance of the suspected bid rigging, in the assessment of this Office severely lowered the risk of corruption, and rendered them a low risk enterprise in the Agyapa Royalties Transactions process and their approval. It is with these new lenses that the analysis of the risk of corruption, and anti-corruption assessments of the legality of the engagement of the other services providers and underwriters on the recommendations of the Transaction Advisors acting as the Ministry of Finance's procurement entity tender committee contrary to Part VI of the Public Procurement Act, 2003 (Act 663) as amended, and Sections 7 and 25 of the Public Financial Management Act, 2016 (Act 921) afore-quoted were made.

#### 4.2 Playing down the request for evidence of Parliamentary approvals for all the services providers and Transaction Advisor(s)

But the Hon. Charles Adu Boahen, in letter with reference number MoF/OLA/di/OSP\_MIIF.4 dated 2<sup>nd</sup> October 2020 in response to this Office's letter with reference number OSP/SCR/22/35/20 dated 1<sup>st</sup> October 2020 "to confirm as a matter of urgency to facilitate the completion of the corruption risk assessment whether or not the Mandate Agreement dated 6<sup>th</sup>

June 2018 was approved by Parliament pursuant to Article 181(5) of the 1992 Constitution...” answered that “..the Mandate Agreement was not submitted to Parliament for Approval”.

The Deputy Minister then sought to play down the request for further information and documents by stating that:

“3. The Ministry sought and received both Cabinet and Parliamentary approval for the minerals royalties transaction, prior to procuring the international transaction advisors. The Ministry did not seek Parliamentary approval of the Mandate Agreement itself, or other transaction advisory agreements, as the Ministry interpreted the work of advisors to be advisory only, without having the nature of an autonomous commercial transaction with significant impact on the wealth and resources of Ghana. (Supreme Court of Ghana, in Attorney General v Balkan Energy [2012]).”

It is not the place of this analysis of the risk of corruption, and anti-corruption assessment to banter with the Deputy Minister (F). These analyses of the risk of corruption, and anti-corruption assessment in the processing of the Transaction Documents is an assessment based on the information and documents made available. In doing such analyses and assessments the absurdity of submissions and stonewalling by public institutions to provide accurate information and documents are noted as part of the process for analyzing and assessing the probity, transparency, and accountability of legislative and executive action. Suffice it to say that in the request for financial proposals (RFP) from the Ministry of Finance submitted to this Office the transaction description was stated in the opening paragraph as follows: “The Ministry of Finance, as part of its mandate, is requesting for Financial Proposals (RFP) for the partial monetization of Ghana’s gold royalties of up to USD750.00 million for the financing of development projects as stipulated by the 2018 Budget statement....”

The request for proposals for “Transaction Advisor(s) For The Partial Monetization of Ghana’s Gold Royalties” states the scope of work for the selected Transaction Advisor(s) as providing (a) evaluating and analyzing proposals received from prospective financiers; (b) advising Government on the merits and demerits of all proposals received to issue gold backed securities; (c ) negotiating with selected bidders on behalf of Government; and (d) assist in putting together the Request for Proposal (RFP) to be circulated to prospective financiers for the transaction.” The Mandate Agreement dated 6<sup>th</sup> June 2018 unlawfully signed by the Deputy Minister (F) now states the scope of contractual work more exhaustively as already analyzed and assessed hereinbefore.

The Mandate Agreement unlawfully entered into between the Ministry of Finance on 6<sup>th</sup> June 2018 renewable every twelve months with Imara Corporate Finance Limited (Pty) of South Africa for advice for the “The Partial Monetization of Ghana’s Gold Royalties” up to USD750.00 million is what the Hon. Charles Adu Boahen, Deputy Minister for Finance (F) conveys as “the Ministry interpreted the work of advisors to be advisory only, without having the nature of an autonomous commercial transaction with significant impact on the wealth and resources of Ghana.” In this Office’s analysis of the risk of corruption, and anti-corruption assessment of the Transaction Documents, the Transaction Advisor(s), and the other services

providers and/or underwriters unlawfully appointed by the Ministry of Finance to provide consultancy services whether advisory or financial, legal or other in a very important international business or economic transaction involving all the processes leading up to the choice of the establishment of a Special Purpose Vehicle (SPV) Asaase Royalties Limited now rechristened Agyapa Royalties Limited of Jersey, United Kingdom, needed, at the least, a Public Procurement Authority approval in accordance with Part VI of the Public Procurement Authority Act, 2003 (Act 663) as amended dealing with “Methods And Procedure To Procure Consultants”. Those provisions of Act 663 as amended apply to the procurement of both foreign and local consultants by a procurement entity such as the Ministry of Finance. The appointments were also all in violation of Sections 7 and 25 of the Public financial Management Act, 2016 (Act 921).

It must be stated again for the avoidance of doubt, that the “Fees and Expenses rendered in terms of Evaluation and Recommendation Phase in Clause 2.1 was to be paid by Ministry of Finance (MoF) to the Transaction Advisors as follows: Clause 3.1.1 a fixed retainer of US\$15,000 (Fifteen Thousand US Dollars) per month, payable quarterly in advance to Imara from 01 May 2018, for a maximum of 12 months, such fee to be offset against the success fee; 3.1.2 a fixed Success Fee of US\$4,000,000 (Four Million US Dollars), payable to Imara on the Completion Date and adjusted for the retainer paid in terms of Clause 3.1.1; Clause 3.1.3 for the purposes of this Clause 3.1.” These clauses, in the view of this Office for purposes of the analysis of the risk of corruption and anti-corruption assessments, qualifies the Mandate Agreement with Imara Corporate Finance Limited (Pty) as an autonomous international business or economic transaction with significant impact on the wealth and resources of Ghana. In the proposals submitted by Imara/Databank they stated that: “The proposed fee payable to Imara-Databank was heavily oriented towards concluding a Transaction on the most favourable terms possible for the Government comprising: a work Fee of USD15,000 per month, plus a success Fee equal to 1.80% of the Gross Proceeds received by the Government payable upon completion of the Transaction...” (Emphasis supplied). With the analysis of the risk of corruption and anti-corruption assessment that Imara Corporate Finance Limited (Pty) is an opaque surrogate of both the Ministry of Finance and Databank Financial Services Limited playing the role of Transaction Advisors in a suspected bid rigging process, the total fees upon the completion of the Transaction may never be known.

The assessment of this Office is that the Mandate Agreement is opaque even in terms of the final fees payable directly to Imara Corporate Finance Limited (Pty) of South Africa as a surrogate of the Ministry of Finance up to the completion of the Fourth Phase of the Agreement. The analysis that Databank was a mere decoy acting as a smokescreen in the bid selection process and in the Mandate Agreement with the Ministry’s surrogate, Imara Corporate Finance Limited (Pty) supports the further assessment that a full disclosure of all authenticated foreign exchange payments made to Imara Corporate Finance Limited (Pty) of South Africa from the public purse need to be made for purposes an independent audit and/or a future investigation for the suspected commission of corruption and corruption-related offences.

#### 4.3 Appointment Of The Other Services Providers And Underwriters On The Recommendations Of The Transaction Advisors

This report has already stated that the Ministry of Finance, acting on behalf of the Republic of Ghana purportedly signed a Mandate Agreement with Imara Corporation Finance (Pty) Limited of South Africa and Databank Financial Services Limited of Ghana as joint partners on 6<sup>th</sup> June 2018, in Accra taking retrospective effect from 1st May 2018 contrary to the approval given by the PPA in its letter dated 16<sup>th</sup> November 2017. It has also already been stated that Phase 1 of the Mandate Agreement required the Transaction Advisors to do an evaluation and make recommendations to include the presentation of a detailed written report to the Ministry of Finance reviewing all the options regarding the most suitable structure for the Transaction after taking into consideration the Ministry of Finance's objective and include the detailed breakdown of the roles and responsibilities of the Transaction Advisors in the subsequent phases based on the recommended transaction structure for the review and sign-off by Ministry of Finance prior to the commencement of the second phase.

The second phase which commences when the Ministry of Finance has indicated its preferred structure is the Documentation and Preparation Phase and includes a contractual requirement for the Transaction Advisor to "Identify and recommend to the Ministry of Finance for appointment, a list of other services providers and/or underwriters that may be required to complete the Transaction" and to assist the Ministry of Finance and/or its nominees with the preparation, in conjunction with such legal, accounting, technical and any other adviser as the Transaction Advisors may consider appropriate as per the second phase for the documentation and preparation for the Transaction. It has already been analyzed and assessed that the authority given to the Transaction Advisor(s) to exercise the functions of the Ministry's procurement entity tender committee under the Mandate Agreement and the signing of that agreement by the Deputy Minister (F) dated 6<sup>th</sup> June 2018 are contrary to the Public Procurement Authority, 2003 (Act 663) and the Public Financial Management Act, 2016 (Act 921) respectively and consequently, null and void for the purpose of this anti-corruption assessment.

Nonetheless, the Transaction Advisor(s) went ahead to identify and recommend services providers and underwriters to the Ministry of Finance for appointment by the Republic of Ghana. The Ministry acted contrary to the Public Procurement Authority Act and the Public Financial Management Act in delegating the power to appoint services providers and/or underwriters to the unlawfully appointed Transaction Advisor(s). The Transaction Advisor(s) whose selection and appointment did not measure up favourably to the analysis of the risk of corruption, and anti-corruption assessment that meets the fundamentals of probity, transparency and accountability was/were potentially susceptible to undue influence, favouritism, cronyism, nepotism, and all forms of discrimination abhorred under the 1992 Constitution leading to the suspected packing of the services providers and underwriters position with entities not chosen on merit.

Apart from providing information and documentation showing that the Transaction Advisors were appointed through a restricted tendering process approved by the Public Procurement Authority, the Ministry of Finance did not provide the list of the other services providers required to complete the Transaction along with its response to this Office's letter dated 24<sup>th</sup>

September 2020. When the Chief Director of the Ministry was reminded of this, he called the Special Prosecutor on the evening of Friday 25<sup>th</sup> September 2020 to say that the Transaction Advisors engaged the lawyers. When he was reminded of the terms of Clause 2.2.1. of the Mandate Agreement he promised to get back to the Office on Monday 28<sup>th</sup> September 2020. Consequently, the Special Prosecutor in letter with reference number OSP/SCR/22/34/20 dated 28<sup>th</sup> September 2020 reminded the Ministry of Finance on the production of the outstanding information and documents. The Ministry of Finance in letter with reference number MOF/OLA/PLCDA. 2 dated 29<sup>th</sup> September 2020 submitted ten (10) assorted documents which were received the same day.

This Office has examined and analyzed the documents numbered 9 and 10 submitted by the Ministry of Finance listed in the letter as “(ix) Letter from MoF to Imara – Appointment of External Consultants to the Mineral Royalties Transaction dated 13<sup>th</sup> August 2018 (Appendix)” and “(x) Copies of engagement letters/mandates between Imara and the respective transaction advisors”. (Appendix 9 A-G). None of the documents submitted was in accordance with Clause 2.2.1 which expressly required that the services providers and the underwriters be appointed by the Ministry of Finance on the recommendations of the Transaction Advisors.

The Ministry of Finance sought to do the impossible by purporting to stealthily escape the requirements of the Public Procurement Act, 2003 (Act 663), the Public Financial Management Act, 2016 (Act 921), and Article 181(5) of the Constitution in a mere letter with reference number MOF/TDMD/MR/F&E/2018/4 dated 13<sup>th</sup> August 2018 under the subject matter of “Appointment of External Consultants To The Mineral Royalties Transaction” addressed to the Managing Director, Imara Corporate Finance Ltd., South Africa and signed on behalf of the Minister of Finance by Charles Adu Boahen, Deputy Minister (F). The first paragraph of this letter of 13<sup>th</sup> August 2018 referred to “your Mandate letter dated 6<sup>th</sup> June, 2018 of which Imara is required to identify and recommend to this Ministry for appointment of other service providers and/or underwriters that may be required to complete the transaction (Clause 2.2 (1)).” The second paragraph then states that: “...based on your recommendation approval is granted for the engagement of the external consultants needed for the implementation of the Transaction as listed in the attached. He then states in paragraph 3 thereof that: “As stated in Clause 3.4 of the Mandate Letter, cost, fees and expenses of these external consultants will be borne by this Ministry.” (Emphasis supplied).

Clause 3.4 of the Mandate Agreement which the Minister’s letter refers to as a Mandate letter states that:

“3.4 The cost of any external consultants and advisers, including but not limited to, legal, tax, audit, regulatory, underwriters and the like, appointed by, or in agreement with, MoF, MoF or by the Transaction Advisors at the request of the MoF, will be borne by MoF or its nominee but should be pre-approved by MoF.”

Based on the Deputy Minister’s letter of 13<sup>th</sup> August 2018, on the next day 14<sup>th</sup> August 2018 Korn Ferry sent a letter by email to Roger Clegg of Imara Corporate Finance outlining their understanding of “...the terms and conditions on which its services will be provided (the

Agreement”) for the opportunity to assist Imara in the search of a Chief Executive Officer “CEO” for newly formed Pan African Precious Metals Royalty Company “NewCo” that is being set up by the Ministry of Finance of the Republic of Ghana for IPO in London.” (Emphasis mine). This offer letter stated on the concluding page an acknowledgement of acceptance and with the words: “Accepted By”: this is followed by spaces provided for Imara Corporate Finance for signature and for Korn Ferry for signature. James Bright, Senior Client Partner for Korn Ferry signed on 14<sup>th</sup> August 2018 and Jayne Backhouse for Imara signed on 22<sup>nd</sup> August 2018. The signatures are followed by the following words: “Invoices should be addressed for the attention of: The Chief Director, Billing address: The Ministry of Finance of the Republic of Ghana...Accra Ghana...” (Emphasis supplied).

Deloitte LLP of London in letter with reference number CN/JF/SO dated 18<sup>th</sup> September 2018 to Imara Corporate Finance South Africa (Pty) Limited set out the terms on which the offer to perform certain transaction assistance services for Imara Corporate Finance South Africa (Pty) Limited (“Imara”, the “Principal”) in respect of a new special purpose vehicle (the “company”) to be formed by the Ministry of Finance of Ghana (the Ministry of Finance) in connection with the Initial Public Offering in the U.K. (“IPO”) (the Transaction)...” This letter was made for the attention of Jayne Backhouse/Roger Clegg of Imara. On the same day Jayne Backhouse signs and dates a column at the tail end of this letter with the following words: “I am duly authorized to, and do hereby confirm the agreement of Imara to the terms set out in the Contract.” Attached to this letter were four (4) appendixes stating the Terms of Business, Scope of work, and Example Close Down Confirmation. (Emphasis supplied).

On 4<sup>th</sup> October 2018 White & Case LLP of London wrote a letter signed on its behalf by Christopher Czarnocki to Imara Corporate Financing (Pty) Limited (“Imara”) attention Ms Jayne Backhouse/Mr. Tom Gaffney on the subject matter “Engagement Letter.” It set “out the terms of engagement of White & Case LLP to act through Imara in connection with, broadly, the proposed initial public (securities) offering by the Ghanaian gold royalties company (the “SPV”) to be incorporated on behalf of the Ministry of Finance of the Republic of Ghana (“MOF”).” The portion at the end of the letter stated: “Accepted and agreed, Imara Corporate Finance (Pty) Limited” was signed by Jayne Backhouse and dated 5<sup>th</sup> October 2018. (Emphasis supplied).

Bentsi-Enchill Letsa & Ankomah a firm of lawyers in Ghana in an email letter dated 16<sup>th</sup> October 2018 accepted “the opportunity to provide legal services to Imara (as the financial adviser to the Government of Ghana (GoG) acting through the Ministry of Finance) in respect of the Transaction. The letter was addressed to Jayne Backhouse, Director, Imara Corporation South Africa setting forth their terms. The letter had a portion after the signature of the law firm which stated that: “The above is understood and agreed by; for Imara Corporate Finance. It is then signed by Jayne Backhouse, Director and dated 13<sup>th</sup> November 2018. (Emphasis supplied)

SRK Consulting (UK) Limited prepared for and submitted to Imara Corporate Finance (Pty) Ltd “A Proposal To Prepare A Technical Report For A Gold Production Royalty Company In Ghana” in January 2019 to which is annexed an Agreement on an Execution Page stating that: “This Agreement Is Made Between And Signed By The Parties Through Their Authorized Representatives On The Dates Below:” Jayne Backhouse, Director on 24<sup>th</sup> January 2018 signed

“For and on behalf of Imara Corporate Finance (Pty) (ON BEHALF OF ITS CLIENT The Government of Ghana.” There is no signature and name for SRK Consulting (UK) Limited on the agreement submitted to this Office for this analysis of the risk of corruption, and anti-corruption assessment. (Emphasis supplied).

Buchanan of London on 15<sup>th</sup> November 2018 wrote to Imara Corporate Finance (Pty) Limited with the salutation to Jayne, “...to confirm their appointment as Public Relations consultants by Imara with immediate effect. The fee structure below outlines the various stages of the project:...” The space reserved for signature by the parties was signed on 15<sup>th</sup> January 2019 by Jayne Backhouse, Director for and on behalf of Imara Corporate Finance (Pty) Ltd.

OGIER Global or Ogier Group of the tax haven of Jersey, United Kingdom, is one of the companies for which a document was produced but which was not a signed contract. What was submitted was a document from the Ogier Group on the subject of “Ghana Minerals Income Investment Fund (the Fund) Initial Public Offering Fee Estimates” in which Ogier is thanking the unknown addressee ( in all probability Imara Corporate Finance) for the enquiry in relation to the proposed listing (the Listing) of a new Jersey holding Company (JerseyCo) which Ogier understood will be formed to act as the listing vehicle for the Government of Ghana’s (GoG) new royalties revenue business (the Business). Ogier estimated its legal fees for assisting in the Listing and the scope of work for the fee estimates. The scope of work for the incorporation included eleven items four (4) of which are revealing for the present purposes of this Office on analysis of the risk of corruption and anti-corruption assessment as follows: “(1) Advising in connection with the incorporation of JerseyCo to serve as the listing vehicle, including preparing the initial memorandum and articles of association in conjunction with White & Case (WC) and Ghanaian Counsel; (2) Preparing documentation and dealing with the transfer of JerseyCo to Imara Capital and initial appointment of interim directors; (3) Preparing any resolutions and board minutes required for JerseyCo in connection with the restructuring of its share capital and transferring ownership of JerseyCo to the Fund; (4) Generally assisting with other matters relating to the initial set up and structuring of the Fund and JerseyCo including all correspondence with WC, Imara Capital, Ogier Global (corporate administrator) and Ghanaian Counsel....” (Emphasis supplied, and note the meaning of the combination of words). This document is not dated or signed to constitute a contract of appointment. OGIER GLOBAL, 3<sup>RD</sup> FLOOR, 44 ESPLANDE, SAINT HELLER, JERSEY, UNITED KINGDOM, JE4 9W6 turned out to be the registered office address in Jersey for Asaase Royalties Limited registered under the company Law of Jersey on 30<sup>th</sup> October 2019. An analysis of the risk of corruption and anti-corruption assessment shows an opaque relationship between Ogier Global, Imara Corporate Finance Limited (Pty) as a surrogate the Ministry of Finance, White & Case, and a Ghanaian law firm at this early stage of the formation of the Special Purpose Vehicle. Subsequently, Ogier Global will be one of the services providers unlawfully paid by the Ministry of Finance through Imara Botswana Limited (not South Africa).

It is imperative to note that the correspondence between the Ministry of Finance and the Transaction Advisor are addressed to the Managing Director, Imara Corporate Finance (Pty) Limited in South Africa. It is also pertinent that all the offers for engagement as services

providers were addressed to Imara Corporate Finance, South Africa alone. (But transfers of foreign currency for payments from the Ministry of Finance are made to the account name Imara Botswana Limited through the First Bank of Botswana, Gaborone, Botswana, Kgale View Branch, with Branch Code: 287867 instead). This supports the analysis of the risk of corruption, and anti-corruption assessment that the addition of the Databank Financial Services Limited as a decoy joint bidder contrary to the PPA approval was a manipulation of the bidding process and constituted bid rigging in favour of Imara Corporate Finance Limited (Pty) of South Africa to foster individual interest of the Ministry of Finance. As already stated only the Principal Spending Officer of the Ministry, the Chief Director, has authority to commit the budget appropriation to any contract under sections 7 and 25 of Act 921 aforesaid.

This analysis of the risk of corruption, and anti-corruption assessment of the processes of the gold royalties monetization transactions has already stated that the ill-fated Mandate Agreement with Imara Corporate Finance South Africa (Pty) Limited with the decoy of Databank Financial Services Limited of Ghana with all the fees paid directly to Imara in United States Dollars was an international business or economic transaction under Article 181(5) of the 1992 Constitution which was never approved by Parliament before the Ministry of Finance started to implement it and commit funds from the public purse in honouring the considerations of fees for services contained in the Agreement. See Amidu (No. 2) v Attorney-General, Isofoton SA & Forson (No. 1) [2013-2014] 1 SCGLR 167. This failure or refusal by the Ministry of Finance, subsequent to the Deputy Minister (F) unlawfully signing the Mandate Agreement contrary to Sections 7 and 25 of the Public Financial Management Act, 2016 (Act 921) and committing public funds to payments under the Mandate Agreement had already seriously lowered the risk of corruption and made corruption a low risk incentive for public office holders. The consequences are that all transactions undertaken by the unlawfully appointed Transaction Advisors in the name of the Republic of Ghana were not backed by any law or the 1992 Constitution.

It has to be restated again for the avoidance of any doubt that, the absence of any approval or exemption from the Public Procurement Authority to the Ministry of Finance as a procurement entity to engage experts or consultants for the preparation and negotiations for the investment agreements and assignment of the beneficial mineral rights of the Chiefs and people of Ghana to Agyapa Royalties Limited of the United Kingdom over whom the Republic has to relinquish every sovereign control over as a purely commercial venture in a foreign tax haven may constitute procurement offences under the Public Procurement Authority Act and Public Financial Management Act, 2016 (Act 921). This further cemented the perception that the procedure and processes adopted in mortgaging Ghana's mineral royalty rights to Agyapa Royalties Limited of the United Kingdom, in perpetuity may have been tainted with corruption and corruption-related offences.

This Office also analyzed the risk of corruption, and made anti-corruption assessments in respect of the other services providers and underwriters purportedly appointed by the Government of Ghana to provide services for the actualization of the Transaction Documents involving such a crucial transaction as the partial monetization of Ghana's Gold Royalties in an international safe



haven through Agyapa Royalties Limited of Jersey, the United Kingdom. The analysis of the risk of corruption and anti-corruption assessment led to the conclusion that each appointment constituted a major outlay of foreign currency from the public purse to have warranted a transparent and accountable bidding processes by the Ministry's procurement entity tender committee under Part VI the Public Procurement Authority Act (Act 663) as amended and subsequent approval by Parliament under Article 181(5) of the Constitution as an international business or economic transaction. This Office also analyzed the risk of corruption, and anti-corruption assessment of each of the transactions and concluded that each agreement engaging a service provider or consultant constituted an autonomous commercial transaction with significant impact on the wealth and resources of Ghana in the monetization of Ghana's Gold royalties which is a patrimony for the Chiefs and people of Ghana, being temporarily held in trust by the President for the time being during his tenure of office. As consultancy services providers also called advisory services providers, they each also needed the approval of the Public Procurement Authority under the Public Procurement Authority Act, 2003 (Act 663) as amended before beginning the procurement process, selection, engagement, and award of each contract. None was sought or given.

#### 4.4 Piecemeal production of documents by the Ministry of Finance

It will be recalled that the Deputy Minister for Finance in a letter dated 6<sup>th</sup> October 2020 contended that the Mandate Agreement itself, or other transaction did not constitute international business or economic transactions but "advisory agreements, as the Ministry interpreted the work of advisors to be advisory only, without having the nature of an autonomous commercial transaction with significant impact on the wealth and resources of Ghana." This Office immediately requested on the same day for the submission of all payments by the Ministry on the transaction through approved foreign exchange channels.

The first batch of these documents were delivered on 9<sup>th</sup> October 2020 in letter with reference number MOF/OLA/PLCDA.5 dated 9<sup>th</sup> October 2020 attaching six (6) copies of bank transfer advice by the Ministry to the Transaction Advisors in August 2019, October, 2019, and November 2019 in response to this Office's letter with reference number OSP/SCR/22/37/20 dated 7<sup>th</sup> October 2020 with a promise to deliver a last batch from Imara Corporate Finance on 13<sup>th</sup> October 2020. On 13<sup>th</sup> October 2020 the Ministry hand delivered letter with reference number MOF/OLA/PLCDA.6 dated 12<sup>th</sup> October 2020 attaching five (5) copies of bank payment advice from Imara Botswana Ltd, Gaborone, Botswana to five (5) services providers in September 2019 and September 2020 as a sequel to the Ministry's letter with reference number MOF/OLA/PLCDA.5 dated 9<sup>th</sup> October 2020. On the same day, 13<sup>th</sup> October 2020 the Ministry hand delivered a second letter with reference number MOF/OLA/PLCDA.7 dated 13<sup>th</sup> October 2020 attaching seven (7) copies of bank payment advice again from Imara Botswana Ltd, Gaborone, Botswana to even (7) services providers in September 2019, October 2019, December 2019, March 2020, June 2020, and July 2020 as a further sequel to the Ministry's letter with reference number MOF/OLA/PLCDA.6 dated 12<sup>th</sup> October 2020. It should be noted that the payments are not from Imara Corporate Finance Limited (Pty) of South Africa who signed the illegal Agreements.

After a detailed analysis of the documents on foreign exchange transfers provided by the Ministry of Finance through the Bank of Ghana to the account name of Imara Botswana Limited through the First National Bank of Botswana, Gaborone, Botswana, KGALE VIEW Branch, with Branch Code: 287867 and not Imara South Africa as contained in the Mandate Agreement, this Office has come to the conclusive assessment again, that all the transactions which are in the nature of consultancy services, constitute not only consultancy services under Part VI of the Public Procurement Authority Act, 2003 (Act 663) ( as amended) but constituted also international business and economic transactions for purposes of Article 181(5) of the 1992 Constitution.

The Mandate Agreement was unlawfully signed on 6<sup>th</sup> June 2018 to take retroactive effect from 1<sup>st</sup> May 2018 but despite the clear words of the notice of request from this Office to the Ministry of Finance dated 14<sup>th</sup> September 2020 and several reminders the Ministry selectively provided only bank transfer advice payments starting from August 2019 to September 2020 all of which were made payable through the First National Bank of Botswana, Gaborone, Botswana, KGALE VIEW Branch, with Branch Code: 287867 to the account name of Imara Botswana Limited instead of Imara Corporate Finance Limited (Pty) of South Africa. The failure or refusal of the Ministry of Finance to provide all the bank transfer advice payments beginning from 1<sup>st</sup> May 2018 (after the Mandate Agreement was first unlawfully signed on 6<sup>th</sup> June 2018) which would have disclosed the success fee and other payments made on the agreement by the end of 30<sup>th</sup> April 2019 reinforces the analysis of the risk of corruption and anti-corruption assessment that the Ministry of Finance handled Ghana's gold royalties monetization policy and its transactions in such an opaque manner as to have completely lowered the risk to corruption and made corruption a low risk venture for the public officers involved in the process.

The one fundamental thing that the Ministry of Finance and the Deputy Minister (F) are blind to recognize is the legal fact that no valid Agreement could have legitimized the Transaction Advisor(s) to assume the authority of the Ministry's procurement entity tender committee under the Public Procurement Act, 2003 (Act 663) let alone enter into contracts with services providers and/or underwriters for and on behalf of the Ministry of Finance representing the Republic of Ghana under Sections 7 and 25 of the Public Financial Management Act, 2016 (Act 921). The Agreements entered into with each of the services providers and/or underwriters by the Transaction Advisor(s) is not only null and void but every bank transfer advice to Imara Botswana Limited or Imara South Africa to pay on each such consultancy services contract constitutes an unlawful expenditure from the public purse actuated by suspected corruption and corruption-related offences.

This is an analysis of the risk of corruption, and anti-corruption assessment of legislation and identified deficiencies in regulations and instructions under Regulation 31 of L. I. 2374. It is, therefore, not intended to include any detailed analysis and assessment of those payments in this report because of their nature. The proper place to deal with them is when these assessments give rise to a decision to open full investigations into the Transaction Documents for suspected corruption and corruption-related offences.

#### 4.5 The Unique Case Of The Engagement Of Africa Legal Associates As Services Provider/Advisor

It is regrettable, needless and avoidable that the procurement process leading to the appointment of Africa Legal Associates, one of two Ghanaian law firms whose name appears on the Agyapa Royalties Limited Transaction Agreements is being analyzed and assessed separately and alone for an analysis of the risk of corruption, and anti-corruption assessment. This Office in letter with reference number OSP/SCR/22/33/20 dated 14<sup>th</sup> September 2020 ( a Monday) gave notice of request for information and documents with a deadline of Thursday, 17<sup>th</sup> September 2020 which was hand delivered to and received at the Ministry of Finance the same day. The Ministry after some delay hand delivered its response in its letter with reference number MOF/OLA/PLCDA dated 24<sup>th</sup> September 2020 which was received on Friday 25<sup>th</sup> September 2020 submitting ten (10) documents, eight of which related to the processes leading up to the signing of the Mandate Agreement appointing the Transaction Advisor(s). The names and appointment particulars of the other services providers and/or underwriters were not provided.

It has already been narrated how a telephone call by the Special Prosecutor on 25<sup>th</sup> September 2020 reminded the Ministry of the outstanding information and documents and received a response from the Chief Director of Ministry of Finance that the Transaction Advisors engaged the lawyers. He was reminded that the Ministry was the only appointing authority under the Mandate Agreement. On Monday, 28<sup>th</sup> September 2020 this Office then wrote letter with reference number OSP/SCR/22/34/20 reminding the Ministry of Finance on the production of the outstanding information and documents and requesting it to hold the IPO listing process in abeyance pending the completion of the analysis of the risk of corruption, and anti-corruption assessment by this Office. The Ministry of Finance in letter with reference number MOF/OLA/PLCDA. 2 dated 29<sup>th</sup> September 2020 submitted ten (10) assorted documents which were received the same day without any information and documents on the appointment of Africa Legal Associates.

The Special Prosecutor, who was then out of office, instructed the Deputy Special Prosecutor the same day to remind the Chief Director of the omission, and the Chief Director promised to get back to the Office with the information and documents. On Friday 2<sup>nd</sup> October 2020 the Special Prosecutor instructed the Secretary to the Office (who is its Chief Director) to remind the Chief Director of the outstanding information on Africa Legal Associates and the Chief Director promised to get back to the Office with the information on Monday, 5<sup>th</sup> October 2020. When the information and documents were not forthcoming by the afternoon of 5<sup>th</sup> October 2020 the Special Prosecutor who was still out of office called the Chief Director to remind him of his promises and to demand an answer. The Chief Director informed the Special Prosecutor that Africa Legal Associates partnered with White & Case and was not independently appointed. The Special Prosecutor pointed out to the Chief Director the improbability of his answer based on the listing of the names of the law firms on the first page of each of the Agreements. The Chief Director promised to make enquires and get back to the Office. The foregoing led to the analysis and assessment from the available evidence that the Chief Director of the Ministry of Finance as the Principal Spending Officer of the Ministry might have been sidestepped in the procurement processes or the commitment of the budgetary appropriation of the Ministry to the engagement

of the Transaction Advisor(s) and other services providers for the Agyapa Royalties Limited Transactions as the Principal Spending Officer.

Then on Tuesday, 6<sup>th</sup> October 2020 this Office received an undated letter of October 2020 with reference number MOF/OLA/PLCDA.4 under the signature of Hon. Charles Adu Boahen, Deputy Minister (F), referring to an alleged non existing letter of this Office dated 29<sup>th</sup> September 2020 to which was “attached a copy of the mandate between Imara and Africa Legal Associates which was not included in our previous letter.” There is no authentication whatsoever that any of the documents received on 6<sup>th</sup> October 2020 was in the custody of the Ministry of Finance as coming from Imara.

The attached alleged copy of the mandate between Imara and Africa Legal Associates is the only formal Legal Services Agreement entered into by Imara Corporate Services Limited (Pty) of South Africa’s Jayne Backhouse in Accra. The Agreement also coincidentally happens to have been the last of all the services providers appointment on behalf of the Ministry of Finance as having been “made and entered into on 16 day of Nov. 2018 in Accra” (the figure “16” and the abbreviated month “Nov” were written in ink). All the other agreements with the services providers from the documents submitted by the Ministry of Finance in its letter of 29<sup>th</sup> September 2020 as already assessed were entered into by letters offering the terms and conditions of the services providers by the respective services providers and accepted under the signature of Imara Corporate Finance.

The Ministry of Finance went out of its way for the first time to send along with the mandate between Imara and Africa Legal Associates another selected unauthenticated presentation slide document from Imara Corporate Finance entitled “Project Kingdom Recommendation On Local Legal Advisors” referring to a meeting with five Ghanaian law firms required for Project Kingdom between February and January 2018. Curiously and paradoxically, no such document of recommendation accompanied the information and documents submitted by the Ministry of Finance on 29<sup>th</sup> September 2020 for the other foreign services providers and the one Ghanaian law firm from Imara Corporate Finance.

Let us take the example of the exchange of email letters between Bentsi-Enchill Letsa & Ankomah, one of the services providers already assessed: “Bentsi-Enchill Letsa & Ankomah a firm of lawyers in Ghana in a letter dated 16<sup>th</sup> October 2018 accepted “the opportunity to provide legal services to Imara (as the financial adviser to the Government of Ghana (GoG) acting through the Ministry of Finance) in respect of the Transaction. The letter was addressed to Jayne Backhouse, Director, Imara Corporation South Africa setting forth their terms. The letter had a portion after the signature of the law firm which stated that: “The above is understood and agreed by; for Imara Corporate Finance. It is then signed by Jayne Backhouse, Director and dated 13<sup>th</sup> November 2018. (Emphasis supplied).”

The foregoing examination and analysis have been undertaken to show why the Africa Legal Associates appointment is unique. The Ministry of Finance failed or refused to submit the information and documents on the appointment of Africa Legal Associates to this Office upon several reminders as narrated herein. After informing this Office that Africa Legal Associates

was a partner of White & Case, the Ministry changes its position and submits unauthenticated documents from the Ministry as evidence of the appointment of Africa Legal Associates in an undated letter.

The stonewalling and undue delay in supplying the information and documents referred to in the Deputy Minister's undated letter of October 2020 referring to this Office's non existing letter dated 29<sup>th</sup> September 2020 raises issues of probity, transparency, and accountability in public office for any corruption risk analysts, security, or intelligence analysts making an assessment on corruption, security or intelligence risks. The analysis of the risk of corruption and anti-corruption assessment revealed that the delayed unauthenticated information and documents on the appointment of Africa Legal Associates hand delivered by the Ministry of Finance to this Office on 6<sup>th</sup> October 2020 meant that the Ministry of Finance did not have the information and documents on the appointment of the law firm because none existed at the Ministry of Finance. The information and documents submitted in the undated letter of October 2020 had to be documents the Ministry was waiting to be computer generated by Imara Corporate Finance Limited (Pty) (which had unlawfully become its procurement entity tender committee) for submission to this Office when this Office pointed out the improbability of the contention by the Chief Director (who as the principal spending officer did not sign that agreement), that Africa Legal Associates was engaged as partners of White & Case LLP of the United Kingdom.

Be that as it may, all analysis of the risk of corruption, and anti-corruption assessment made in respect of the appointment of all the other services providers apply to the appointment of Africa Legal Associates. It has already been assessed that the suspected bid rigging process led to there being no distinction between the Ministry of Finance and Imara Corporate Finance Limited (Pty) of South Africa for purposes of probity, transparency and accountability in such an important international business or economic transaction involving the Monetization of Ghana's Gold mineral royalties. Consequently, the analysis of the risk of corruption and anti-corruption assessment on the Africa Legal Associates mandate agreement is obvious and consequential.

## **5.0 ESTABLISHMENT OF A NATIONAL VEHICLE TO HOLD ALL OF THE GOVERNMENT OF GHANA'S GOLD INTERESTS – POST 2016**

### **5.1 The Minerals Income Investment Fund Act, 2018 (Act 978)**

It can be surmised that following from the evaluation and recommendation phase of the void Mandate Agreement, and the documentation and preparation stage by the surrogate Transaction Advisor(s) that the Ministry of Finance had settled on the development of a transaction structure for raising equity capital that will involve leveraging the nation's future gold receivables. The proposals from the Transaction Advisor(s), which was refined and adopted by the Ministry of Finance required the establishment of a statutory Fund with the authority to manage its equity interests in mining companies, create and hold equity interest in special purpose vehicles (SPVs) in any jurisdiction, assign any and/or all of the Republic's mineral equity interest to a Special Purpose Vehicle consistent with the Fund's objectives and to procure the listing of a Special Purpose Vehicle on any reputable stock exchange. As the preceding analysis of the risk of

corruption, and anti-corruption assessment of the appointing process of the Transaction Advisor(s) showed, the Transaction Advisor(s) became so inextricably intertwined and interwoven with the Ministry of Finance through individual interest in such a way that led to the bidding process being opaque and reasonably suspected of having been rigged in favour of the Transaction Advisor(s).

There is no evidence available to this Office to support the conclusion that the evaluation and the recommendations of the Transaction Advisors (in which the Ministry had individual interests through the involvement of its decoy, Databank), were the subject of broad consultation with national stakeholders who under the Constitution are the beneficiaries of the extractive mineral resources. Be that as it may, a Bill setting up the Minerals Investment Fund was prepared, approved by the Cabinet, submitted to Parliament and enacted as the Minerals Income Investment Fund Act, 2018 (Act 978) which came into force on 3<sup>rd</sup> December 2018.

Section 40 of Act 978 gave the Minister of Finance the authority to enter into a stability agreement with the Fund and a Special Purpose Vehicle (SPV) to grant fiscal and legislative stability to the Special Purpose Vehicle, subject to ratification by Parliament. The Fund was also empowered to enter into a minerals allocation agreement with a Special Purpose Vehicle to assign the Republic's mineral equity interest to the Special Purpose Vehicle, subject to parliamentary ratification. The President is the appointing authority of the governing board of the Fund to execute the objects and functions of the Fund.

The fact that legislation has been enacted does not put it beyond the pale of the analysis of the risk of corruption, and anti-corruption assessment under Regulation 31 of L. I. 2374 made pursuant to Act 959. It is the probity, transparency and accountability in the legislation making process and the application of the law that lowers or raises the risk of corruption and makes corruption a very low or very high risk enterprise which is the focus of the endeavour of the analysis of the risk of corruption and anti-corruption assessments. Accordingly, the analysis of the risk of corruption and anti-corruption risk assessment of the outcomes brought about by the Minerals Income Investment Fund Act, 2018 (Act 978) leading up to the incorporation of the Special Purpose Vehicle and the finalization of the Transaction Documents presented to Parliament for approval did not pass the test of lowering the risk of corruption. The best of laws and regulations have been used opaquely for corrupt purposes in the absence of probity, transparency, and accountability in public office and good governance. The unholy union between the Ministry of Finance and the Transaction Advisor(s) reinforced this perception.

The Governing Board appointed for the Fund consisted of Hon. George Mireku Duker; Mr. Yaw Baah, Chief Executive Officer of the MIIF; Mrs. Felicia Ashley, representing the Ministry of Finance; Dr. Maxwell Opoku-Afari, Deputy Governor of the Bank of Ghana; and Mr. Amiishadai Owusu-Amoah, the Commissioner for Domestic Tax Revenue Division of GRA. - Acting Director -General of the Ghana Revenue Authority; Ms. Naana Dufie Addo, a nominee of the President; Ekow Essuman of the Office of the President, nominee of the President; and Mrs. Antoinette Kwofie, also a nominee of the President. This then is the governing board of the Fund set up to transparently and accountably supervise the efficient functioning of the Fund for such

an important national patrimony of mineral resource revenue on behalf of the Chiefs and people of Ghana.

But a quick intelligence review revealed the following background analysis and associates of the Chairman and members of the Governing Board which is necessary for any analysis of the risk of corruption and anti-corruption assessment. Hon. George Meriku Duker, the Chairperson of the Board is the Member of Parliament of the Tarkwa-Nsuaem Constituency who is said to have pulled more votes for the governing political party in the 2016 general elections in the Western Region. The Chief Executive of the Fund is Mr. Yaw Baah who was the Member of Parliament for Kumawu constituency for the governing party in the 4<sup>th</sup> and 5<sup>th</sup> Parliaments of the Fourth Republic from 7<sup>th</sup> January 2005 to 6<sup>th</sup> January 2009. He is reported in the Graphic Online of 17<sup>th</sup> April 2019 as having been appointed as the Chairman of the Research Committee of the governing political party, the New Patriotic Party pursuant to Article 10(3) of the NPP Constitution. Mrs. Felicia Ashley now with the Ministry of Finance is reported to have taken up her public office following the appointment of the Minister of Finance in 2017 with whom she had previously worked as the Vice President and Head of Human Capital and Administration of the Databank Group, one of the alleged partners of the Transaction Advisors. She was and is the Director for Human Capital and General Administration Division at the Ministry of Finance. Dr. Maxwell Opoku-Afari, is a Deputy Governor of the Bank of Ghana appointed on 7<sup>th</sup> August 2017. Before then he had served as the special assistant to Dr. Paul Acquah, former Governor of the Bank of Ghana from 2006 to 2009 and had been at the IMF in December 2012, and finally holding the position of a Deputy Division Chief since September 2014. Mr. Amiishadai Owusu-Amoah of the Ghana Revenue Authority had been appointed to the GRA in June 2019 as the Commissioner for Domestic Tax Revenue (DTRD), and on 1<sup>st</sup> October 2019 the Ministry of Finance appointed him to act as the Commissioner-General of the GRA to replace Mr. Kofi Nti and still be responsible for DTRD. Ms. Naana Dufie Addo, a nominee of the President, was the Chief Financial Officer of mPharma Data Inc., a venture based in the United States (US), a healthcare technology company, and who would later be appointed by the Government as Chief Operating Officer of the Ghana Investment Promotion Center in August 2020. Mr. Ekow Essuman of the Office of the President, nominee of the President is a lawyer in the Office of the President. And Mrs. Antoinette Kwofie, also a nominee of the President was the Chief Financial Officer of Barclays Bank in May 2014 and who was later appointed to the Board of Barclays Bank (now Absa Bank Ghana Limited) as Executive Director, Finance in February 2017. This then is the governing board of the Fund set up to transparently and accountably supervise the efficient functioning of the Fund for such an important national patrimony of mineral resources revenue on behalf of the Chiefs and people of Ghana fairly and impartially.

One may wish to contrast the public perception non-partisan citizens may have about the composition and appointment of the Governing Board of the Minerals Income Investment Fund with the stakeholder composition and representation on the Minerals Development Fund Act, 2016 (Act 912) and analyze and assess the risk of corruption in the appointment process of both Boards.

## 5.2 Incorporation of Asaase Royalties Limited of Jersey, the United Kingdom

On 5<sup>th</sup> of November 2019 Asaase Royalties Limited was incorporated as a limited liability company in the secretive financial tax haven of Jersey, United Kingdom. The Company's Office in Jersey is stated as OGIER GLOBAL, 3<sup>rd</sup> Floor, 44 Esplanade, Saint Heller, Jersey, United Kingdom, JE4 9W6. The Beneficial Owner of Asaase Royalties Ltd registered under the Company Law of Jersey on 30<sup>th</sup> October 2019 is Minerals Income Investment Fund represented by YAW BAAH of Parliament, FELICIA ASHLEY and HON. GEORGE MIREKU DUKER. On 10<sup>th</sup> August 2020, the name was changed from ASAASE ROYALTIES LTD in Jersey Financial Services Commission to AGYAPA ROYALTIES LIMITED. The change of name was done just three days to the submission of the Transaction Documents to Parliament for approval.

Asaase Royalties Ltd registered as an External Company on 20<sup>th</sup> March 2020 with its Local Manager being YAW BAAH of B4 Jogging Estate, Accra, Mobile 054735413. The address in Ghana is: H/No. 6, Second Circular Road, Accra, District – LA Dade Kotopon, P. O. Box CT 7012, Cantonments, Accra

A further quick intelligence review on Asaase Royalties Limited (Agyapa Royalties Limited) show that the company was registered by Mr. Yaw Baah who is the Chief Executive Office of the Minerals Incomes Investment Fund, a statutory body under Act 978. Mr. Yaw Baah is stated on the 30<sup>th</sup> October registration details to be of Parliament but the truth is, Mr. Yaw Baah was a Member of Parliament for Kumawu constituency for the Governing Party in the 4<sup>th</sup> and 5<sup>th</sup> Parliaments of the Fourth Republic from 7<sup>th</sup> January 2005 to 6<sup>th</sup> January 2009. He is reported in Graphic Online of 17<sup>th</sup> April 2019 as having been appointed as the Chairman of the Research Committee of the governing political party, the New Patriotic Party pursuant to Article 10(3) of the NPP Constitution.

Hon. George Mireku Duker is the Chairman of the Mineral Income Investment Fund, a first time Member of Parliament of the Governing party representing the Tarkwa-Nsuaem Constituency and is said to have pulled more votes for the party in the 2016 elections in Western Region. He is also the Vice Chairperson of the Mines and Energy Committee of Parliament.

Felicia Ashley now with the Ministry of Finance is reported to have taken up her public office following the appointment of the Minister of Finance in 2017 with whom she had previously worked as the Vice President and Head of Human Capital and Administration of the Databank Group, one of the decoy partners of the Transaction Advisors. She was and is the Director for Human Capital and General Administration Division at the Ministry of Finance. By virtue of her position in the Ministry of Finance she oversees the entire General Administration function of the Ministry of Finance with responsibility spanning General Services, HR, Procurement, IT, Security, Accounts and Transport. Felicia Ashley and the Minister of Finance are perceived to have individual interests in Databank to be impartial and neutral in the execution of their public office functions in the affairs of the Transaction Documents. The analysis of the risk of Corruption, and anti-corruption assessment concluded that her responsibility for Procurement, the evaluation, the selection and appointment of the Transaction Advisors, and her immediate former position as a Vice President and Head of Human Capital and Administration of Databank



were not conducive to her nomination as a beneficial owner of Asaase Royalties Limited (Agyapa Royalties Limited) and a Director of ARG Royalties Ghana Limited.

These analyses of the risk of corruption, and anti-corruption risk assessment also revealed that the Governing Board members of the Minerals Income Investment Fund could not meet the litmus test of any analysis of the risk of corruption, and anti-corruption assessment. The analysis of the risk of corruption and anti-corruption assessment of the Chairman and the other Board members taking into account their respective backgrounds and associations indicted a real likelihood of almost all of them being affected by partisan considerations in the discharge of their duties as they appear to lean towards only one political persuasion in the Country making the perception of probity, transparency, and accountability very low in the management of such important national extractive mineral resource revenue under the control of the Fund.

### 5.3 Incorporation of ARG Royalties Ghana Limited as a wholly Owned Ghanaian Subsidiary of Agyapa Royalties Ltd of Jersey, United Kingdom.

On 12<sup>th</sup> March 2020 Asaase Royalty Limited incorporated ARG Royalties Ghana Limited with Asaase Royalties Limited as the sole shareholder and wholly owned subsidiary. ARG Royalties Ghana Ltd commenced business the same day. The Directors of the company are again Yaw Baah and Felicia Ashley (Emphasis supplied). The company Secretary is Charles Amoh. With all the beneficial owners of Asaase Royalties Limited (Agyapa Royalties Limited) appearing to come only from the governing political party it will be difficult to say the appointments were made taking into account the interest of all national stakeholders in the extractive gold resources which belong equally to all citizens of Ghana under the Constitution in a non-partisan manner.

The structure of both Agyapa Royalties Limited and ARG Royalties Ghana Limited can also be assumed to have been made on the recommendations of the surrogate Transaction Advisor(s) appointed contrary to the PPA approval and Article 181(5) of the 1992 Constitution.

Consequently, the legal warrant of appointment and the independence of the Transaction Advisor(s) is critical in the process of setting up the processes leading up to the actualization and implementation of government policy dealing with a national asset such as the extractive mineral resources provided for in the 1992 Constitution to be held in trust for and on behalf of the Chiefs and people of Ghana who make up the Republic. The foregoing analysis of the risk of corruption, and anti-corruption assessment rates them negatively in terms of independence, impartiality, neutrality and validity of appointment under the 1992 Constitution and the Public Financial Management Act, 2016 (Act 921). The operations of the Transaction Advisors are also considered null, void and without effect whatsoever under both sections 7 and 25 of the Public Financial Management Act, 2016 (Act 921), and Article 181(5) of the 1992 Constitution as international business and economic transactions in accordance with decisions of the Supreme Court in Attorney-General v Faroe Atlantic Co. Ltd [2005-2006] SCGLR 271, Amidu (No. 1) v Attorney-General, Waterville Holdings (BVI) Ltd & Woyome (No.1) [2013-2014] 1 SCGLR 112, and Amidu (No. 2) v Attorney-general, Isofoton & Forson (No. 1) [2013-2014] SCGLR 167.

## **6.0 APPROVAL OF THE MINISTER FOR FINANCE’S LETTER OF REQUEST FOR EXECUTIVE APPROVAL**

After engaging the services of services providers and other consultants in the unconstitutional and illegally opaque manner as already analyzed and assessed, the Transaction Advisors realized that the Transaction Documents thus far prepared and possibly executed could not achieve their original purpose of setting up the special purpose vehicle (SPV) with the powers and authorities under the Minerals Incomes Investment Fund Act, 2018 (Act 978) under which they advised the Ministry of Finance for payment of fees in foreign currency to themselves and other services providers abroad. The Transaction Advisors and their relevant services providers advised, and the Ministry of Finance accepted that the existing Act 978 had to be amended solely to enable the Ministry of Finance and its unconstitutionally appointed Transaction Advisors to achieve the objects for which they had been pursuing as analyzed and assessed for corruption risk herein.

The Minister of Finance, consequently, wrote a letter dated 23<sup>rd</sup> March 2020 to the Presidency on the subject matter : “Request For Executive Approval Of A Bill for The Amendment Of The Minerals Income Investment Fund Act, 2018 (Act 978) And Execution Of Agreements By The Republic Of Ghana To Operationalize The Provisions Of the Minerals Income Investment Fund Act, 2018 (Act 978).” The next day 24<sup>th</sup> March 2020 an Executive Approval was purportedly granted by the President signed for and on his behalf by the Secretary to the President contained in letter with reference number OPS 182 VOL 9/20/294 dated 24<sup>th</sup> March 2020 conveying the President’s unbridled executive approval in paragraphs 1, 2 and 3 as follows:

“I refer to your letter dated 23<sup>rd</sup> March 2020 on the above subject matter.

The President has granted executive approval for the amendment of certain provisions of the Minerals Income Investment Fund Act, 2018 (Act 978) (the MIIF Act) to provide legal backing for the transactions that will be carried on to operationalize the provisions of the MIIF Act.

The President has also granted Executive Approval for execution and implementation by the Minister for Finance on behalf of the Government of Ghana of the following agreements to be laid before Parliament:

- (a) An Investment Agreement in terms of which the Minerals Income Investment Fund (the Fund) assigns its right to receive 75.6% of gold mineral royalties from the gold mining companies;
- (b) A Relationship Agreement which regulates the degree of control that Government of Ghana and its associates, including the Fund, may exercise over the management of Asaase Royalties Limited; and
- (c) An Indemnity Deed letter to be issued by the Ministry of Finance and by which it will indemnify and hold harmless, Bank of America (BofA) Merrill Lynch International, each member of the BofA Group, and their respective relevant persons against any and all losses, including, without limitation, any fees, expenses and

disbursements save only to the extent that they are finally judicially determined to have resulted from the fraud, wilful default or gross negligence of BofA, or any member for the BofA Group or its or their respective relevant persons.

I shall be grateful if you could take requisite action on paragraphs two (2) and three (3) above.”

The Bills containing proposals for the enactment of legislation, or Public Agreements are by convention submitted to the Cabinet Secretariat by memorandum with the accompanying Bill or public agreement and approved by the Cabinet before they are submitted by Ministers to Parliament for consideration for enactment or the approval of public agreements by Parliament should they fall within Article 181(5) of the Constitution, as the case may be. In cases of emergency the President as the repository of the Executive Authority under Article 58 of the Constitution may give an Executive Approval through the Secretary to the Cabinet to the request contained in the Cabinet memorandum and the accompanying documents for the process to go ahead subject to subsequent ratification by the Cabinet. Cabinet approvals are given after deliberations of the Cabinet for Bills as approved for submission to Parliament. The process is the same for public agreements as well. The President may require further briefing by the relevant Minister or authorities after the submission of the Cabinet memo to the Secretary to the Cabinet before acting. An Executive Approval (Which temporarily takes the place of a Cabinet Approval) is normally granted after the President is satisfied about the urgency of the matter(s) for which the approval is sought. It follows from the foregoing that any material changes in the executive approved Bill or public agreement require a fresh approval. There is never a blank cabinet or executive approval as portrayed in the Secretary to the President’s letter with reference number OPS 182 VOL 9/20/294 dated 24<sup>th</sup> March 2020. The Secretary to the President’s letter of 24<sup>th</sup> March 2020 also refers to the Minister’s letter of the previous day without reference number, and not a Cabinet memorandum with its accompanying documents.

This is what makes one wonder why the Secretariat of the Secretary to the Cabinet with the expertise and technocrats collectively working for the Cabinet were left out of the loop in such an important matter involving the nation’s extractive minerals patrimony only for the Executive Approval to be unusually granted based on a future contingent event or events. The grant of executive approval for the Minister’s request dated 23<sup>rd</sup> March 2020 the next day 24<sup>th</sup> March 2020 under the hand of the Secretary to the President without the involvement of the Cabinet Secretariat makes the transaction look opaque for purposes of an analysis of the risk of corruption, and anti-corruption assessment.

Be that as it may, it follows from the above that on 24<sup>th</sup> March 2020 the Executive Approval granted by the President covered the specific Bill, and public agreements (if any indeed existed and accompanied the letter of request for executive approval) in the letter submitted for consideration and approval which would not have incorporated future amendments. However, after repeated analysis of the risk of corruption, and anti-corruption assessment of the Executive Approval granted the next day after it was requested for by the Minister’s letter, one thing continued to stand out like a cork in water. The Minister’s letter dated 23<sup>rd</sup> March 2020, possibly

with a Cabinet Memorandum and the accompanying documents, including the proposed Bill and public agreements referred to in the Secretary to the President's letter dated 24<sup>th</sup> March 2020, could not have possibly been read, evaluated and recommended for executive approval the next day, 24<sup>th</sup> March 2020 in accordance with good governance practices. Good governance practices are a sine qua non to any analysis of the risk of corruption, and anti-corruption assessment, and of lowering the risk to the commission of corruption and corruption-related offences.

But the correspondence between the Minister of Finance and the Office of the Attorney-General show that the public agreements for which the Ministry of Finance obtained Executive Approval within twenty-four (24) hours of the submission on 24<sup>th</sup> March 2020 became contentious in the correspondence dated 28<sup>th</sup> May, 2020, 22<sup>nd</sup> July, 2020 and 5<sup>th</sup> August, 2020 and the Transaction Adviser's (TA) comments dated 12<sup>th</sup> June, 2020 and 22<sup>nd</sup> July, 2020 respectively on the Kingdom Investment Arrangement for the proposed monetization of Ghana's mineral royalties documents (now called the Transaction Documents). It meant that any changes to the Transaction Documents presented to the President for Executive Approval would procedurally require a fresh approval based on the advice and "No Objection" provided to the Minister of Finance by the Attorney-General in letter with reference number D.54/SF.239 dated 12<sup>th</sup> August 2020. The Transaction Documents in the form and substance in which they were on 12<sup>th</sup> August 2020 when the Attorney-General finally gave her "No Objection" letter subject to conditions, were not the same Transaction Documents submitted by the Minister of Finance on 23<sup>rd</sup> March 2020 to the President for Executive Approval on 24<sup>th</sup> March 2020 because the original approval had been overtaken by new terms and conditions incorporated therein resulting from the above correspondence.

An analysis of the risk of corruption and anti-corruption assessment of deficiencies in legislative and executive action show that the Executive Approval purportedly granted on 24<sup>th</sup> March 2020 was granted in excess of the approval requested for by the Minister for the amendment of certain provisions of the Minerals Income Investment Fund Act, 2018 (Act 978) to include unsolicited items in paragraph 3 (a), (b), and (c) which were made contingent upon paragraph 2 of the letter of the Secretary to the President's letter dated 24<sup>th</sup> March 2020. The expanded and contingent terms of the Executive Approval is inconsistent with any analysis of the risk of corruption and anti-corruption assessment because it purports to confer a wider discretion on a Minister in the absence of the law on which the exercise of the wide discretion ought to be based. It consequently created a situation that lowered the risk for corruption and increased the incentive for the commission of corruption and corruption-related offences by making them low risk enterprises. These low risks may have been avoided if the procedure for submitting Cabinet memoranda for Executive Approval to the President through the Secretary to the Cabinet were strictly followed.

These are fundamental factors to take into account in assessing the memorandum submitted to Parliament for approval of the Transaction Documents dated 13<sup>th</sup> August 2020.

6.1 The Memorandum of the Ministry of Finance submitted to Parliament for Approval of the Transaction Documents.

On 13<sup>th</sup> August 2020 the Hon. Ken Ofori-Atta, Minister for Finance submitted a memorandum of even date to Parliament requesting the House to consider and approve the entering by the Minister of Finance (on behalf of the Government of Ghana) (the Republic) into five (5) Agreements, collectively referred to as the Transaction Documents and Tax exemptions granted thereunder in relation to a gold royalties monetization transaction being implemented under the Mineral's Income Investment Fund Act, 2018 (Act 978). The following are the Transaction Documents referred to in the Minister of Finance's memorandum to Parliament:

- (a) An investment agreement to be entered into between the Republic, the Minerals Income Investment Fund (the **Fund**), Agyapa Royalties Limited (**Agyapa**) (a limited liability company incorporated by the Fund under the laws of Jersey) and ARG Royalties Ghana Limited (**ARG**) (a limited liability company incorporated under the laws of Ghana and wholly owned by Agyapa Royalties Limited) (as amended and/or restated from time to time, the **Investment Agreement**), pursuant to which (i) the Fund, among others, assigns its right to receive 75.6% of the gold mineral royalties paid by specified gold mining companies (the **Allocated Mineral Royalties**) to ARG; and (ii) the Minister of Finance, on behalf of the Republic, grants certain tax exemptions and fiscal and legislative stability to each of Agyapa and (Agyapa and ARG, together, the **Group**);
- (b) An amendment and restatement of the Investment Agreement (the **Amended and Restated Investment Agreement**) to be effected by the Republic, the Fund, Agyapa, and ARG, to reflect the Fund Act Amendments (as defined below) and to incorporate certain additional provisions into the Investment Agreement;
- (c) An assignment agreement to be entered into between the Fund and Agyapa (the **Assignment Agreement**) pursuant to which the Fund will assign to Agyapa its right to receive the royalty value due from ARG under the Investment Agreement for the acquisition of the Allocated Mineral Royalties from the Fund, in consideration for shares to be issued by Agyapa to the Fund at an agreed price of US\$ 1 billion;
- (d) A relationship agreement to be entered into between the Republic, Agyapa and the Fund (the **Relationship Agreement**) to, among others, regulate the degree of control that the Republic and its Associates, including the Fund, may exercise over the management of Agyapa and to ensure that Agyapa conducts its business independently of the Fund and/or the Republic; and
- (e) An indemnity deed to be entered into between the Republic, Merrill Lynch International (**BofA**), J.P. Morgan Securities plc (**JPM**), BMO Capital Markets Limited (**BMO**), Peel Hunt LLP (**Peel Hunt**) and Tamesis Partners LLP (**Tamesis**) (Bofa, JPM, BMO and Peel Hunt, together, the **Banks**) pursuant to which the Republic undertakes, among other things, to indemnify the Banks, their respective

selling agents, affiliates, subsidiaries and associates, and hold them harmless (on the terms stated therein) from certain losses in connection with services to be provided by the Banks in respect of the proposed offering of shares in Agyapa (the **shares**) by Agyapa and the Fund (as sole shareholder of Agyapa to institutional investors in various jurisdictions (outside of Ghana), and the admission of the Shares to the standard listing segment of the Official List of the Financial Conduct Authority and to trading on the London Stock Exchange (the **IPO**).

The authority under which the Minister submitted the request for the approval of the Transaction Documents on 14<sup>th</sup> August 2020 to Parliament for Approval is stated at page 8 of his memorandum to be a Cabinet Approval by means of Executive Approval given on 24<sup>th</sup> March 2020 “for the amendment of the Minerals Income Investment Fund Act, 2018 (Act 978), and the execution of the Investment Agreement, Relationship Agreement and Indemnity Deed Letter, in order to operationalize the provisions of Act 978 (as amended).” It follows from the foregoing that whatever amendments had been made to the Minerals Income Investment Act should have been enacted and being in existence as of 24<sup>th</sup> March 2020 when the executive approval was purportedly granted. This analysis of the risk of corruption, and anti-corruption assessment concluded that the blank executive approval purportedly granted by the President on 24<sup>th</sup> March 2020 could not form the basis of the transformed Transaction Documents submitted by the Minister for Finance to Parliament for approval in his memorandum dated 13<sup>th</sup> August 2020. The submission of the Memorandum by the Minister to Parliament without seeking a fresh cabinet executive approval manifested impunity and had a negative impact on corruption prevention and lowered the risk of corruption.

On 13<sup>th</sup> August 2020, when the Minister of Finance’s memorandum was allegedly signed and submitted to the Clerk to Parliament, the Transaction Documents were not listed on the Order Paper for the Fifty-Second sitting of the Second Meeting of Parliament on 13<sup>th</sup> August 2020. Only four (4) of the Transaction Documents, however, found their way onto the list on Votes and Proceedings of 13<sup>th</sup> August 2020 as having been presented or laid when they were submitted to the House for correction on 14<sup>th</sup> August 2020. The Order Paper for the Fifty-Third Sitting of the Second Meeting of Parliament list as item “(c) (iv) Mineral Royalty Investment Agreements” as one of the Reports of the Committee on Finance for the day’s business. The Indemnity Agreement was subsequently listed on an Addendum 2 Order Paper for the Fifty-Third sitting of the Second Meeting of Parliament together with the report of the Committee on Finance and the motions and Resolution for Approval.

#### 6.2 The Examination and Recommendations In The Report Of The Committee On Finance Of Parliament To Parliament For Approval Of The Transaction Documents

The report of the Finance Committee (Committee on Finance) of Parliament under the signature of its Chairman and Secretary dated 14<sup>th</sup> August 2020 surprisingly, however, does not disclose the day the Minister’s memorandum was laid before Parliament or the day it was referred to the Committee on Finance for consideration and reporting back to the House. Even though the Minister’s memorandum included the Indemnity Agreement as one of the Transaction Documents being submitted to Parliament on 13<sup>th</sup> August 2020, it was not. It was stated as

presented on 14<sup>th</sup> August 2020 in a supplementary Order Paper. The report of the Committee after restating by paraphrasing the memorandum on the Transaction Documents submitted by the Minister to Parliament for approval in an introduction to its report narrates that the documents: “...were presented to the House and referred to the Committee on Finance for consideration and reporting pursuant to Orders 169 and 171 (1) of the Standing Orders of the House.” The omission of the date of presentation to and referral of the Minister’s memorandum to the Committee on Finance is unusual in normal transparent and accountable parliamentary practice and business in established democracies such as under the 1992 Constitution.

The Committee on Finance’s report does not state when it met. It simply stated that:

“The Committee subsequently met and considered the Agreements with Deputy Ministers for Finance, Hon. Charles Adu-Boahen and Hon. Kwaku Kwarteng as well as a team of officials from the Ministry of Finance and the Minerals Income Investment Fund (MIIF) and hereby presents this report to the House pursuant to Order 161 (1) of the Standing Orders of the House.”

The Committee on Finance report appears to be a rehash of the Minister’s memorandum to Parliament without any critical examination and analysis of the Transaction Documents as fit for the intended purpose and approval by the House. The Committee on Finance appear to have just rubber stamped the Minister of Finance’s Memorandum to Parliament for the approval of the Transaction Documents without any study of the document to determine whether or not the commitment of Ghana’s patrimony in the manner agreed to by the Government with the other transaction partners was consistent with the national interest. The justification for the Government Action stated in the Minister’s memorandum at pages 4 to 5 are stated word for word at pages 11 to 12 of the Committee on Finance’s report to the House as, “5.3 Benefits of the Transaction.” No mention was made of the beneficiary interest of the Chiefs and people of Ghana as provided for under Articles 257(6), 267 and 269 of the 1992 Constitution and the existing law except the Minerals Income Investment Act.

A Committee of Parliament, such as the Committee on Finance, which is enjoined by the 1992 Constitution and the Standing Orders of Parliament to protect the Constitution, the laws and the people of Ghana just listed the benefits of the transaction. Surprisingly it listed not a single defect or anomaly in the Agreements in spite of the fact that the Attorney-General had raised queries over the propriety of the transactions in a number of opinions to the Minister of Finance who was under an obligation to have made these available to Parliament to assist it in the performance of its duties.

The Standing Orders of Parliament enjoin the Committee on Finance to proceed as follows:

“Order 168. (1) When a Loan Agreement or an International business or economic transaction that requires the authorization of Parliament through a resolution is laid before Parliament it shall be the duty of the Committee on Finance to examine the Agreement or transaction and make a recommendation to the House

(2) The Committee on Finance shall monitor the foreign exchange receipts, and payments or transfers of the Bank of Ghana in and outside Ghana and report to Parliament every six months.”

In any case as a Committee on Finance with the expertise at its disposal it could not have just endorsed the Minister’s request by rubberstamping everything in the memorandum without at least discovering basic flaws which any reasonable person casually reading the Transaction Documents could easily have discovered. The Committee on Finance concluded, with no questions asked, by recommending by a majority decision that the House adopt and approve by Resolution the five (5) Transaction Documents submitted to Parliament by the Minister of Finance.

The fact that the Committee on Finance of Parliament threw all the rules of proper scrutiny of the Transaction Documents to the wind for purposes of expediency appears to have been captured on page 10 of its report when it stated that:

“5.2 Scheduled Transaction Date

The Transaction is already behind schedule as it was programmed to occur in May 2020, after a delay since January 2020. Given that the effectiveness of the Transaction Documents is conditioned on the Parliamentary approval, the Ministry of Finance and MIIF have now rescheduled the Transaction to be implemented in the first week of September 2020.”

The Committee on Finance was clearly in indecent haste to rubber stamp the Transaction Documents to meet the rescheduled implementation timeline of the first week of September 2020 put forward by the Ministry of Finance and MIIT without taking into account the preamble injunction of the 1992 Constitution for justice, probity and accountability in its deliberations. The Supreme Court of Ghana provided such guidance to parliament as to the “purpose of ensuring transparency, openness and parliamentary consent” in examining international business and economic transactions under Article 181(5) of the Constitution in the case of Amidu (No. 2) v Attorney-General, Isofoton SA & Forson (No. 1) [2013-2014] 1 SCGLR 167 at page 185. The Court stated unanimously that: “It is evident that this purpose of ensuring transparency, openness and parliamentary consent to international business or economic transactions to which the Government is a party, deserves to be applied as much in relation to the so-called implementation agreements as to project loan agreements...” (Emphasis supplied).

It is instructive to note that the report of the Committee on Finance by majority decision recommending that the House adopt their report and approve the Minister’s request by Resolution did not avert its mind to a consideration of the effect of its recommendations on the procedural and legal consequences of the prospective Bill passed by Parliament to amend the MIIF Act which had not been assented to by the President on the day of its deliberations on the integrity of the submission of the Committee’s report to the House. Consequently, no reference is



made to any such legislation or un-assented proposed legislation as part of the report of the Committee on Finance to the House.

A Minerals Income Investment Fund (Amendment) Bill, 2020 was signed by the Minister of Finance on 7<sup>th</sup> July 2020 to clarify the parameters of the operations of the Minerals Income Investment Fund and to provide for related matters after the May 2020 programmed occurrence time. The Minister in his concluding paragraph to his memorandum to Parliament underscored the urgency of his request by stating that:

“In view of the urgent need to raise non-debt funds for the developmental agenda of the Republic and in line with the objects of the Fund in terms of MIIF Act (as amended), I respectfully urge the Honourable members of this House to consider and ratify the Transaction Documents as well as the exercise of the rights (and the performance of the obligations) of the Republic under the Transaction Documents.”

On 13<sup>th</sup> August 2020 when the Minister signed and submitted the memorandum requesting approval of the Transaction Documents to Parliament culminating in the laying and referral of the request to the Committee on Finance; the recommendations for approval by the Committee on Finance to the House; and the proceedings of the House approving the whole request contained in the memorandum on 14<sup>th</sup> August 2020, (without any variation) the alleged Minerals Income Investment (Amendment) Fund Bill 2020 had not received any Presidential assent to become law. The recommendations by the Committee on Finance of the entire memorandum of the Minister of Finance for approval as submitted incorporating amendments based on the prospective legislation was, according to the analysis of the risk of corruption and anti-corruption assessment null and void. Neither the Committee on Finance nor Parliament which considered the Minister’s request and purported to have approved same in a single day could have incorporated by reference a prospective Act of Parliament awaiting Presidential assent. The failure or refusal of the Minister for Finance and Parliament to follow approved procedures for the execution of legislative and executive actions constituted a lowering of the risk standards for corruption and anti-corruption assessment as the processes leading to the Transaction Documents has demonstrated.

The Ministry of Finance acting for and on behalf of the Republic of Ghana appointed Imara Corporate Finance Limited (Pty) of South Africa to advise it on the actualization of the Government’s Gold Royalties Monetization Transaction in breach of the approval granted by the Public Procurement Authority and Article 181(5) of the 1992 Constitution. The Ministry of Finance appears to have ceded or redelegated all its powers and authority to its foreign surrogate company according to letter with reference number MOF/OLA/PLCDA.3 dated 1<sup>st</sup> October 2020 signed by Hon. Charles Adu Boahen, Deputy Minister on behalf of the Minister to the Special Prosecutor which contradicts the memorandum of the Minister dated 13<sup>th</sup> August 2020 to Parliament at page 4 paragraph K; the Committee on Finance’s report to the House dated 14<sup>th</sup> August 2020 at page 10 thereof; and the Ministry’s letter dated 24<sup>th</sup> September 2020 submitting documents on the Ministry’s letter head to this Office. The Deputy Minister stated at paragraph 5 of the letter of 1<sup>st</sup> October 2020 thus:

‘5. We also wish to use this opportunity to clarify the issue of “Timing” of the transaction as captured in the document titled – Overview of Agyapa Royalties Transaction”, which you referred to in your 28<sup>th</sup> September letter. Kindly note that the document was prepared about two months go by the Transaction Advisors to update the Minister on the progress of the transaction. The “Timing” expressed in the document was the intention of the Transaction Advisors, at a time, to launch the IPO by the end of September 2020, to be completed by the end of the year. This was prior to your office’s request for information and production of documents.’

The document titled “Overview of Agyapa Royalties Transaction” submitted to this Office by the Ministry’s letter dated 24<sup>th</sup> September 2020 as item (i) is a document on the Ministry of Finance’s stationery with the Coat of Arms is really titled “Ministry of Finance: Agyapa Royalties: Summary of Transaction” and is not and cannot be a document from the Transaction Advisors expressing their future intention as the Deputy Minister stated in paragraph 5 of his letter dated 1<sup>st</sup> October 2020. The Committee on Finance at page 10 paragraph 5.2 of their report quoted in almost identical words the “Timing” stated in this Office’s letter dated 28<sup>th</sup> September 2020. Consequently, the contention by the Deputy Minister of Finance that ‘the “Timing” expressed in the document was the intention of the Transaction Advisors at the time..’ if true, will constitute a confession and admission that the Minister of Finance and the Deputy Minister became mere conduits for the expression of the intentions of their surrogate Transaction Advisors in all the processes leading up to the approval of the Agreements by Parliament on 14<sup>th</sup> August 2020. The surrender of the Minister’s responsibility and exercise of discretion to the Ministry’s surrogate foreign Transaction Advisor as contended by the Deputy Minister in his letter dated 1<sup>st</sup> October 2020 to the Special Prosecutor is a clear demonstration that the actions of the Ministry in overseeing the preparation of the Transaction Documents have seriously lowered the risk of corruption and enabled corruption in relation to the Special Purpose Vehicle Transaction – the Agyapa Royalties Limited of Jersey, United Kingdom, Transaction.

## **7.0 ANALYSIS OF THE RISK OF CORRUPTION, AND ANTI-CORRUPTION ASSESSMENT OF THE TRANSACTION DOCUMENTS SUBMITTED TO PARLIAMENT FOR APPROVAL**

The wording of the Executive Approval already quoted was not so expansive as to cover the addition of unapproved insertions and amendments incorporated into the Transaction Documents submitted to Parliament: (a) An amendment and restatement of the Investment Agreement ( the **Amended and Restated Investment Agreement**) to be effected by the Republic, the Fund, Agyapa, and ARG, to reflect the Fund Act Amendments (as defined below) and to incorporate certain additional provisions into the Investment Agreement, (b) the original Investment Agreement, (c ) A Relationship Agreement with ARG; and (d) An Assignment Agreement to be entered into between the Fund and Agyapa (the Assignment Agreement) pursuant to which the Fund will assign to Agyapa its right to receive the royalty value due from ARG under the Investment Agreement for the acquisition of the Allocated Mineral Royalties from the Fund, in consideration for shares to be issued by Agyapa to the Fund at an agreed price of US\$ 1 billion.

7.1 Investment Agreement in terms of which the Minerals Income Investment Fund (the Fund) assigns its right to receive 75.6% of gold mineral royalties from the gold mining companies

This was the only Agreement for which the President purported to have granted Executive Approval in the Office of the President letter dated 24<sup>th</sup> March 2020. The Investment Agreement submitted to Parliament under the memorandum of the Minister of Finance dated 13<sup>th</sup> August 2020 does not appear to be the Agreement submitted to the President for which the purported approval was given on 24<sup>th</sup> March 2020. This is so, because the Agreement submitted to Parliament and referred to the Committee on Finance contains a number of omissions which would not have been the case when the Minister submitted the copy to the President to enable him decide whether to grant executive approval or not. It makes the authority for submitting the original Investment Agreement with omitted clauses to Parliament dubious in the analysis of the risk of corruption, and anti-corruption assessment. It engenders a low risk incentive for the promotion of corruption.

The Clauses of this Agreement except the deliberately omitted provisions are in pari materia with the Amended and Restated Investment Agreement which is analyzed and assessed in detail below for prevention of corruption and corruption risk.

7.2 The Amended and Restated Investment Agreement to be effected by the Republic, the Fund, Agyapa, and ARG, to reflect the Fund Act Amendments (as defined below)

The Minister's memorandum to Parliament requested for the approval of two (2) Investment Agreements: (i) An Investment Agreement, and (ii) Amended and Restated Investment Agreement. An examination of the two Investment Agreements show that the Amended and Restated Investment Agreement is in pari materia with the Investment Agreement except for the fact that the Amended and Restated Investment Agreement was made to take cognizance of a proposed amendment Act to the Minerals Income Investment Fund, Act, 2018 (Act 978) which had not come into effect as at the time both Investment Agreements were laid before Parliament for approval, referred to the Committee on Finance, the Committee's report thereon made to the House the same day, and approved by Parliament also on the same day, 14<sup>th</sup> August 2020.

Everything in respect of obtaining Parliamentary approval were substantially done within less than twenty-four hours on 24<sup>th</sup> August 2020. Apart from additions to the recitals or background statements capital lettered E, G, and H thereof and Clauses 1.4 and 2.1 (a) on the Amended and Restated Agreement which were intended to take care of substantive changes to the initial Investment Agreement and parts of the definition and Interpretation, the operative parts of the two Agreements are similar. The Clauses in the operative parts of both Agreements have almost the same subject matter, substance, and numbering except a few inexplicable clauses or sub-clauses omitted from the original Investment Agreement to take care of the new terms and conditions dependent on a prospective amendment to Act 978 at the time of their approval by Parliament. Consequently, the analysis, opinion and comments made herein on each of the Clauses in terms of the analysis of the risk of corruption and anti-corruption assessment apply mutatis mutandis to both Agreements.

Clause 2.1 dealing with the Effective date stipulates that the Agreement commences when the last of certain conditions precedent have been satisfied. Three such preconditions are critical for

our present purposes of examining, analyzing, and making a considered corruption risk assessment of the procedure and substantial due processes followed in arriving at the content of the Agreements. The first precondition is when the amendments to the Fund Act contemplated at the date of the Agreement have been passed by Parliament, assented to by the President and published in the Ghana Gazette and have come into force and effect. This Clause 2.1 of the Agreement is an absurd provision because these are Agreements and Assignments made in contemplation of a future change in the laws of a sovereign nation to accommodate the terms of the agreements. It seeks to give retroactive effect to an amendment to Act 978 which might not have been in existence at the time of the incorporation of proposed amendments to the original Investment Agreement into the Amended and Restated Investment Agreement when they were made and approved by Parliament.

The above shows an abuse of process in the making of the Investment Agreement and the Restated and Amended Investment Agreement which are clearly inconsistent with the high moral character and exemplary level of integrity demanded of public officers to achieve the object of making corruption a high-risk enterprise. The sanctity of law does not permit its purity to be used as an abusive instrument to promote corruption or potential corruption activities. Any wanton abuse of the legislative and executive process by the legislative and executive arms of Government to achieve an objective that affects an important national resource such as the gold mineral resources and royalties which constitute a patrimony of the citizens of Ghana entrusted to the trusteeship of the President through an opaque and secretive process brings any analysis of the risk of corruption and anti-corruption assessment to the lowest degree possible. The reputation of Parliament as a shield against such abuse is also compromised. Therein lie the dangerous harbingers of resource conflicts in Africa.

The second critical precondition is contained in Clause 2.1 (c) which states that one of the preconditions for the commencement of the Agreements is to be when “this Agreement has been unreservedly approved by the Parliament of the Republic in accordance with Article 181 (5) of the Constitution, and Section 40 and 41 of the Fund Act.” This Clause requires that both the form and substance of the Parliamentary approval must conform to the letter and spirit of the 1992 Constitution and the Standing Orders of Parliament. And Order 168(1) of the Standing Orders of Parliament state that: “When a Loan Agreement or an International business or economic transaction that requires the authorization of Parliament through a resolution is laid before Parliament it shall be the duty of the Committee on Finance to examine the Agreement or transaction and make a recommendation to the House.” The operative words are “to examine” and “make recommendation” based on the examination – see the ordinary meaning of “to examine” in any dictionary.

Substantively, the Committee on Finance could not have within twenty-four (24) hours from the commencement of its meeting to examine the five (5) Agreements, including the Deed of Indemnity have fulfilled its responsibility to the letter and spirit of the 1992 Constitution and Order 168(1) of the Standing Orders that enjoins the Committee to have examined the five (5) Agreements, including the Indemnity Agreement before submitting a report of a reasoned and thorough recommendations to the House for consideration and approval pursuant to Article

181(5) of the Constitution. Also, as a matter of substance the Committee on Finance did not have any amended Act before it on which to base any reasoned examination before making any recommendations to the House. The Committee on Finance's examination could not have been reasonably accomplished based on mere speculations or conjecture that the President will give his assent to a Bill passed by Parliament.

Most importantly, the Resolutions of Parliament approving the Agreements did so subject to the condition of an amended Act coming into force at a future date. Parliament could not, therefore, be said to have unreservedly approved the Agreements and Assignments as stipulated in this sub-clause 2.1 (c) of the Agreements under Article 181(5) of the 1992 Constitution when there was no reasonable examination made to protect the national interest, now and for future generations. Any disregard for the spirit of the Constitution, the existing laws on probity, transparency, and accountability, and Order 168(1) of the Standing Orders lowers the threshold of corruption, encourages corruption and makes corruption a low risk incentive enterprise for citizens.

Clause 2.2 which deals with the terms of the two (2) Agreements makes the agreements (and any assignment and Allocation of Gold Mineral Royalties made under them) determinable on the date on which the last of the Allocated Mining Lease has expired or been terminated without any further extension or renewal (such period, the "Term"). This is an agreement surrendering the sovereignty of Ghana over its gold mineral resources in perpetuity. This Clause is patently inconsistent with the trust powers entrusted to the President on behalf of the Republic under Article 257(6), Article 258, 267, 268, and 269 of the unentrenched provisions of the 1992 Constitution. It also contravenes the sovereignty of the people of Ghana under Article 1 in and for whose welfare the powers of the government are to be exercised as laid down in the 1992 Constitution. It is further prone to encouraging citizens to consider corruption prevention and corruption as low risk enterprises exemplified by legislative and executive conduct.

Clauses 3.1(a) and (b) and 3.2(a), (b) and (c) dealing with Allocated Mineral Obligations of the Fund from the commencement date to ARG Royalty Ghana Limited (RoyaltyCo), a subsidiary of a foreign company, Agyapa Royalties Limited of Jersey of the United Kingdom, and Payment of Mineral Royalties by the Republic of Ghana and the Fund not only to RoyaltyCo but also in United States Dollars are inconsistent with the sovereignty of the Republic of Ghana and is discriminatory of other existing Ghanaian incorporated entities under the Fundamental human Rights provision of the 1992 Constitution. The Clauses constitute an interference with the regular banking laws of the country as it applies to other entities and further constitutes an incentive for other law abiding companies to resort to corrupt practices and corruption in their dealings with domestic public and private institutions, and foreign entities. This makes the prevention of corruption not only difficult but morally and legally unjustifiable. The analysis of the risk of corruption, and anti-corruption assessment, therefore, indicated the lowering of the risk of corruption as well as the lowering of risk for the commission of corruption and corruption-related offences.

Clause. 4 (a) and (b) on Value of Rights Assigned to RoyaltyCo also constitute another surrender of the sovereignty of the Republic to the subsidiary of a foreign incorporated company over

which the Republic of Ghana will have very minimal, if any, administrative and managerial control for onward assignment to the foreign company incorporated and resident in Jersey in the United Kingdom with unaccountable surrogates of the promoters opaquely chosen representing Ghana as a so called majority shareholder. The stated value of one billion US Dollars (USD 1, 000, 000, 000 (the “Royal Value”) has not been demonstrated to be based on any rational evaluation of the sovereign gold resources under the Agreements held in trust for and on behalf of the Chiefs and people of Ghana as a patrimony for generations unborn. The Ministry of Finance urges Ghanaians to rely on its goodwill to ensure an ultimate valuation in the interest of the Republic after the horse has fled out of the stable. This is untenable in any serious analysis of the risk of corruption, and anti-corruption assessment making without any factual basis and evidence. Appeals to be trusted in the face of flagrant breaches of every rule governing probity, transparency, and accountability in conducting public office by any yardstick of anti-corruption assessment breed impunity and thereby corruption.

Clause 5.5 which deals with Audit by the Auditor-General of Ghana seeks to give additional directions to the Auditor-General on how to audit the Ghana Revenue Authority’s receipts on gold mineral royalties on behalf of the Republic of Ghana, and payments by the Republic to the Fund, and the Fund’s relationship with RoyaltyCo, a wholly owned subsidiary of a foreign company over which the Republic of Ghana and Fund have virtually no administrative and managerial control over, is an interference with the independence of Auditor-General under Article 187(7) of the 1992 Constitution. This is more obnoxiously so when the Auditor-General does not have the reciprocal authority to audit RoyaltyCo or its principal, Agyapa Royalties Limited of Jersey, United Kingdom. Any interference through legislation and a mere public agreement in the independence of the Auditor-General guaranteed under the 1992 Constitution lowers the risk to preventing corruption and encourages corruption as a low risk enterprise for holders of public office.

Clause 5.6 (a), (b), (c ), (d) and (e ) which grants incremental and culminative powers to RoyaltyCo allowing it to appoint an internationally recognized accountancy firm to inspect, audit and report on Royalty Records of the Fund to RoyaltyCo for confirmation; and further granting RoyaltyCo’s appointed auditors full and free access to the Fund’s records together with other rights thereunder constitute a capstone to the surrender of the unsupervised sovereign rights of Ghana to RoyaltyCo and its foreign principal, Agyapa Royalties Limited in these Transactions. Granting such unique rights and powers to only one incorporated limited liability company under the company law of Ghana is discriminatory, arbitrary, unfair and an opaque abuse of both executive and legislative power and consequently has the tendency to encourage corruption by otherwise law abiding companies which have been unjustly discriminated against.

Clause 6 on stabilization which appears in the Amended and Restated Agreement was omitted in the Investment Agreement submitted to Parliament for approval. Probity, transparency, accountability and raising high the risk of corruption requires that the original Investment Agreement be submitted to Parliament without any deletions of any clauses in the original form as agreed between the parties. The omissions detract from the ability of Parliament to make a reasoned examination of the Agreements and their recommendations for approval under Article

181(5) of the 1992 Constitution and the Standing Orders of Parliament. The parliamentary approval process could not therefore be said to have been transparent and accountable for purposes of any analysis of the risk of corruption, and anti-corruption assessment.

The whole of the stabilization provisions contained in Clause 6 of the Amended and Restated Investment Agreement constituted a surrender of Ghana's sovereignty over its gold resource revenue for one billion United States Dollars without a thorough consultation with critical stakeholders and a meticulous examination by the people's representatives in Parliament in a bi-partisan manner. Mineral resources conflicts have been the cause of destabilization in neighbouring countries and Africa generally. Ghana in order to avoid such resource conflicts and perceptions of underhand dealing and the propensity to promote corruption and corrupt practices, ought not to open the flood gates to corruption and resource conflicts by a partisan surrender of its sovereign resource such as gold and its revenue or royalties to any foreign entity and investors. Any form of impunity exhibited unwittingly or wittingly by executive or legislative action that lowers the risk of corruption, and encourages corruption as a low risk venture. As the analysis and assessment of clauses of the five (5) Agreements have shown, such lowering of the risk of corruption subordinates the national interest to individual interest including greed, and lack of ethicalness.

In contrast, to the stringent conditions of the stabilization provisions in Clause 6, Clause 7 which deals with Undertakings and Indemnity by the Republic and the Fund to RoyaltyCo which is a wholly owned subsidiary of a foreign company over which Ghana will have the barest of control over the conduct of its business, is acknowledged and agreed to have the exclusive purpose of having been formed to operate as a single purpose vehicle to transact in connection with the Allocation of Mineral Royalties. RoyaltyCo is also guaranteed to engage in any activity and perform any and all acts necessary, appropriate, proper, advisable, incidental or convenient to or in furtherance of the grant of indemnity. Clauses 7.2 on Positive Covenants and Clause 7.3 on Negative Covenants do nothing than to reinforce the obligations of the Republic of Ghana and the Fund, and to forbear the Republic and the Fund from taking or doing certain actions that may affect RoyaltyCo's purpose. This is yet another unbridled surrender of Ghana's sovereign gold resources royalties without consulting the chiefs and people whose patrimony those resources are for now and posterity. The foregoing Clauses smack of an exhibition of impunity by the Republic's negotiators who agreed to these burdensome terms and conditions on behalf of the Republic of Ghana. Impunity in the analysis of the risk of corruption, and anti-corruption assessment, lowers the risk of corruption and encourages Ghanaians to subordinate the national interest to their individual interests and greed thereby making corruption a low risk venture.

7.3 A Relationship Agreement to be entered into between the Republic, Agyapa and the Fund (the Relationship Agreement) to, amongst others, regulate the degree of control that the Republic and its Associates, including the Fund, may exercise over the management of Agyapa and to ensure that Agyapa conducts its business independently of the Fund and/or the Republic.

The Executive Approval given by the President on 24<sup>th</sup> March 2020 to the Minister for Finance on the relationship agreement was narrowly stated thus: "A Relationship Agreement which

regulates the degree of control that Government of Ghana and its associates, including the Fund, may exercise over the management of Asaase Royalties Limited.” The Minister for Finance has purported in his discretion to extend the wording by adding the words “and to ensure that Agyapa conducts its business independently of the Fund and/or the Republic.” There is no evidence produced to show that this exercise by the Minister of such wide discretion was done fairly and candidly, and not arbitrarily and capriciously. Wide and unbridled discretionary powers even with good intentions has the potentiality to lower the risk of corruption and to act as an incentive to the commission of corruption and corruption-related offences.

The recitals to the Relationship Agreement between the Republic of Ghana and the Minerals Investment Fund, and Agyapa Royalties Limited state the relationship between the parties when Agyapa Royalties Limited applies for its ordinary share capital to be admitted to the standard listing segment of the Official List maintained by the Financial Conduct Authority of the United Kingdom (the “FCA”) and to trade on the main market for listed securities of the London Stock Exchange, after which the Minerals Income Investment Fund of the Republic of Ghana is expected to be the beneficiary holder of approximately fifty one (51%) per cent of the Company’s share capital, and the agreement by the parties that regulate the relationship between them in order to ensure that the Company will be capable of carrying on with its business independently of the Fund and the Republic of Ghana. This recital clearly indicates an intention by the parties to abdicate the sovereignty of the people of Ghana over the supervision of the nation’s earnings from the Republic’s mineral resource revenues under the 1992 Constitution.

The conditions precedent under which the obligations of the parties to the Relationship Agreement is to come into force are stated under Clause 2.1 of the agreement as when the Parliament of the Republic of Ghana unreservedly approves the agreement in accordance with Article 181(5) of the 1992 Constitution; and the admission of Agyapa to the London Stock Exchange has occurred. There is a provision that states that when the precondition set out in Clause 2.1 is not satisfied on or before 31<sup>st</sup> December 2020 (or such later date as may be agreed in writing between the parties) the agreement will, lapse automatically and all rights and obligations of the parties thereunder shall cease and determine. This provision in Clause 2.1 appears to be so overriding in the exercise of discretion by the Minister of Finance as to result in the Ministry’s over bearing and compelling posture of having the four (4) Agreements and the Deed of Indemnity bulldozed through the Office of the Attorney-General on 10<sup>th</sup> August 2020, and then through Parliament on 13<sup>th</sup> August 2020 to be deliberated upon by the Committee on Finance within a few hours on 14<sup>th</sup> August 2020, recommended to the House and approved by the House the same day. The net effect was impunity instead of accountability and transparency needed to prevent and to fight corruption in the management of the mineral resource royalties of the Republic which any President holds temporarily as a trustee for Chiefs and people during his tenure of office under the 1992 Constitution.

The operational clause under Clause 2.1 of this agreement is that Parliament unreservedly approves the Relationship Agreement in accordance with Article 181 (5) of 1992 Constitution. The Resolution of Parliament made on 14<sup>th</sup> August 2020 giving approval for this Relationship Agreement was made conditional upon the passage of the Minerals Incomes Investment Fund



(Amendment) Act, and means that the requirement of unreserved approval under Clause 2.1 was not met by Parliament as there was no amendment to Act 978 in existence as at the date of the approval. The Parliament was duty bound to have approved this agreement after ensuring that the Relationship Agreement was consistent with whatever amendment was made to Act 978 at the time of the recommendations by the Committee on Finance to the House. The Committee of Finance never referred to any amended Act as existing at the time of its consideration of the Minister's memorandum and if Parliament was sure of or had been in possession of the enactment of the amendment Act it will not have made such contingent reservations to the Parliamentary approval which was inconsistent with the terms of the Agreement it was approving. See the letter with reference number PS/CS/80/004 dated 18<sup>th</sup> August 2020 signed by the Clerk to Parliament to the Minister of Finance the last paragraph of which states that: "Parliament adopted a motion indicating that this Agreement be non-operational until after the President has assented to the Minerals Income Investment Fund (Amendment) Bill, 2020." Each of the five (5) Resolutions of Parliament made on 14<sup>th</sup> August 2020 purporting to approve each of the five (5) Agreements have this reservation stated in them.

It is a wonder how the Committee on Finance could have examined the five (5) Agreements including the Deed of Indemnity, and made reasoned recommendations to the House to approve the provisions of a law incorporated in those Agreements which had not yet come into existence. It shows that there was no examination of the Agreements properly so called as envisaged under the Constitution and the Standing Orders of Parliament to have enabled Parliament itself to have given a reasoned approval to the Agreements in accordance with the letter and spirit of Article 181 (5) of the 1992 Constitution. What Parliament purported to have done, lowered the risk of corruption. It made corruption attractive as a low risk enterprise. This is a demonstrable form of impunity which acts as an incentive to ordinary citizens to be tempted to engage in corruption and corruption-related enterprises as exemplified by the actions of the executive and legislative arms of Government in this transaction.

Clause 3 of the Relationship Agreement dealing with the undertakings of the Fund and the Republic of Ghana is also tantamount to a surrender of the Sovereignty of the Republic of Ghana to Agyapa Royalties Limited of the United Kingdom in so far as the mineral revenue which the President of the Republic is enjoined under the Constitution to hold in trust for the Chiefs and people of Ghana is concerned. It talks in terms of the Fund and its associates, the Republic of Ghana, which includes the rights of the Chiefs and people of Ghana as beneficiaries of the President's trusteeship of the mineral resources of Ghana. The Ministry of Mines and Natural Resources, the Minerals Commission provided for under the Constitution and other entities become subservient to a foreign registered entity, (Agyapa Royalties Limited of the United Kingdom), with no controls by the Republic after it lists on the London Stock Exchange. This is inconsistent with the letter and spirit of the 1992 Constitution and lowers the risk of corruption and acts as an incentive to the commission of corruption and corruption-related offences under the Office of the Special Prosecutor Act, 2017 (Act 959).

When it comes to the Agyapa Royalties Limited's undertaking under Clause 4 it is only to ensure that the provisions of the Relationship Agreement are observed in so far as it is within its power

and control (Emphasis supplied). Clause 5 on the right to appoint a director(s); Clause 6 on information and confidentiality; and Clause 7 on overriding obligations; and Clauses 8, 9, and 16 constitute serious compromises of the sovereignty of Ghana under the 1992 Constitution for an enterprise that has not been subjected to extensive consultation and debate by the owners of the patrimony being given away for a pittance by their trustee, the Government. It creates a perception of impunity in the eyes of the ordinary citizen and has the chilling effect of lowering the risk of corruption standard and renders the deterrent effect of establishing the Office of the Special Prosecutor, Act 2017 (Act 959) almost nugatory.

Ghana loses control and sovereignty over the Special Purpose Vehicle, Agyapa Royalties Limited of Jersey, United Kingdom, when it is listed or admitted to the London Stock Exchange and acquires the binding rights over critical sovereign Ghanaian public institutions such as the Ghana Revenue Authority and the Bank of Ghana by virtue of their being associates of the Republic of Ghana. (See the interpretation clause of the Relationship agreement –“Mineral Revenue Management Agreement” and “Operations Management Agreement”, for instance).

7.4 An Assignment Agreement to be entered into between the Fund and Agyapa (the Assignment Agreement) pursuant to which the Fund will assign to Agyapa its right to receive the royalty value due from ARG under the Investment Agreement for the acquisition of the Allocated Mineral Royalties from the Fund, in consideration for shares to be issued by Agyapa to the Fund at an agreed price of US\$ 1 billion.

The Minister of Finance’s letter allegedly dated 23<sup>rd</sup> March 2020 to the President for the grant of an Executive Approval for the conduct of the government business named in the executive approval included a request for approval for “the Minerals Income Investment Fund (the Fund) to assign its right to receive 75.6% of gold mineral royalties from the gold mining companies” to Agyapa Royalties Limited (then Asaase Royalties Limited). The approval did not expressly contain any approval for the Fund to assign to Agyapa the Fund’s right to receive the royalty value due from ARG under the Investment Agreements for the acquisition of the Allocated Mineral Royalties from the Fund in consideration for shares to be issued by Agyapa to the Fund at an agreed price of US\$1 billion.

However, the Assignment Agreement between the Minerals Income Investment Fund (as assignor) and Agyapa Royalties Limited (as assignee) stated so in the recitals in capital letters D, E, and F underpins the Assignment Agreement. In recital D it states that pursuant to Clause 4 (Value of the Rights Assigned to RoyaltyCo) of the Investment Agreement, RoyaltyCo is to pay the Fund USD one billion (USD 1,000,000,000) (the “**Royalty Value**”) for the rights granted under the Investment Agreement. In E it states that in consideration for Agyapa issuing shares at the agreed purchase price of USD One billion (USD 1,000,000,000) to the Fund (the “Agyapa Share Subscription”), the Fund wishes to assign to Agyapa its right to receive the Royalty Value from RoyaltyCo.’ Then recital F nails the coffin of the surrender of Ghana’s sovereignty in the extractive mineral resources royalties when it states under “ Clause 15.4(a) (*No Assignment*) of the Investment Agreement”, that the Fund cannot assign all or any of its rights and obligations thereunder without the prior written consent of RoyaltyCo and Agyapa. The Republic of Ghana

has no actual control over the administration and management of Agyapa Royalties Limited when its shares are floated on the London Stock Exchange.

In any case neither the recitals, nor Clause 2 of the Assignment Agreement itself nor the main Investment Agreements in Clauses 3.1 on Allocated Mineral Royalties Obligations, Clause 3.2 on Payment of Allocated Mineral Royalties and Clause 4 thereof state the basis for the calculation and arrival of the figure of US\$1 billion as the value of the “75.6% of gold mineral royalties from the gold mining companies” approved by the Executive Approval dated 24<sup>th</sup> March 2020. Consequently, the figure of US\$ 1 billion stated as the royalty value of Allocated Minerals Royalties from the Fund to Agyapa for the assignment of the Fund’s right to receive the mineral royalty value of those royalties is arbitrary, and leaves a very wide discretion to the Ministry of Finance, its surrogates the Transactional Advisor(s), and the other negotiators representing the Republic of Ghana in the transaction which is a very fertile ground for potential corruption and corruption-related offences in the agreement negotiation and assignment process. The method of arriving at the value of US\$ 1 billion between the parties is consequently opaque, non-transparent and unaccountable for the purposes of the prevention of corruption. The Ministry of Finance offers assurances that it will obtain a fair valuation of the value of the royalties after further evaluation which cannot be relied upon for such an important Assignment of Ghana’s rights when the commencement of the process from the selection and appointment of the Transaction Advisors and services providers to the approval of the Agreements by Parliament have been analyzed and assessed to have been non-transparent and unaccountable resulting severally in the lowering of the risks of corruption and making corruption a very low incentive venture.

This essentially is a double assignment agreement because the Fund is required by the main Investment Agreements to assign its rights to the same Allocated Mineral Royalties to ARG and then on again to Agyapa Royalty Limited. This was intended to make the Investment Agreement and its subsidiary agreements complex for the understanding of the ordinary person, and I dare say for the ordinary member of Parliament. Therein lie the potential for the commission of corruption and corruption-related offences which the President sought to prevent by his electoral promise and its consummation in the setting up of the Office of the Special Prosecutor with the mandate to alert the Government to such opaque Transactions.

#### 7.5 The indemnity Agreement or Deed

This document is expressed to be strictly private and confidential and it will not be prudent to discuss its content. The Committee on Finance’s report to the House dated 14<sup>th</sup> August 2020 recommended approval pursuant to Article 181(5) of the Constitution for the “(v) Indemnity Agreement among the Government of the Republic of Ghana (represented by the Ministry of Finance), Merrill Lynch International, J.P. Morgan securities plc., BMO Capital Markets Limited, Peel Hunt LLP and Tamesis Partners LLP under the Minerals Investment Agreement in respect of the proposed offering of shares in Agyapa Royalties Limited by Agyapa and the Minerals Income Investment Fund to institutional investors outside Ghana, and the admission of the Shares to the standard listing segment of the Official List of the Financial Conduct Authority

and to trading on the London Stock Exchange in relation to Gold Royalties Monetisation Transaction under the Minerals Income Investment Fund Act, 2018 (Act 978)”

The Special Prosecutor analyzed the processes from the initiation of the procurement process through the purported executive approval of 24<sup>th</sup> March 2020 to the submission of the Indemnity Agreement to Parliament for approval and the approval granted by Parliament on 14<sup>th</sup> August 2020. The assessment resulting from the examination, and analysis of all the five (5) Agreements making up the Transaction Documents is that they each suffer from the same lack of probity, transparency, unaccountability, illegality and unconstitutionality as already assessed hereinbefore and lowered the risk of corruption, and made corruption an attractive low risk enterprise for public office holders and their accomplices. The very nature of secrecy and confidentiality surrounding the Agreements and Indemnity Agreement in particular, does not conduce to the prevention of corruption and fighting corruption in the extractive mineral sector. It is in this respect that the conduct of poor citizens struggling to make a living by breaking the laws of mines and minerals to mine illegally must be understood as arising out of perceptions of an unequal or discriminatory application of the mining laws more favourably for foreign companies and investors against the illegal local miners who are also beneficial owners of those mineral resources.

#### 7.6 Consultation of affected stakeholders in the extractive minerals sector and beneficiaries of the minerals royalties of Ghana

A casual reading of the Transaction Documents leaves nobody in doubt that it affects the rights and obligations of several stakeholders in the Mining and Minerals sector of the economy including the Chiefs and people of Ghana.

Articles 257(6), 267, and 269 of 1992 the Constitution give an indication of some of the major stakeholders in the sector. Consequent upon these provisions of the Constitution, the Minerals Commission under the Minerals Commission Act, 1993 (Act 450) was established to be responsible for the regulation and management of the utilization of the extractive minerals sector and to co-ordinate policies in relation to them. The Minerals and Mining Act, 2006 (Act 703) regulates minerals and mining rights, and incidental matters. The Office of the Administrator of Stool Lands Act, 1994 (Act 481) was set up to manage revenues and moneys from Stool and Skin lands pursuant to Article 267(6) under which ten percent of the revenue accruing from stool lands are to be paid to the Office of the Administrator of Stool Lands and to be distributed to the named beneficiaries in percentages indicated therein. The Minerals Development Fund Act, 2016 (Act 912) is also relevant. The financial implications and processes on the foregoing dealing with mineral resources and revenue are captured under Articles 175, and 176 of the 1992 Constitution, the Financial Administration Act, 2003 (Act 654) as amended and the Public Financial Management Act, 2016 (Act 921).

The Ministry of Lands and Natural Resources, the Minerals Commission, the Chiefs and people of Ghana represented by the stools and skins making up the traditional councils and houses of chiefs, the Administrator of Stool Lands, the concessions owners and mining companies with leases and others constitute some of the stakeholders when it comes to matters of royalties whether as tax or income in establishing a Special Purpose Vehicle provided for under Act 978.

The policy of the Ministry of Finance to monetize all extractive gold mineral income in Ghana affected the interests and obligations of the foregoing stakeholders who are not referred to in the Minister's memorandum to Parliament as having been consulted. This further brings in issue the probity, transparency, and accountability of the processes leading up to the submission of the request by the Minister of Finance and their approval by Parliament for purposes of this analysis of the risk of corruption and anti-corruption corruption assessment.

The Ministry of Finance in letter with reference number MOF/OLA/PLCDA.3 dated 1<sup>st</sup> October 2020 in response to this Office's letter with reference number OSP/SCR/22/33/20 dated 28<sup>th</sup> September 2020 and its further letter No. OSP/SCR/22/35/20 dated 1<sup>st</sup> October 2020 respectively, requesting for information and documents on stakeholder consultations or engagements was informed that it is typical of similar capital market transactions for stakeholder engagements to be limited to parties that will be relevant to the transaction. The relevant stakeholders included the Bank of Ghana (BoG), Ghana Revenue Authority (GRA) and the Minerals Commission.

Before the passage of the Minerals Investment Fund Act, 2018 (Act 978), however, various stakeholders such as the Office of the Attorney-General, the Ministry of Lands and Natural Resources, Parliament and others took part in the enactment process and had no objection to the Minerals Investment Fund Bill that was subsequently approved, gazetted and published.

This is all well and good. However, an analysis of the risk of corruption, and anti-corruption assessment of the Agyapa Royalties Limited transactions reveal that the nature of extractive minerals as a national patrimony of all Ghanaians needed innovative ways of stakeholder consultation to avoid generating possible resource conflict in Ghana which the African experience has shown engenders destabilization within the body politic. The acrimony, disagreement, and threats of abrogation of the Agreements by a future Government would have been avoided if more innovative, transparent, and accountable processes were devised for broader stakeholder consultation for this national resource. In meeting the constitutional requirement of probity and accountability the Ministry of Finance of the Republic of Ghana chose full transparency and accountability to Imara Corporate Finance Limited (Pty) of South Africa as Transaction Advisors and other foreign services providers without a modicum of trusting the National House of Chiefs and other Constitutional bodies in the extractive and extractive royalties sector for consultation on such an important natural resource of Ghana. South Africa from which Imara Corporate Finance Limited (Pty) is a citizen is a leading and experienced gold producer in the world, but South Africa has not exhibited the same level of trust in Imara Corporate Finance Limited (Pty) which the Ministry of Finance has exhibited for purposes of Ghana's Gold monetization of mineral royalties.

This is why the concerns raised by some of the Chiefs at a consultative or briefing session with the Minister of Finance in the National House of Chiefs, post the 14<sup>th</sup> August 2020 approval by Parliament and reported by the GNA, about "why the Ministry failed to engage them before taking the deal to Parliament despite being custodians of the land with vested interest in mineral royalties" weighed more in this Office's analysis of the risk of corruption and anti-corruption assessment as a demonstration of the opaqueness of the consultative processes undertaken with

the beneficiaries of the trust mineral resource royalties before the grant of Parliamentary approval to the Agreements on 14<sup>th</sup> August 2020. No post facto engagement or consultation or briefing can cure this shortcoming. It does not brood well for the prevention of corruption. It makes corruption a low risk venture in the analysis of the risk of corruption, and anticorruption assessment of the processes leading up to the approval by Parliament of the Transaction Documents undertaken by this Office.

## **8.0 PARLIAMENTARY OVERSIGHT AFTER LISTING AGYAPA ROYALTIES LIMITED ON THE LONDON STOCK EXCHANGE**

The Minerals Income Investment Act, 2018 (Act 978) provides for transparency as a fundamental principle, accounts and audit, an annual report, and other reports to Parliament. Section 37 of Act 978 provides for the Fund to keep the books, records, returns of account and other documents relevant to the accounts in the form approved by the Auditor-General. The Board is enjoined to submit the accounts of the Fund to the Auditor-General for audit within three months after the end of the financial year. The Auditor-General is required within six months after the end of the immediate preceding financial year to audit the accounts and forward a copy each of the audit report to the Minister and the Board. The Minister of Finance is required within one month after receipt of the annual report to submit the report to Parliament with a statements [sic], that the Minister considers necessary. The foregoing resembles normal provisions in most statutory authorities established by an Act of Parliament.

In analyzing the risk of corruption and anti-corruption assessment of the Transaction Documents approved by Parliament on 14<sup>th</sup> August 2020 the point was underscored that the fact that the analysis and assessment of corruption risks, particularly in connection with the Relationship Agreement between the Republic of Ghana, Agyapa and the Fund to regulate the degree of control that the Republic and its associates, including the Fund, may exercise over the management of Agyapa and to ensure that Agyapa conducts its business independently of the Fund and/or the Republic such that, when Agyapa is listed or admitted to the London Stock Exchange, Ghana will lose control and sovereignty over Agyapa Royalty Limited. In spite of the form of the provisions of Sections 31 and 38 of Act 978 Parliament will have no ability through the audit and accounts of the Fund to know or supervise the operations of Agyapa Royalties Limited operating under the laws of the tax haven of Jersey in the United Kingdom. It has already been stated that the Auditor-General of Ghana does not have a reciprocal authority to audit Agyapa Royalty Limited.

The difficulties and secrecy intended to surround Agyapa Royalty Limited of the United Kingdom by incorporating it under the laws of Jersey is akin to the difficulty the Government of Ghana has faced in trying to execute the Supreme Court Judgment against Waterville Holdings (BVI) Limited in the case of Amidu (No. 1) v Attorney-General, Waterville Holdings (BVI) Ltd, & Woyome (No. 1) [2013-2014] 1 SCGLR 112 for a sum of over 47 million Euros with interest from the date of the judgment to date of payment which the President of Ghana promised in his 2016 electoral campaign to retrieve for the public purse which still remains outstanding. Any reasonable analysis of the risk of corruption, and anti-corruption assessment must take account of Ghana's experience with the Waterville Holdings (BVI) Limited case and the difficulty of

executing that judgment debt which the Supreme Court as late as November 2019 urged the Government to execute based on fresh information and particulars of the Ghanaian ownership of the offshore incorporated company in the tax haven of the British Virgin Islands also of the United Kingdom ordered by the Court and supplied by a supporting affidavit and served on the Attorney-General. There is no guarantee that the sovereign minerals income royalties being ceded to Agyapa Royalties Limited without a national consensus and the analysis of the risk of corruption, and anti-corruption assessment environment as hereinbefore analyzed is not and will not be a leaking pipe in the public purse. There is further no guarantee that it will not constitute a wind fall from this leaking public purse pipe for those Ghanaians lucky through partisan affiliations to be represented on its management and who might have had stakes as promoters in establishing and incorporating it in the safe haven of Jersey aforesaid.

#### **9.0 MINERALS INCOME INVESTMENT FUND (AMENDMENT) ACT, 2020 (ACT 1024)**

This analysis of the risk of corruption, and anti-corruption assessment will lack integrity should this Office not mention the fact that amongst the information and documents submitted to this Office by Parliament in its letter with reference number PS/LS/038/SPO01 of dated 15<sup>th</sup> September 2020 pursuant to this Office's notice of request dated 10<sup>th</sup> September 2020 were a copy of the Minerals Income Investment Fund (Amendment) Bill, 2020 and a Minerals Income Investment Fund (Amendment) Act, 2020 (Act 1024) assented to on 27<sup>th</sup> August 2020 and gazetted the same day.

This Office made enquires at the Office of the Attorney-General on 16<sup>th</sup> September 2020 to obtain a copy of Act 1024 and nobody could tell this Office that it had received Presidential assent. This Office sent emissaries to the Assembly Press Shop near the Accra Polytechnic on the 28<sup>th</sup> September 2020 and to both the Assembly Press Shop near Accra Polytechnic and the Printing Press on 2<sup>nd</sup> October 2020 only to be told Act 1024 was unavailable. The last date of enquiry at both the Assembly Press Shop and the Printing Press was on 14<sup>th</sup> October 2020 again to no avail. It means Act 1024 is not available to the public to know its content as soon as enacted as they are entitled to in every democracy.

The Minerals Income Investment Fund Act, 2020 (Act 1024) assented to and gazetted on 27<sup>th</sup> August 2020 submitted to this Office by Parliament is not expressed to be retrospective in operation. Its purpose was to ratify transactions which by this analysis of the risk of corruption, and anti-corruption assessment of the originating processes leading up to the approval of the Transaction Documents by Parliament lowered considerably the risk of corruption. It was assented to on 27<sup>th</sup> August 2020 and not before 14<sup>th</sup> August 2020.

It has been stated in the foregoing analysis of the risk of corruption and anti-corruption assessment that: "The fact that legislation has been enacted does not put it beyond the pale of corruption risk analysis and assessment under Regulation 31 of L. I. 2374 made pursuant to Act 959. It is the transparency and accountability in the legislation making process and the application of the law that lowers or raises the risk of corruption and makes corruption a very low or very high risk incentive enterprise which is the focus of the endeavour of corruption risk

analysis and assessment.” The foregoing analysis of the risk of corruption, and anti-corruption assessment of enacted legislation applies to the Minerals Income Investment Fund (Amendment Act, 2020) (Act 1024) should it, even though validly enacted as law, be used opaquely now or in future in aid of transactions that lowers the risk of corruption and thereby act as a low risk incentive for commission of corruption and corruption-related offences under the Office of the Special Prosecutor Act, 2017 (Act 959).

## **10.0 OBSERVATIONS**

This is the first time that an independent anti-corruption agency established by any Government in Ghana has undertaken an analysis of the risk of corruption and anti-corruption risk assessment of the processes leading up to the approval by Parliament of Public Agreements as part of its statutory mandate. This has been made possible by the courage and commitment of H. E. the President of Ghana in redeeming the promise he made to Ghanaians when he was a Presidential candidate of a political party to establish an independent anti-corruption statutory entity to make meaningful any real commitment to prevent and to fight corruption. The Office of the Special Prosecutor Act, 2017 (Act 959) established this Office. The President ensured that in the teeth of strong opposition the Special Prosecutor was able to have his way to have included in the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374) the prevention of corruption regulations which to the best of my knowledge may be the first in Africa and meets international standards and best practices.

The Office of the Special Prosecutor in accordance with L. I. 2374 normally undertakes a discrete and classified analysis of the risk of corruption and anti-corruption assessments each time it is considering whether or not to commence an investigation into suspected commission of corruption and corruption-related offences. The exercise of the discretion to prosecute may also be informed by the analysis of the risk of corruption and anti-corruption assessment of the evidence as disclosed by the investigation. Whether or not a decision to investigate or to prosecute on the facts will raise the risk of corruption and make it a high risk enterprise for public office holders and their accomplices are important considerations for the achievement of the prevention of corruption objectives of this Office.

The case of the Republic v George Owusu & Others involved an undertaking to pay fifteen (15) million United States Dollars to the Government to be used as part of corporate social responsibility for the development of the West Cape Three Points Area of the Western Region in exchange for indemnity from prosecution and to allow the suspects’ to sell shares in their company, the E. O. Group. Two Attorneys-General from 2011 to 2012 declined to sign the deed of indemnity for good reason. The indemnity had been negotiated and concluded by the then Vice-President in 2011. The deed of indemnity was signed in July 2013 by Hon. Dr. Dominic Akuritinga Ayine, a Deputy Minister, and exhibited at page 341 of a book, “In Pursuit of Jubilee...”, 2017. The sum of 15 million USD from intelligence gathered was paid not into the public purse as agreed by former President Mills but was privately paid as part of a political settlement within the same Government. An investigation begun by this Office in March 2018 is still pending the provision of the case docket containing the original copy of the signed



Indemnity letter from the Attorney-General's Office and the Police Administration who have custody of the dockets.

This Office also has warrants of arrest issued by the Courts of Ghana, and an Interpol Red Alert Notice outstanding for execution in the case of the Republic v Samuel Adam Mahama and Others (known as the Airbus SE – Ghana Bribery Scandal involving the then Government of Ghana), not to talk of documentary evidence of suspected forgeries and deceit of a public officer by the three full blood brothers in the corruption transaction to obtain a Ghanaian passport for Samuel Adam Mahama. This Office has established the identity of elected Government official 1 to be former President John Dramani Mahama whose brother of the full blood is Samuel Adam Foster also known as Samuel Adam Mahama. The only reason the former President has not been invited for interrogation (in spite of all threats from some of his followers and lawyers) is the fact that he got himself an insurance as the Presidential candidate of the other largest political party in Ghana and prudence dictated that the interrogation be held in abeyance during this election season. The former President has also not offered to make any voluntary statement to this Office despite the publication of an alleged interview containing admissions purportedly made by the former President to a Daily Graphic reporter without the full voice recording which in the meantime remains just hearsay.

This Office also has on-going investigations against Adjenim Boateng Adjei, the suspended Chief Executive Officer of the Public Procurement Authority; the National Lotteries Authority; Charles Bissue, and others. An issue of identity which needs resolution has held up the Bissue case. The Members of Parliament Vehicle Loan Affair which affects Members of Parliament from both sides of Parliament is still pending a decision on whether or not to prosecute due to unjustifiable delay by seconded staff in carrying out instructions for clarifications on certain pertinent issues. The delays have in the main been actuated by the fact that no staff has been independently employed by this Office due to lack of sheer physical office space, resulting in the use of staff on short duration secondment whose commitment may depend on how their main employers stay away from interfering with the work of this Office during their short tenure.

The analyses of the risk of corruption and anti-corruption assessment of the Agyapa Royalties Limited of Jersey, United Kingdom Transaction was intended to have been completed before the 1<sup>st</sup> of October 2020. Unfortunately, there were some delays, particularly from the Ministry of Finance which submitted the requisite information and documents piecemeal. The last two letters submitting information and documents from the Ministry of Finance were hand delivered to the registry of this Office on 13<sup>th</sup> October 2020. The Special Prosecutor has had to study, make notes, analyze, and assess the Agyapa Royalties Transaction information and documents submitted to this Office in person for lack of supporting staff. This Office has been able to complete its analysis of the risk of corruption and anti-corruption assessment of the Transaction Documents.

The experience of the Special Prosecutor spanning decades as a Ghanaian public officer makes the Special Prosecutor conscious of the fact that the assessments revealed in this report partake of other anti-corruption matters of notorious public knowledge in previous Finance Ministries where the present assessments would have been impossible. The opportunity and independence

for conducting and making this assessment report must, therefore, be viewed by Ghanaians as a deliberate legislative opening in the fight against corruption under this Government.

The Special Prosecutor wishes to acknowledge that this is the second time in his experience in Ghana that public institutions have responded within a reasonable time of requests to notices for information and documents. The first experience was when the Special Prosecutor was the Chairman of the Public Agreements Board under the PNDC. Indeed, the Special Prosecutor's experience in the reluctance to provide information and documents manifested when the Special prosecutor was the then Attorney-General in 2011. It was the opaqueness and secrecy at the time on the policy to establish a "National Vehicle To Hold All Of the Government's Gold Interests" that resulted in the Attorney-General's volunteered opinion dated 6<sup>th</sup> October 2011 which has been quoted and referred to in the preceding analysis of the risk of corruption, and anti-corruption assessment.

It is the expectation of this Office that the analysis of the risk of corruption, and anti-corruption assessment of the Agyapa Royalties Limited Agreements will guide policy decisions on this transaction and be seen more in terms of the vision that informed the establishment of this Office, and not be used for political point scoring.

## **11.0 CONCLUSIONS**

The analyses of the risk of corruption and anti-corruption assessment was expected to have been completed before the end of the month of September 2020. Unfortunately, there were some delays, particularly from the Ministry of Finance which submitted the requisite information and documents piecemeal. The last two letters submitting information and documents from the Ministry of Finance were hand delivered to the registry of this Office on 13<sup>th</sup> October 2020. This Office has been able to complete its analysis of the risk of corruption and anti-corruption assessments of the Transaction Documents.

"A stitch in time", the saying goes "saves nine". The analysis of the of corruption, and anti-corruption assessment started with a thorough analysis of the risk of corruption and anti-corruption assessment of legislative and executive actions on the Transaction Documents which as a matter of necessity had to begin from the inception of the processes leading to the selection, evaluation, and terms of the contracts and appointments of the Transaction Advisor(s) and other service providers which are fundamental to the probity, transparency and accountability of the unitary national outcome sought to be achieved by the Government for the Chiefs and people of Ghana in its gold royalties monetization policy.

The analysis of the risk of corruption, and anti-corruption assessment in the bid selection process led to the assessment that the involvement of Imara Corporate Finance Limited (Pty) of South Africa in the Mandate Agreement as approved by the Public Procurement Authority made the Mandate Agreement an international business or economic transaction needing approval from Parliament under Article 181(5) which was never sought or given. See Attorney-General v Faroe Atlantic Co Ltd [2005-2006] SCGLR 271. Secondly, the whole of the fees for the bid purportedly won by Imara of South Africa with its decoy, Databank of Ghana, is to be paid in

United States Dollars to Imara Corporate Finance Limited (Pty) of South Africa. The Mandate Agreement does not say how and when the decoy, Databank of Ghana, was to be paid by Imara for a contract purportedly won and performed jointly. This opaque arrangement in the contract negotiation process not arising out of the Public Procurement Authority approval is what made the analysis of the risk of corruption and anti-corruption assessment conclude that the process of the selection of the Transaction Advisor(s) disclosed a reasonable suspicion of bid rigging, and corruption activity including the potential for illicit financial flows and money laundering in the arrangement of how the fees payable to Databank of Ghana as the decoy which was not approved under the Public Procurement Authority Act, 2003 (Act 663) as amended by the Public Procurement Authority (Amendment) Act, 2016 (Act 914) (Act 663 as amended) are to be made. There was thus a zero chance arising out of individual interests at the Ministry of Finance and Imara/Databank of expecting impartiality and neutrality on the part of the Transaction Advisor(s) in advising the Republic of Ghana as a national corporate entity representing the unitary interest of its Chiefs and people.

It must be stated for the avoidance of doubt, that the “Fees and Expenses rendered in terms of the Evaluation and Recommendation Phase in Clause 2.1 of the Mandate Agreement was to be paid by the Ministry of Finance to the Transaction Advisor(s) as follows: Clause 3.1.1 a fixed retainer of US\$15,000 (Fifteen Thousand US Dollars) per month, payable quarterly in advance to Imara from 01 May 2018, for a maximum of 12 months, such fee to be offset against the success fee; 3.1.2 a fixed Success Fee of US\$4,000,000 (Four Million US Dollars), payable to Imara on the Completion Date and adjusted for the retainer paid in terms of Clause 3.1.1; Clause 3.1.3 for the purposes of this Clause 3.1.” These clauses, in the view of this Office for purposes of the analysis of the risk of corruption and anti-corruption assessments, qualifies the Mandate Agreement with Imara Corporate Finance Limited (Pty) as an autonomous international business or economic transaction with significant impact on the wealth and resources of Ghana. In the proposals submitted by Imara/Databank they stated that: “The proposed fee payable to Imara-Databank was heavily oriented towards concluding a Transaction on the most favourable terms possible for the Government comprising: a work Fee of USD15,000 per month, plus a success Fee equal to 1.80% of the Gross Proceeds received by the Government payable upon completion of the Transaction....” (Emphasis supplied). With the analysis of the risk of corruption and anti-corruption assessment that Imara Corporate Finance Limited (Pty) is an opaque surrogate of both the Ministry of Finance and Databank Financial Services Limited playing the role of Transaction Advisors in a suspected bid rigging process the total fees upon the completion of the Transaction may never be known.

A deeper analysis of the risk of corruption, and anti-corruption assessment of the Mandate Agreement arising from stonewalling by the Deputy Minister (F) led to the discovery that Hon. Charles Adu Boahen, the Deputy Minister (F), who appeared from the analysis of the risk of corruption, and anti-corruption assessment to have been the overseeing Deputy Minister for this procurement process for the Transaction Advisors and purportedly signed the Mandate Agreement for and on behalf of the Republic of Ghana knew or ought to have known that he could not commit the Republic to any contract let alone sign the Mandate Agreement in the name

of the Republic. Sections 7, 25(3) and (4) and 102 of the Public Financial Management Act, 2016 (Act 921) vested the power and authority to commit the Ministry of Finance to any contract for and on behalf of the Republic in the Principal Spending Officer who is the Chief Director of the Ministry of Finance.

All the parties to the Mandate Agreement are deemed to have known the law but ignored it with impunity in signing and implementing the Mandate Agreement which is null and void ab initio as violating the Public Financial Management Act, 2016 (Act 921) and the Public Procurement Authority Procurement Act, 2003 (Act 663) as amended. This conduct which appears to have been in furtherance of the suspected bid rigging, in the assessment of this Office severely lowered the risk of corruption and rendered them a low risk enterprise in the Agyapa Royalties Transactions process and their approval. It is with these new lenses that the analysis and assessments of the legality of the engagement of the other services providers and underwriters on the recommendations of the Transaction Advisors acting as the Ministry of Finance's procurement entity tender committee contrary to Part VI of the Public Procurement Act, 2003 (Act 663) as amended, and Sections 7 and 25 of the Public Financial Management Act, 2016 (Act 921) afore-quoted were made.

It was further analyzed and assessed that the Transaction Advisor(s) nonetheless, went ahead to identify and recommend services providers and underwriters to the Ministry of Finance for appointment by the Republic of Ghana. The Ministry acted contrary to the Public Procurement Authority Act and the Public Financial Management Act in delegating the power to appoint services providers and/or other underwriters to the unlawfully appointed Transaction Advisor(s). The Transaction Advisor(s) whose selection and appointment by the Ministry of Finance did not measure up favourably to the analysis of the risk of corruption and anti-corruption assessment that meets the fundamentals of probity, transparency and accountability was/were potentially susceptible to undue influence, favouritism, cronyism, nepotism, and all forms of discrimination abhorred under the 1992 Constitution leading to the suspected packing of the services providers and underwriters position with entities not chosen on merit.

The analysis of the risk of corruption and anti-corruption risk assessment disclosed that the Transaction Advisor(s), Imara Corporate Finance Limited (Pty) are paid in foreign currency directed to the account name Imara Botswana Limited through the First National Bank of Botswana, Gaborone, Botswana, Kgale View Branch, with Branch Code: 287867, instead of Imara Corporate Finance Limited (Pty) of South Africa even when the international business or economic transaction had not received Parliamentary approval under Article 181(5) of the 1992 Constitution. The Transaction Advisor(s) did not also have the moral, contractual, legal and Constitutional mandate to assume the authority of the Ministry's procurement Entity Tender Committee under the Public Procurement Authority Act, 2003 (Act 663) as amended to shortlist, evaluate, recommend, or to appoint services providers and underwriters for and on behalf of the Republic of Ghana to be paid abroad in foreign currency through the First National Bank of Botswana, Gaborone, Botswana, Kgale View Branch, with Branch Code: 287867 for the account

of Imara Botswana Limited, instead of South Africa as contracted for an important mineral royalties transaction which affects the national patrimony of extractive mineral resources.

It is imperative to note that the correspondence between the Ministry of Finance and the Transaction Advisor(s) were addressed to the Managing Director, Imara Corporate Finance (Pty) Limited in South Africa. It is also pertinent that all the offers for engagement as services providers were addressed to Imara Corporate Finance, South Africa alone. (But transfers of foreign currency for payments from the Ministry of Finance are made to the account name Imara Botswana Limited through the First National Bank of Botswana, Gaborone, Botswana, Kgale View Branch, with Branch Code: 287867 instead). This supports the analysis of the risk of corruption and anti-corruption assessment that the addition of Databank Financial Services Limited as a decoy joint bidder contrary to the PPA approval was a manipulation of the bidding process and constituted bid rigging in favour of Imara Corporate Finance Limited (Pty) of South Africa. As already stated only the Principal Spending Officer of the Ministry, the Chief Director, had the authority to commit the budgetary appropriation to any contract under sections 7 and 25 of Act 921 aforesaid.

The analysis of the risk of corruption, and anti-corruption assessment revealed that the delayed unauthenticated information and documents on the appointment of Africa Legal Associates hand delivered by the Ministry of Finance to this Office on 6<sup>th</sup> October 2020 meant that the Ministry of Finance did not have the information and documents on the appointment of the law firm because none existed at the Ministry of Finance. The information and documents submitted in the undated letter of October 2020 had to be documents the Ministry was waiting to be computer generated by Imara Corporate Finance Limited (Pty) (which had unlawfully become its procurement entity tender committee) for submission to this Office when this Office pointed out the improbability of the contention by the Chief Director, (who as the principal spending officer did not sign that agreement), that Africa Legal Associates was engaged as partners of White & Case LLP of the United Kingdom. The foregoing led to the analysis and assessment from the available evidence that the Chief Director of the Ministry of Finance as the Principal Spending Officer of the Ministry might have been sidestepped in the procurement processes or the commitment of the budgetary appropriation of the Ministry for the engagement of the Transaction Advisor(s) and other services providers for the Agyapa Royalties Limited Transactions as the Principal Spending Officer.

This Office analyzed the risk of corruption, and made anti-corruption assessments in respect of the other services providers and underwriters appointed by the Government of Ghana to provide services for the actualization of the Transaction Documents involving such a crucial transaction as the partial monetization of Ghana's Gold Royalties in an international tax haven through Agyapa Royalties Limited of Jersey, the United Kingdom. The assessment led to the conclusion that each appointment constituted a major outlay of foreign currency from the public purse to have warranted transparent and accountable bidding processes by the Ministry's procurement entity tender committee under Part VI the Public Procurement Authority Act (Act 663) as amended and subsequent approval by Parliament under Article 181(5) of the Constitution as an

international business or economic transaction. It was also analyzed and assessed for purposes of corruption risk prevention that each agreement engaging a service provider or consultant constituted an autonomous commercial transaction with significant impact on the wealth and resources of Ghana in the monetization of Ghana's Gold royalties which is a patrimony for the Chiefs and people of Ghana, being temporarily held in trust by the President for the time being during his tenure of office. As consultancy services providers also called advisory services providers, they each also needed the approval of the Public Procurement Authority under the Public Procurement Authority Act, 2003 (Act 663) as amended before the beginning of the procurement process, selection and awarded of each contract. None was sought or given.

The fact that legislation has been enacted does not put it beyond the pale of the analysis of the risk of corruption, and anti-corruption assessment under Regulation 31 of L. I. 2374 made pursuant to Act 959. It is the transparency and accountability in the legislation making process and the application of the law that lowers or raises the risk of corruption and makes corruption a very low or very high risk enterprise which is the focus of the endeavour of the analysis of the risk of corruption and anti-corruption assessments. Accordingly, the analysis of the risk of corruption and anti-corruption assessment of the outcomes brought about by the Minerals Income Investment Fund Act, 2018 (Act 978) leading up to the incorporation of the Special Purpose Vehicle and the finalization of the Transaction Documents presented to Parliament for approval did not pass the test of lowering the risk of corruption prevention and corruption. The best of laws and regulations have been used opaquely for corrupt purposes in the absence of probity, transparency, and accountability in public office and good governance. The unholy union between the Ministry of Finance and the Transaction Advisor(s) reinforced this perception.

The analyses of the risk of corruption, and anti-corruption assessment also revealed that the Governing Board members of the Minerals Income Investment Fund could not meet the litmus test of prevention of corruption and corruption. The analysis of the risk of corruption and anti-corruption assessment of the Chairman and the other Board members taking into account their respective backgrounds and associations indicated a real likelihood of almost all of them being affected by partisan considerations in the discharge of their duties as they appear to lean towards only one political persuasion in the Country making the perception of probity, transparency, and accountability very low in the management of such an important national extractive mineral resource revenue under the control of the Fund.

One may wish to contrast the public perception non-partisan citizens may have about the composition and appointment of the Governing Board of the Minerals Income Investment Fund with the stakeholder composition and representation on the Minerals Development Fund Act, 2016 (Act 912) and analyze and assess the risk of corruption prevention and corruption in the appointment process of both Boards.

An analysis of the risk of corruption, and anti-corruption assessments of deficiencies in legislative and executive action show that the Executive Approval purportedly granted on 24<sup>th</sup> March 2020 was granted in excess of the approval requested for by the Minister for the amendment of certain provisions of the Minerals Income Investment Fund Act, 2018 (Act 978) to include Agreements which were made contingent upon the enactment of the proposed

Amendment Bill stated in the Secretary to the President's letter dated 24<sup>th</sup> March 2020. The expanded and contingent terms of the Executive Approval is inconsistent with any analysis of the risk of corruption, and anti-corruption assessment because it purports to confer a wider discretion on a Minister in the absence of the law on which the exercise of the wide discretion ought to be based. It consequently created a situation that lowered the risk of corruption and increased the incentive for the commission of corruption and corruption-related offences by making them low risk enterprises. These low risks of corruption may have been avoided if the procedure for submitting Cabinet memoranda for Executive Approval to the President through the Secretary to the Cabinet were strictly followed.

Be that as it may, it follows from the above that on 24<sup>th</sup> March 2020 the Executive Approval granted by the President covered the specific Bill and public agreements (if any indeed existed and accompanied the letter of request for executive approval) in the letter submitted for consideration and approval which would not have incorporated future amendments. However, after repeated analysis of the risk of corruption, and anti-corruption assessment of the Executive Approval granted the next day after it was requested for by the Minister's letter, one thing continued to stand out like a cork in water. The Minister's letter dated 23<sup>rd</sup> March 2020, possibly with a Cabinet Memorandum and the accompanying documents, including the proposed Bill and public agreements referred to in the Secretary to the President's letter dated 24<sup>th</sup> March 2020, could not have possibly been read, evaluated and recommended for executive approval the next day, 24<sup>th</sup> August 2020 in accordance with good governance practices. Good governance practices are a sine qua non to the prevention of corruption and corruption.

It follows from the foregoing that whatever amendments had been made to the Minerals Income Investment Act should have been enacted and being in existence as of 24<sup>th</sup> March 2020 when the executive approval was purportedly granted. This analysis of the risk of corruption, and anti-corruption assessment concluded that the blank executive approval purportedly granted by the President on 24<sup>th</sup> March 2020 could not form the basis of the transformed Transaction Documents submitted by the Minister for Finance to Parliament for approval in his memorandum dated 13<sup>th</sup> August 2020. The submission of the Memorandum by the Minister to Parliament without seeking a fresh cabinet executive approval manifested impunity and had a negative impact on corruption prevention and lowered the risk of corruption.

On 13<sup>th</sup> August 2020 when the Minister signed and submitted the memorandum requesting approval of the Transaction Documents to Parliament culminating in the laying and referral of the request to the Committee on Finance; the recommendations for approval by the Committee on Finance to the House; and the proceedings of the House approving the whole request contained in the memorandum on 14<sup>th</sup> August 2020, (without any variation) the alleged Minerals Income Investment (Amendment) Fund Bill 2020 had not received any Presidential assent to become law. The recommendations by the Committee on Finance of the entire memorandum of the Minister of Finance for approval as submitted incorporating amendments based on the prospective legislation was, according to the analysis of the risk of corruption and anti-corruption assessment null and void. Neither the Committee on Finance nor Parliament which considered the Minister's request and purported to have approved same in a single day could have

incorporated by reference a prospective Act of Parliament awaiting Presidential assent. The failure or refusal of the Minister for Finance and Parliament to follow approved procedures for the execution of legislative and executive actions constituted a lowering of the risk standards for corruption and anti-corruption assessment as the processes leading to the Transaction Documents has demonstrated.

The whole of the stabilization provisions contained in Clause 6 of the Amended and Restated Investment Agreement constituted a surrender of Ghana's sovereignty over its gold resource revenue for one billion United States Dollars without a thorough consultation with critical stakeholders and a meticulous examination by the people's representatives in Parliament in a bi-partisan manner. Mineral resources conflicts have been the cause of destabilization in neighbouring countries and Africa generally. Ghana in order to avoid such resource conflicts and perceptions of underhand dealing and the propensity to promote corruption and corrupt practices, ought not to open the flood gates to corruption and resource conflicts by a partisan surrender of its sovereign resource such as gold and its revenue or royalties to any foreign entity and investors. Any form of impunity exhibited unwittingly or wittingly by executive or legislative action lowers the risk of corruption and encourages corruption as a low risk venture. As the preceding analysis and assessment of the risk of corruption show, such lowering of the risk of corruption subordinates the national interest to individual interest, including greed, and lack of ethicalness.

It is a wonder how the Committee on Finance could have examined the five (5) Agreements including the Deed of Indemnity, and made reasoned recommendations to the House to approve the provisions of a law incorporated in those Agreements which had not yet come into existence. It shows that there was no examination of the Agreements properly so called as envisaged under the Constitution and the Standing Orders of Parliament to have enabled Parliament itself to have given a reasoned approval to the Agreements in accordance with the letter and spirit of Article 181 (5) of the 1992 Constitution. What Parliament purported to have done, lowered the risk of corruption. It made corruption attractive as a low risk enterprise.

The Special Prosecutor analyzed the processes from the initiation of the procurement process through the purported executive approval of 24<sup>th</sup> March 2020 to the submission of the Indemnity Agreement to Parliament for approval and the approval granted by Parliament on 14<sup>th</sup> August 2020. The assessment resulting from the examination, and analysis of all the five (5) Agreements making up the Transaction Documents is that they each suffer from the same lack of probity, transparency, unaccountability, illegality and unconstitutionality and lowered the risk of corruption. The very nature of secrecy and confidentiality surrounding the Agreements and Indemnity Agreement in particular, does not conduce to the prevention of corruption and fighting corruption in the extractive mineral sector. It is in this respect that the conduct of poor citizens struggling to make a living by breaking the laws on mines and minerals to mine illegally must be understood as arising out of perceptions of an unequal or discriminatory application of the mining laws more favourably for foreign companies and investors against the illegal local miners who are also beneficial owners of those mineral resources.



The Ministry of Finance contended that as is typical of similar capital market transactions the stakeholder engagements were limited to parties that were relevant to the transaction; and in the case of the passage of the Minerals Income Investment Act, 2018 (Act 978) they were limited to the Office of the Attorney-General, the Ministry of Lands and Natural resources, Parliament and others who took part in the enacting process. That is all well and good.

However an analysis of the risk of corruption, and anti-corruption assessment of the Agyapa Royalties Limited transactions reveal that the nature of extractive minerals as a national patrimony of all Ghanaians needed innovative ways of stakeholder consultation to avoid generating possible resource conflict in Ghana which the African experience has shown engenders destabilization within the body politic. The acrimony, disagreement, and threats of abrogation of the Agreements by a future Government would have been avoided if more innovative, transparent, and accountable processes were devised for broader stakeholder consultation for this national resource. In meeting the constitutional requirement of probity and accountability the Ministry of Finance of the Republic of Ghana chose full transparency and accountability to Imara Corporate Finance Limited of South Africa as Transaction Advisors and other foreign services providers without a modicum of trusting the National House of Chiefs and other Constitutional bodies in the extractive minerals and gold mineral royalties sector for consultation on such an important natural resource of Ghana. South Africa from which Imara Corporate Finance Limited (Pty) is a citizen is a leading and experienced gold producer in the world, but South Africa has not exhibited the same level of trust in Imara Corporate Finance Limited (Pty) which the Ministry of Finance has exhibited for purposes of Ghana's Gold monetization of mineral royalties.

This is why the concerns raised by some of the Chiefs at a consultative or briefing session with the Minister of Finance in the National House of Chiefs, post the 14<sup>th</sup> August 2020 approval by Parliament and reported by the GNA, about "why the Ministry failed to engage them before taking the deal to Parliament despite being custodians of the land with vested interest in mineral royalties" weighed more in this Office's analysis of the risk of corruption and anti-corruption, assessment as a demonstration of the opaqueness of the consultative processes undertaken with the beneficiaries of the trust mineral resource royalties before the grant of Parliamentary approval to the Agreements on 14<sup>th</sup> August 2020. No post facto engagement or consultation or briefing can cure this shortcoming. It does not brood well for the prevention of corruption. It made corruption a low risk venture in the analysis of the risk of corruption and anti-corruption assessment of the Transaction Documents undertaken by this Office.

The difficulties and secrecy intended to surround Agyapa Royalty Limited of the United Kingdom by incorporating it under the laws of Jersey is akin to the difficulty the Government of Ghana has faced in trying to execute the Supreme Court Judgment against Waterville Holdings (BVI) Limited in the case of Amidu (No. 1) v Attorney-General, Waterville Holdings (BVI) Ltd & Woyome (No. 1) [2013-2014] 1 SCGLR 112 for a sum of over 47 million Euros with interest from the date of the judgment to date of payment which the President of Ghana promised in his 2016 electoral campaign to retrieve for the public purse which still remains outstanding. Any reasonable analysis of the risk of corruption and anti-corruption assessment must take account of

Ghana's experience with the Waterville Holdings (BVI) Limited case and the difficulty of executing that judgment debt which the Supreme Court has as late as November 2019 urged the Government to execute based on fresh information and particulars of the Ghanaian ownership of the offshore incorporated company in the safe haven of the British Virgin Islands also of the United Kingdom ordered by the Court and supplied by a supporting affidavit and served on the Attorney-General.

There is no guarantee that the sovereign minerals income royalties being ceded to Agyapa Royalties Limited without a national consensus and the analysis of the risk of corruption, and anti-corruption assessment environment as hereinbefore analyzed is not and will not be a leaking pipe in the public purse. There is further no guarantee that it will not constitute a wind fall from this leaking public purse pipe for those Ghanaians lucky through partisan affiliations to be represented on its management and who might have had stakes as promoters in establishing and incorporating it in the safe haven of Jersey aforesaid.

This analysis of the risk of corruption, and anti-corruption assessment of legislation will lack integrity should this Office not mention the fact that amongst the information and documents submitted to this Office by Parliament in its letter with reference number PS/LS/038/SPO01 dated 15<sup>th</sup> September 2020 pursuant to this Office's notice of request dated 10<sup>th</sup> September 2020 were a copy of the Minerals Income Investment Fund (Amendment) Bill, 2020 and a Minerals Income Investment Fund (Amendment) Act, 2020 (Act 1024) assented to on 27<sup>th</sup> August 2020 and gazetted the same day. As at the last date of enquiry 14<sup>th</sup> October 2020 by emissaries of this Office at both the Assembly Press Shop and the Printing Press near the Accra Polytechnic they were as usual told that Act 1024 was unavailable. It means Act 1024 is not available to the public to know its content as soon as enacted as they are entitled to in every democracy. The conclusions already made on the analysis of the risk of corruption and anti-corruption assessment of enacted legislation also apply to the Minerals Income Investment Fund (Amendment Act, 2020) (Act 1024) should it, even though validly enacted as law, be used retroactively and opaquely now or prospectively in aid of transactions that lower the risk of corruption and thereby act as low risk incentives for the commission of corruption and corruption-related offences.

This analysis of the risk of corruption and anti-corruption assessment was undertaken pursuant to Sections 2(c), 4, 29, 69, and 73 of the Office of the Special Prosecutor Act, 2017 (Act 959) and Regulation 31 of the Office of the Special Prosecutor (Operations) Regulations, (L. I. 2374) and is in fulfilment of the mandate of the Office to undertake measures to prevent corruption which includes the analysis of the risk of corruption, anti-corruption assessment of legislation and draft legislation, publicizing detected acts of corruption, identifying deficiencies in administration of instructions, regulations and procedure, and individual interest, including greed, lack of ethicalness and legal awareness, amongst others. This Office accordingly hopes that the foregoing analysis of the risk of corruption, and anti-corruption assessment of the processes leading up to the parliamentary approval of the Transaction Documents will be received in good faith and used to improve current and future legislative and executive actions to make corruption and corruption-related offences very high- risk enterprises in Ghana.

This assessment does not constitute an investigation even though formal investigations for the suspected commission of corruption and corruption-related offences may arise from this corruption risk assessment. It is not the work of a Commission or Committee of Enquiry. It is what it is, an analysis of the risk of corruption, and anti-corruption assessment of the Transaction Documents. It partakes in the nature of a compliance audit or an Inspector-General's report which needs to be taken seriously, if corruption and corruption-related offences have to be made high risk enterprises for public Officers in Ghana as promised by H. E. the President of Ghana.

**DATED AT THE OFFICE OF THE SPECIAL PROSECUTOR, YANTRABI ROAD,  
LABONE, ACCRA, THIS 15<sup>TH</sup> DAY OF OCTOBER 2020.**

  
**MARTIN A. B. K. AMIDU  
(SPECIAL PROSECUTOR)**