Towards the Establishment of a Mineral Resource Fund in Ghana: A Critical Review of the Minerals Income Investment Fund in Ghana

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A. Introduction

Sovereign wealth funds (SWFs) have established themselves as important sources of capital for the global economy. Their importance is only set to rise to greater prominence in the ensuing decades. In 2013, the cumulative assets of natural resource funds, a subset of SWF were worth US$ 3.5 trillion.[1] Post-COVID-19, the total assets of all SWFs are currently valued at US$ 11.5 trillion as of 2023.[2] SWFs together outflank other institutional investors including hedge and pension funds though they are still significantly less than other institutional assets such as those in insurance and banking. From 1953 when the first SWF, the Kuwait Investment Authority was established, SWFs now number in the hundreds with many more yet to be established. Many notable countries, such as Norway have accumulated wealth in sovereign wealth funds valued at billions of dollars. SWFs have become extremely popular because they are considered vehicles to properly manage government revenue especially when the revenue is obtained from extracting natural resources such as oil, gas or minerals. SWFs funded from the revenue derived from the sale of natural resources such as oil, gas or minerals are termed natural resource funds (NRFs).

Ghana has not been inattentive to the growth of SWFs, in the world and their potential to generate risk-adjusted returns to maximize the value of country revenues. Despite evidence of mining from pre-colonial times, the formalization of the industry in the colonial through the post-colonial epochs has not brought accompanied growth to mining communities. Mining communities and scholars continue to find Ghana's signs or symptoms of the country becoming a rentier state with enclave characteristics.[3] Thus, when Ghana discovered oil in 2007, the social, political, and intellectual consensus was that the mistakes made in mining should not repeat themselves in the then-nascent upstream petroleum sector. For

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1 *Andrew Bauer, Perrine Toledano and Malan Rietveld*, Managing the public trust: How to make natural resource funds work for citizens, USA 2014, 7.

2 *William L. Megginson, Asif I. Malik, and Xin Yue Zhou*, Sovereign wealth funds in the post-pandemic era, Journal of International Business Policy (2023), 10.1057/s42214-023-00155-2.

3 *Gavin Hilson and Abigail Hilson*, Mining in Ghana: Critical Reflections of Turbulent Past and Uncertain Future, in: Ernest Aryeetey and Ravi Kanbur, (eds), The Economy of Ghana Sixty Years after Independence, United Kingdom, 2017.

this reason, in 2011, the Petroleum Revenue Management Act 2011 (Act 815) was passed to put in place a framework for the adequate management of revenues obtained from the upstream petroleum sector. This established the first NRFs in Ghana: the Ghana Heritage Fund and the Ghana Stabilization Fund, collectively called the Ghana Petroleum Funds. In 2018, the Government passed the Minerals Income Investment Fund Act 2018 (Act 978) to sequester mineral royalties to harness them to support long-term development in key sectors of the economy.

Legal rules surely have a role to play in establishing legal institutions, norms, and standards for the management of SWF assets; but that is not the full story. The governance of SWFs is the ultimate determiner of whether SWFs achieve their goals. The fact that SWFs are state-owned, with fabulous sums of money which they can invest, has often led to concerns about SWFs being used to further the political interests of despotic and undemocratic regimes. Further, it has also been argued that SWFs may not invest in assets on a sound commercial basis on other non-commercial basis thereby distorting global financial markets. To stem the worry and guard against protectionism in capital-receiving countries, there have been global efforts to develop standards of good governance for SWFs geared towards improving transparency. The Generally Accepted Principles and Practices (GAPP) adopted in 2008 by some twenty-six countries with SWFs more commonly known as the Santiago Principles are the most prominent of these standards.

In this paper, we carry out a critical review of Ghana's Minerals Income Development Fund, including its establishing legislation, to ascertain whether or not it meets international best practices.

B. The Establishment of SWFs Funds

While the first SWF was funded in the 1950s, the creation of SWFs in many countries only became an established trend after the Asian financial crisis of 1997.[4] Many countries, particularly the Asian tigers, resolved to save their excess foreign exchange reserves so that they could have a domestic insurance buffer against subsequent crises if they did occur.[5] Over time, the cost of these savings was becoming expensive, and many countries chose to park their excess foreign exchange reserves in SWFs.[6] Then in the 2000s, high commodity prices also influenced the creation of SWFs to mitigate the risk of volatile prices in the future.[7] The price of oil, for instance, increased from just US$10 per barrel to more than US$100 per barrel in the 2000s.

4 *Gordon L. Clark, Adam D. Dixon, and Ashby H. B. Monk*, Sovereign Wealth Funds: Legitimacy, Governance, and Global Power, Princeton and Oxford 2013, 18; The world's oldest NRF, the Kuwait Investment Authority was itself a NRF to manage the surplus income earned from the oil revenue.

5 Ibid.

6 Ibid 19.

7 Ibid 19-29.

SWFs are notoriously difficult to define because they are so similar to many other institutional investors such as pension and hedge funds and may even look like state-owned enterprises in certain contexts. Any definition used must be just right. A narrow to not recognize SWFs may exclude some SWFs for instance, a definition that restricts SWFs to the source of its capital, for instance, foreign exchange reserves, may lead to the non-recognition of SWFs which are funded from royalties and other mineral payments.[8] A much broader definition simply obliterates whatever distinction exists between SWFs and other state-owned institutional investors.[9] One such good definition is that provided in Appendix I of the Santiago principles as follows:

> SWFs are defined as special purpose investment funds or arrangements, owned by the general government. Created by the general government for macroeconomic purposes, SWFs hold, manage, or administer assets to achieve financial objectives, and employ a set of investment strategies which include investing in foreign financial assets. The SWFs are commonly established out of balance of payments surpluses, official foreign currency operations, the proceeds of privatizations, fiscal surpluses, and/or receipts resulting from commodity exports.[10]

This definition emphasizes the state-owned nature of SWFs, their purpose as macroeconomic tools, their asset management and investing role and the potential sources of capital. The definition however excludes funds that do solely invest domestically.

The Santiago Principles definition is less elaborately captured than the definition propounded by one of the foremost scholars of institutional investing, Ashbury Monk. Monk's definition is as follows:

> SWFs are government-owned and controlled (directly or indirectly) investment funds that have no outside beneficiaries or liabilities (beyond the government or the citizenry in abstract) and that invest their assets, either in the short or long term, according to the interests and objectives of the sovereign sponsor.[11]

This more functional while succinct definition places less emphasis on the source of the assets which constitute the capital base of SWFs and emphasizes state-ownership, the inexistence of more direct liabilities except for sterilization debt or deferred contractual lability to transfer money into or out of the fund, and the state or citizens as beneficiaries of the fund. Nonetheless, both definitions reveal considerable overlap in that they acknowledge the state's ownership, the presence of investing objectives, and the management and

8 Ibid 14-15.

9 Ibid.

10 *The International Working Group of Sovereign Wealth Funds (IWG)*, Sovereign Wealth Funds: Generally Accepted Principles, Appendix I. Defining Sovereign Wealth Funds, paras 1 and 2.

11 *Ashby Monk*, Recasting the Sovereign Wealth Fund Debate: Trust, Legitimacy, and Governance, New Political Economy, (2009), 14:4, 456.

investment of assets. The crucial point of departure is the emphasis on the fiduciary nature of SWFs in Monk's definition.

Consequently, the categorization of SWF continues to evade global consensus. Categorizations proposed have been along the objectives of SWF (stabilization, savings, or development funds),[12] the relationship of SWFs to sovereignty (post-colonial SWFs, rentier SWFs, productivist SWFs, territorialist SWFs and moralist SWFs)[13] or the sources which constitute the capital base of SWF (reserve investment corporations, commodity funds or pension-reserve funds[14]/ or oil-based and trade surplus based[15]). However, the stabilization, savings and development fund categorization seem to be much more widely accepted as compared to other categorizations and provides a more functional appreciation of the uses to which SWFs may be put.

Stabilization funds are SWFs which are created to prop up a country's budget when price shocks lead to revenue shortfalls.[16] In these present times where it is being argued that resources are for both the present and the future generations, more classically called "intergenerational equity", savings funds are used to set aside some money for the future so that those who come after the present generation will obtain the same financial rewards as the present.[17] Finally, development funds may also be used for development-related purposes usually by earmarking the development funds for specific projects.[18] These core mandates aside, SWFs, no matter their designation may also be used to pursue other economic adjustment objectives, especially in mitigating the Dutch disease – a phenomenon which occurs when large capital inflows into a country lead to an appreciation in the country's exchange rate and renders its other economic sectors unproductive.[19] When capital is not needed, a SWF may be used to sterilize the capital inflow as it may be invested elsewhere.[20] There are other political ends to which SWFs may be used. For instance, the sequestration of revenue along with more explicit rules about how the revenue should be used may help minimize corruption and the mismanagement of resources and revenue in SWFs may also be used by political units or entities to make a case for greater political autonomy.[21]

12 *Megginson, Malik, and Zhou* (note 2).

13 *Clark, Dixon, and Monk* (note 4), 36-44.

14 Ibid.

15 *Bernardo Bortolotti, Veljko Fotak, and William L. (Bill) Megginson*, The Rise of Sovereign Wealth Funds: Definition, Organization, and Governance, in: Stefano Caselli, Guido Corbetta, and Veronica Vecchi (eds.), Public Private Partnerships for Infrastructure and Business Development: Principles, Practices, and Perspectives, Hampshire 2015, 296.

16 *Megginson, Malik, and Zhou (note* 2 *)*.

17 Ibid.

18 Ibid.

19 *Andrew Bauer, Perrine Toledano and Malan Rietveld*, note 1, 14.

20 Ibid.

21 Ibid 15.

The complex nature of SWFs, in that they have both economic and political objectives, has led to concern for investment-receiving countries. Between 2005 and 2006, the conduct of two SWFs, the China National Investment Offshore Oil Corporation, and the Dubai Ports World (not a SWF) purchased shares in Western companies triggering the alarm bells in Washington that SWFs were a threat both to national security and the stability of capital markets.[22] SWFs being used for explicit or implicit political purposes, the volatility risks they present to the global financial markets, the opaqueness of their governance and their relatively inferior corporate governance record have remained some of the enduring criticisms against SWFs.[23] To guard against any form of protectionism by investment-receiving countries, SWFs have themselves been willing and ready to commit to standards and norms which will address the criticisms stated above while at the same time encouraging transparency and accountability for the use of the SWF. These have cumulated in several voluntary global initiatives such as the Santiago Principles which will be discussed more fully in this paper, but for now, the SWFs of Ghana.

C. The Development of SWFs/NRFs in Ghana

The discovery of oil off the coast of its Western region was seen as a game-changer for Ghana's economy.[24] High and unsustainable debt levels among other adverse economic conditions forced the country into an austerity programme in the 1980s. The World Bank's aggressive austerity program, euphemistically called the 'Structural Adjustment Program", while managing to stabilize the economy heavily privatized the economy and led to social and economic unrest as many employees in both state and private companies were declared redundant. In the early 2000s, Ghana submitted itself to another World Bank debt-forgiveness program which led to the country being designated as a "Heavily Indebted Poor Country". Despite the abundance of natural resources in the country, it goes without saying then that the country badly needed revenue to propel itself to true development. However, if history is anything to go by, countries with abundant natural resources have often been bogged down by malignant forces which constrain their ability to harness their natural resources for development – the "resource curse". In the West African sub-region alone, Sierra Leone has fought a civil war over diamonds, and Nigeria's fabulous oil wealth has failed to transform Nigeria's economy.

Ghana did not want the discovery of another resource to perform underwhelmingly like other resources before it. In 2012, the Petroleum Revenue Management Act 2011 (Act 815) was passed to establish two SWFs, the Stabilization Fund and the Heritage Fund. While the stabilization fund was "to cushion the impact on or sustain public expenditure capacity

22 *Adam D. Dixon*, Enhancing the Transparency Dialogue in the Santiago Principles for Sovereign Wealth Funds, Seattle University Law Review, 37 (2014, 282)

23 *Bernardo Bortolotti, Veljko Fotak, and William L. (Bill) Megginson*, note 15, 302-303.

24 Theophilus Acheampong and Thomas Kojo Stephens (eds.), Petroleum Resource Management in Africa: Lessons from Ten Years of Oil and Gas Production in Ghana, Switzerland 2022, ix.

during periods of unanticipated petroleum revenue shortfalls",[25] the Heritage Fund was intended to "support development for future generations when petroleum reserves have been depleted; and…receive excess petroleum revenue"[26]. Fiscal, governance and institutional rules are all clearly spelt out in Act 815. It should be noted that the Stabilization Fund is a stabilization SWF and Heritage Fund is a savings SWF.

Then in 2014, the government established the Ghana Infrastructure Investment Fund to "mobilise, manage, coordinate and provide financial resources for investment in a diversified portfolio of infrastructure projects in Ghana for national development".[27] The Fund as established is expected to carry out investments needed for the development of Ghana's infrastructure to support economic development, reinvest returns to increase profitability, and ensure that its investment contributes to the development of infrastructure development, among others.[28] The fund was generally established when Ghana attained lower-middle-income status to raise the country's infrastructure to similarly placed countries by closing an infrastructure funding gap of US$1.5 billion per annum.[29] Here too, we state this fund is a development fund.

In 2018, the Minerals Income Investment Fund Act 2018 (Act 978) (MIIF Act) was passed. The long title of the law states its broad objectives as follows: "to manage the equity interests of the Republic in mining companies, to receive mineral royalties and other related income due the Republic from mining operations, to provide for the management and investment of the assets of the Fund and for related matters". The object of the fund as stated in the law is three-fold: the maximization of the value of minerals income for the welfare of citizens; the monetization of minerals income in a responsible manner; and the introduction of measures to shield the country's budget from minerals income volatility. The law empowers the Fund to set up and hold equity in special purpose vehicles (SPVs) in or out of the jurisdiction and operate such SPVs as normal commercial entities. The Fund has the power to assign all or even some of its rights in minerals income to the SPV.

The MIIF is governed by a Board of nine made up of the chairperson and CEO of the Fund, representatives from the Ministries of Finance and Lands and Natural Resources, and representatives from the Ghana Revenue Authority and the Bank of Ghana.[30] In addition, there is an Investment Advisory Committee with a duty to advise the Board on the formulation of an investment policy and other matters relating to the investment decision to be taken by the Board.[31]

25 Petroleum Revenue Management Act 2011 (Act 815), ss 9(2).
26 Ibid 10(2).
27 Ghana Infrastructure Investment Fund Act 2014 (Act 877), long title.
28 Ibid s 2(2).
29 Memorandum to the Ghana Infrastructure Fund Bill 2014, p 1.
30 Minerals Income Investment Fund Act 2018 (Act 978) (MIIF Act), s 5.
31 Ibid s 13-19.

Other aspects of the MIIF Act address the financial arrangements of the fund,[32] the role of asset managers,[33] the right of the fund to enter into stability and allocation agreements,[34] and relevant good corporate practices needed[35]. In 2020, the MIIF Act was amended to give the SPVs created under the Act greater autonomy, especially by removing the need for any SPVs created under the Act to comply with the Public Financial Management Act 2016 (Act 921) and the State Interest and Governance Act 2019 (Act 990).[36]

The MIIF is a very unconventional SWF. Its aims do not fall neatly into any of the functional categorizations described above. Therefore, it is unclear whether it is a stabilization, savings, or development fund. What is obvious throughout the MIIF Act is its emphasis on the use of SPVs to carry out its investment functions. These SPVs have immense power and are essentially unfettered in complying with public law accountability and transparency requirements.

Not long after the law and its amendment were passed, the government incorporated a Jersey-based company called Agyapa Royalties Limited which would receive 75.6% of MIIF's rights to royalties in some existing mining leases in exchange for US$500 million cash upfront. This cash would be raised from the sale of shares in the offshore company which would be listed on the London and the Ghana Stock Exchange. Civil society organizations and experts raised serious questions about the Agyapa idea. Kofi Ansah and Fui Tsikata, both of whom have extensive experience in Ghana's mining industry, have argued that the valuation of US$ 1 billion undervalues the company.[37] Using a conservative rate of US$1500 per ounce of gold for the years 2020-2023, they state that the projected revenues from eleven existing producing mines would be greater than US$ 1 billion. One analyst, Bright Simons placed the potential value of the Company at over US$ 3 billion.[38] If the revenue figures post-2023 and the addition of potential royalty revenue from other promising mines, they argue that the valuation given to Agyapa has no justifiable basis more so when the government could make more than US$400 million in 2021 from mineral royalties.

Besides the problems with valuation, the agreement has also been described as broad and open-ended because the value of the royalties is unknown as the Agyapa deal encom-

32 Ibid 27-35.

33 Ibid 25.

34 Ibid 36-39.

35 Ibid 40-41.

36 Minerals Income Investment Fund (Amendment) Act 2020 (Act 1024).

37 *Kofi Ansah and Fui S. Tsikata*, Kofi Ansah & Fui S. Tsikata: A statement on Agyapa Royalties transactions, https://www.myjoyonline.com/kofi-ansah-fui-s-tsikata-a-statement-on-agyapa-royalties-transactions/ (accessed 29 June 2024).

38 *Bright Simons*, Is Agyapa a Sweetheart Deal, https://brightsimons.com/2020/08/30/is-agyapa-a-sweetheart-deal/ (accessed 30 June 2024).

passes all of the leases involved in Ghana's industrial gold production.[39] The payment of royalties will continue for as long as the leases exist including subsequent renewals thereof. This could eventually become perpetual, and it has been likened to the mortgaging of the country's future. Other issues of autonomy and sovereignty were also raised.[40] For instance, a stabilization clause in the deal would prevent the government from making any changes to the royalty rates no matter the level of positive changes in market conditions. There is also the risk of the government losing control over the company if its shares are diluted. Parliamentary oversight is also lacking in the process, and it is unclear what fiscal rules will apply. What was worse, the Government's legal advisor, the Attorney-General raised very similar concerns.[41]

Lawsuits in international courts,[42] public outcry and the generally unfavourable reception around the deal led to the suspension of the deal for broader consultation to take place. The status of the deal remains unclear. It seems to us, and this is corroborated by other scholars, that the unconventional legal and institutional framework on which the fund operates was passed to make Agyapa deal and perhaps related deals possible.[43] However, the absence of transparency, the use of offshore companies and complex agreements lead to more questions than answers. Is this a SWF that operates on international best practices? This will be the preoccupation of the remaining parts of this paper.

D. The Governance of SWF

As noted, in 2008, 26 countries with SFWs came together to adopt the Santiago Principles to improve the governance of SWFs.[44] The principles themselves number 24 divided into three thematic areas: Legal Framework, Objectives, and Coordination with Macroeconomic

39 Nicola Woodroffe David Mihalyi Nafi Chinery, Risk and Reward in Ghana's Agyapa Gold Royalties Deal: Eight Points for Consideration, https://resourcegovernance.org/articles/risk-and-reward-ghanas-agyapa-gold-royalties-deal-eight-points-consideration (accessed 5 July 2024).

40 Ibid.

41 Classfmonline, 'Agyapa Deal: Is Gabby Now the AG's Spokesperson? Amoako Baah Wonders, (accessed 5 July 2024).

42 In December 2020, Transparency International, Ghana Integrity Initiative, and Ghana Anti-Corruption Coalition challenged the Agyapa deal in an application filed in the Economic Community of West African States Courts; Summary of case can be accessed at: https://cddgh.org/wp-content/uploads/2022/05/final-Summary-Agyapa-Case-21-5-22-1_EDT.pdf.

43 Nicola Woodroffe, David Mihalyi, Nafi Chinery, note 39.

44 To see a fuller discussion of the background to the Santiago principles, see Victoria Barbary, Adam D. Dixon & Patrick J. Schena, The Evolving Landscape of Sovereign Wealth Funds in a Changing World Economy: How Resilient Are the Santiago Principles? in: Jens Hillebrand Pohl et al, Weponising Investments, Switzerland.

Policies;[45] Institutional Framework and Governance Framework;[46] and Investment and Risk Management Framework[47].

The first thematic area dictates that the establishment of the SWF has an appropriate basis in law. The policy objectives of the Fund be stated to show that the fund is not going to be used for political agenda or propaganda. The funding and withdrawal rules must also be disclosed and information about the form should be publicly disclosed regularly.

The institutional and governance theme of the Principles directs that the governance framework of SWF shows a clear demarcation of the roles and facilities of all stakeholders who manage the fund in pursuit of "accountability and operational independence in the management of the fund". Other principles on the second leg emphasize the power of the fund owner to establish the objectives of the SWF and appoint the members of its governance body in line with set procedures, the duty of the governing body to act in the best interest of the fund, the operational independence of the fund manager, the existence of an accountability framework in either the governing legislature or other corporate documents, the timely preparation of annual reports with financial statements detailing the fund's operations and performance in line with global and national accounting standards, the audit of the SWF's financial statements, the establishment of standards of professional and ethical conduct, the need to deal with third parties on economic and financial grounds based on clear rules and procedures, and the public disclosure of the governance framework and relevant financial information about the fund.

The third theme on the investment and risk management framework encourages SWFs to adopt investment policies which outline the SWF's objectives, risk tolerance and investment strategies as set by the relevant governing bodies. The investment dealings of the SWF are to be grounded in economics and finance and pursue fair competition with the private sector. Strategies for identifying and managing risks are also recognized in the principles.

Ever since the adoption of the Santiago Principles, SWFs around the world have improved in their transparency at least in the reporting and disclosure of relevant fund data. The International Forum of Sovereign Wealth Fund (IFSWF) which emerged from the International Working Group established by the International Monetary Fund with inputs from the United States Treasury and other interested stakeholders now serves as a platform of SWFs to help its members implement the Santiago Principles.[48] The SWFs, while voluntary, use a peer pressure system by asking members to report intermittently on their compliance with the Santiago Principles. As of 2024, the IFSWF has 38 full-time members and 10 associate members.[49]

45 GAPP 1-5.

46 GAPP 6-17.

47 GAPP 18-24.

48 IFSWF, About Us, https://www.ifswf.org/about-us (accessed 8 July 2024).

49 IFSWF, Our Members, https://www.ifswf.org/our-members (accessed 8 July 2024).

In addition to the Santiago Principles, other initiatives have since emerged to measure the transparency-related aspects of SWF. The Edwin Truman's Sovereign Wealth Fund Scoreboard, the SWF Scorecard published by Global SWF, and the Linaburg-Maduell Transparency Index published by the Sovereign Wealth Fund Institute are some of these initiatives.

Despite the mention of the Santiago Principles in some policy documents, Ghana, as a matter of national policy has not committed to aligning the governance of its SWFs to the Santiago Principles and the country is not a full or associate member of the IFSWF.

While the Santiago principles and other related initiatives are commendable, there is something more to be said about the governance of NRF. The orthodoxy seems to suggest that the establishment of NRF will swiftly and immediately lead to better management of natural resource revenue.[50] Nothing could be further from the truth. While the establishment of SWFs has creditably led to better resource management in some countries and accomplished the objectives for which they were established, the same cannot be said of others.[51] Thus, scholars have established that the political economy of resource revenue cannot be discounted in the study of the effectiveness of SWFs. There are domestic political forces that contest and influence the making of decisions as regards the creation and operations of the NRFs and these may in turn have some consequential effects on political power, material interest and legitimacy.[52] Okpanachi and Tremblay suggest that:

> Like the management of natural resource revenues itself, NRFs may be challenged or contested due to perceived crises of legitimacy, accountability, and transparency, with the possibility of heightened contestations in decisions concerning NRFs between different stakeholders within resource-rich countries, such as elites representing the ruling coalition and governments, and between society and the state.[53]

In singling out legitimacy, they explain that contestations over legitimacy are endemic in natural resource-rich states because resource revenues are deemed to negatively affect institutional quality, especially in countries with low institutions. In states that exhibit rentier characteristics where resource rent accrues to the government, the State may become an illiberal and unaccountable government, civil-society activism may be dampened and political parties weakened, thereby fueling cronyism and corruption.[54] The ownership of

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51 Chile and Norway are prominent examples of NRFs which have worked while those by Equatorial Guinea, Venezuela, Russia and Chad have largely failed.

52 *Eyene Okpanachi and Reeta Chowdhari Tremblay*, Introduction: The Political Economy of Natural Resource Funds (NRFs), in: Eyene Okpanachi and Reeta Chowdhari Tremblay (eds.), The Political Economy of Natural Resource Funds, Switzerland 2021, 5.

53 Ibid

54 Ibid 6.

NRFs, the objectives to which NRFs may be put, and the volatility of resource use are all sites of contestation.[55]

All of this is to say that domestic political forces influence the design of a NRF as well as its operations. Where the motives for the establishment of the NRF are wrong, the effectiveness of the NRF will indeed be questionable. Indeed, it has been suggested by Aggarwal and Goodell that culture may influence SWF governance in three ways:

1) directly impacting beliefs, behavior, and perceived outcome utilities;
2) influencing social and ethical environments which in turn influence transactions costs and the extent to which transactions are internalized (transactions costs are lower with higher transparency especially about self-dealing and governance); and
3) influencing historically in an event path-dependent way relevant current institutions including the disclosure, legal, and regulatory environments.[56]

Be that as it may, and flowing from the Santiago principles and other related initiatives, the Revenue Watch Institute-Natural Resource Charter (RWI-NRC) and the Vale Columbia Center on Sustainable International Investment (VCC) researched 22 NRFs in 18 countries around the world and through the process identified best practices and standards of good conduct which inure to the effective management of these funds.[57] These are crystallized as good governance standards for NRFs. Since the MIIF is a NRF, we propose to adopt these standards and measure the MIIF against them. The standards are as follows:[58]

1. Operations: The objectives of the natural resource fund, the rules on withdrawals and deposits and relevant exceptions should be stated.
2. Investment: there should be restrictions on the collateralization of resource revenue; domestic investment should be prohibited, investment risks; and limitations imposed, and specific investments published.
3. Management: there should be penalties for misconduct, ethical standards, standards on conflict of interest, an explanation of the responsibilities of fund managers and staff, and the role of government agencies in the management of the fund.
4. Transparency and oversight: there should be public disclosure of both internal and external audits of the fund, a formalized oversight mechanism and the preparation and publication of fund reports.

The discussion of the good governance standards largely relies on the RWI-NRC and VCC text.

55 Ibid 6-7.

56 *Raj Aggarwal and John W. Goodell*, Sovereign Wealth Fund Governance and National Culture, International Business Review, http://dx.doi.org/10.1016/j.ibusrev.2017.05.007.

57 *Bauer, Toledano and Rietveld*, note 1.

58 Ibid 31-32.

E. Good Governance Standards and MIIF

I. Operations

Throughout this paper, we have explained that SWFs and by extension, natural resource funds may be established for a variety of purposes such as the smoothing of public expenditure in times of price volatility, saving for future generations, executing development projects, reducing corruption in the management of resource rents, among others. While a fund's objective may be singular, nothing prevents a Fund from having more than one objective or purpose and many SWFs are known to do this. Generally, though, it is best practice to clearly state the purpose of the fund. This may be captured in the law or some other related policy document directing the Fund's overall strategy. According to section 2 of the MIIF Act, the Fund's objects are to:

> (a) maximise the value of the income due the Republic from the mineral wealth of the country for the benefit of its citizens; (b) monetise the minerals income accruing to the Republic in a beneficial, responsible, transparent, accountable and sustainable manner; and (c) develop and implement measures to reduce the budgetary exposure of the Republic to minerals income fluctuations.

What immediately becomes obvious from the above objectives is the Act's preoccupation with the maximization of revenue derived from mineral wealth, at least as seen in (a) and (b). The third objective appears to suggest that the Fund will play a stabilization role in the national budget. If this is true, the phraseology thereof is less than elegant. Compare this section to the Petroleum Stabilization and Savings Funds, which in precise and uncategorical language explain that the Funds are "to cushion the impact on or sustain public expenditure capacity during periods of unanticipated petroleum revenue shortfalls" and "provide an endowment to support development for future generations when petroleum reserves have been depleted" respectively.[59] The MIIF Act's predominant concern with the maximization of values without planting the same in Ghana's macroeconomic realities and the socio-economic expectations of its citizens shows that the Act's objectives are quite different from what one may find in other SFWs both in and out of Ghana.

In addition, there must be clear fiscal rules on the management of the Fund. Fiscal rules are rules which stipulate how deposits and withdrawals may be made. Fiscal rules may advance financial prudence because they constitute "multi-year numerical constraints on government finances".[60] Their presence in legal or policy documents advances the fund's objectives by binding and committing successive governments to the Fund's goals, putting budgetary goals in place, and clarifying what conditions deposits and withdrawals may be made with. Without fiscal rules, countries rich in natural resources may spend excessively when commodity prices are high and reduce their spending when commodity

59 PRMA, ss 9(2) and 10(2).

60 *Bauer, Toledano and Rietveld*, note 1, 21.

prices decline, a consequence of which can gravely throw public finances in disarray and lead to a debt trap. A country's weak absorption capacity and the propensity for the Dutch disease to occur in those instances is a good reason why a country should put adequate fiscal rules in place. According to RWI-NRC/VCC text, there are usually four types of fiscal rules: balanced budget rule, debt rule, expenditure rule and revenue rule.[61] These rules as tools of economic prudence may place limits on the country's balances based on headline or structural terms; limit a country's public debt as a percentage of its GDP; limit public spending as in absolute terms, growth rates or as a percentage of its GDP; or placing limits on revenues that enter the budget so that the amount that does not enter the budget is saved in a fund. Deciding which fiscal rules work for a country is not exactly straightforward and several factors such as the length of production remaining on resources, the state of the country's development, the country's development needs and the necessity for a broader fiscal space are all considerable important. Nonetheless, more than one fiscal rule can be combined.

Any fiscal rules agreed on may then be broken down into deposit and withdrawal rules. Rules on deposits ought to explain what the Fund's revenue sources are and how deposits are to be made. Withdrawal rules on the other hand ought to also describe how withdrawals are to be made, applicable limits and approvals needed. The RWI-NRC/VCC notes that generally, transfers are made to the state treasury.[62]

From our review of the MIIF Act, the rules on deposits appear sufficiently clear though the rules on withdrawals are not. In section 27 of the MIIF Act, the Fund's revenue sources as identified as minerals income,[63] interests from investments, revenue from the sale of shares, rights, or other interests in an SPV, other charitable and voluntary contributions made to the Fund, sums, or property which the Fund may become entitled to, and the sums of money approved by Parliament. For royalties payable to the Fund, the Ghana Revenue Authority is in charge of their assessment, collection and accounting.[64] Where the royalties are assessed, the mining company under the obligation to pay such royalties is expected to make a direct transfer of the sums assessed to the Fund by direct transfer and notify the Fund and the Ghana Revenue Authority.[65] The payment of royalties is not categorized as taxes payable to the Republic but suffices for the discharge of any obligation to pay royalties under the Minerals and Mining Act 2006 (Act 703).[66] Where in any agreement, the Government chooses to receive minerals as payment of royalties, the value of the

61 Ibid 50.

62 Ibid 56.

63 The MIIF Act, s 45 defines minerals income to mean: " (a) any mineral royalties; and (b) any amount of money payable to the Republic on account of a minerals equity interest including any divestment or sale of that equity interest".

64 Ibid, s 28(1).

65 Ibid, s 28(2).

66 Ibid, s 28(5).

minerals shall be recorded on the day that the Government receives the minerals and the proceeds from the sale of the minerals shall be transferred to the Republic within 60 days from the date the State received the minerals.[67]

The MIIF Act as understood from its long title is a law passed to sequester mineral royalties and related payments. However, section 30 of the MIIF Act transfers all mineral equity interests held by the Republic to the Fund, together with all rights and obligations therein.[68] The Fund may in turn transfer all or some of the equity interests to an SPV.[69] "Minerals equity interest" is defined in the MIIF Act to mean;

> (a) any direct or indirect equity or similar interest of the Republic in a mining company; (b) any right of the Republic to receive dividends and other guaranteed amounts whether or not associated with an equity interest and whether under law or contract from a mining company; and (c) any right of the Republic to receive amounts under arrangements entered into pursuant to a Mining Investment Agreement to satisfy section 43 of the Minerals and Mining Act, 2006 (Act 703).[70]

Section 30 of the MIIF Act expands the sources of revenue that may be available to the Fund beyond the royalties and related payments to all other payments associated with the State's equity interest in mining companies in Ghana. All forms of dividends paid in respect of the State's equity interests will therefore constitute income for the Fund. Therefore, the purpose of the Fund as captured in the Act's long title contradicts other provisions in the Act as far as the sources of the Fund's revenue are concerned. Worse still is the issue of control, for if the Fund is legally permitted to pass on the State's equity interests in mining companies to the SPV which are to operate only as independent commercial entities, there are serious questions about the State's ability to effectively manage such SPVs which may in any case not be established or incorporated in Ghana. The free hand given to the Fund to transfer the State's equity interests without adequate safeguards, especially Parliamentary scrutiny and approval raises more questions than answers.

Withdrawals from the fund are covered under section 31 of the Act. Under this section, the Fund must, within three days of receiving any mineral income transfer 20% of that amount to the Minerals Development Fund[71]. The rest of the money is to be discharged in accordance with the Act, the Investment Policy Statement made under the Act, and any allocation agreements ratified by Parliament. Where income is made on minerals invest-

67 Ibid, s 29.

68 Ibid, s 30(1).

69 Ibid, s 30(2).

70 Ibid, s 45.

71 The Minerals Development Fund (MDF) predates the creation of the MIIF. MDF was created in 2016 under the Minerals Development Fund Act, 2016 (Act 912). Act 912 provides for the transfer of 20% of minerals royalties to the MDF fund manager to be disbursed according to the provisions of Act 912. The disbursement provision under the MIIF is therefore in fulfilment of the requirements of the law under Act 912.

ments, the investments are to be disbursed in accordance with the Investment Policy Statement and other directives of the Minister of Finance.[72] Here too, we observe that there are serious problems with the withdrawal rules set by the Act. The whole purpose of rules is to constrain discretion within a certain band of reasonableness. How much can be withdrawn, on what grounds may such amounts be withdrawn, to which accounts, and the authority which may approve the withdrawal and on what basis are all unstated and the responsibility ceded to the Minister and an Investment Policy Statement the proposed contents of which are unstated. There is too much discretionary authority contrary to best practices under the Santiago Principles. Furthermore, the link between the minerals investment income and the State's treasury (the consolidated fund) and the general connection between the Fund's income and the country's macroeconomic activity and environment is all but absent. These rules can easily be manipulated to transfer minerals investment income into other funds to fund expenditures without any proper oversight or accountability.

II. Investment

The money in NRFs doesn't just sit in accounts; they are invested in assets and other financial instruments. However, fund managers should not be given the absolute right to treat the assets of NRFs as they please. There should therefore be clear investment rules to constrain how investment is done. Investment decisions inevitably depend on the policy objectives of the Fund. For stabilization funds, the NRF will focus on safer, liquid and lower-return investments while a savings fund might mix these safer investments with long-term higher-risk investments.[73]

Investment rules govern the allocation of assets using benchmarking to prevent fund managers from exceeding the benchmarked figures, eligible assets and permissible trading strategies, and portfolio rebalancing.[74] The assets which may be allocated include cash assets such as money market instruments, fixed-income bonds, equities, and alternative assets such as ad derivatives and real estate.[75] How these assets will be allocated will depend on the Fund's objectives. Generally, some NRFs prohibit investments in certain assets.[76] For instance, investment in domestic assets is prohibited in some countries. Other countries prohibit the acquisition of investment in assets below a certain minimum rating assigned by rating agencies such as Standard and Poor's, Fitch, or Moody's. Restrictions on private market instruments, other types of risky assets such as Over-The-Counter (OTC) derivatives, and the currencies in which investments may be made.[77] Others prevent the

72 Ibid, 31(3).
73 *Bauer, Toledano and Rietveld*, note 1, 63-64.
74 Ibid 65-69.
75 Ibid 62-63.
76 Ibid 66-68.
77 Ibid.

Fund from being used as collateral for government debt as this helps constrain reckless borrowing and restrictions on the Fund acquiring debt to, for example, acquire assets.[78]

We note that section 39 of the MIIF Act gives the MIIF Board the power to issue Investment Guidelines in consultation with the Minister of Finance. These Investment Guidelines can always be updated where relevant.[79] The Board is also empowered to make or revoke any codes of practice or procedures that it considers necessary only on condition that they are consistent with the Act.[80] In 2021, the MIIF Fund adopted an Investment Policy and Guidelines. The Investment Guidelines are quite comprehensive and are intended, to

> …provide a framework and procedures for the investment operations of the Fund and also to assist the Board of Directors, Management, and External Fund Managers of the Fund in their quest to maximize the income from minerals royalties accruing to the Republic through the optimization of returns within an acceptable level of risk.[81]

There objectives of the Fund include the establishment of rules to facilitate an understanding of the Fund's investment goals, objectives or assets, the identification of investment opportunities especially in extractives, the creation of a framework to select and monitor investment results, and the identification of permitted asset classes.[82] The Policy identifies what it calls, key investment areas. These include the sound and effective management of minerals revenue through investments which in some cases will include support of the Government's budget, community social investments in mining communities, portfolio diversification, and the maximization of its portfolio value through SPVs to raise domestic and international capital.[83] In the mining sector, the Policy states that the Fund will explore joint-venture opportunities in the mining sector together with other funding partners and consider the acquisition of equity participation in the establishment of mining infrastructure.[84] Community social investing will prioritize the establishment of specialized health and educational facilities in mining areas.[85] The assets which the Fund may acquire include equity participation, capital raised through the listing and sale of shares in Agyapa Royalties, sovereign and corporate bonds, and issuance of bonds backed by the mineral royalties both in and out of Ghana.[86]

78 Ibid 68.
79 MIIF Act, s 39(2).
80 Ibid 39(3).
81 MIIF, Investment Policy and Guidelines, 2021, para 5.
82 Ibid, para 6.
83 Ibid 22-29.
84 Ibid 26-27.
85 Ibid 28-29.
86 Ibid 30-34.

The disbursements of the fund's receipts are captured in the table below.

Assets under the Agyapa Transaction	
Gold (Large Scale)	
Total Receipts	100.00%
Disbursement	
Minerals Development Fund (MDF)	20.00%
Ghana Revenue Authority (GRA)	2.40%
Agyapa Royalties Limited (Investment)	75.60%
Minerals Income Investment Fund (Operations)	2.00%
Assets Outside the Agyapa Transaction	
Mid-Tier Gold & Other Mineral-types	
Total Receipts	100.00%
Disbursement	
Minerals Development Fund (MDF)	20.00%
Ghana Revenue Authority (GRA)	2.40%
Agyapa Royalties Limited (Investment)	0.00%
Minerals Income Investment Fund (Operations)	2.00%
Cash Available for Other Investments	**75.60%**
Dividend	**100%**

Source: Minerals Income and Investment Policy and Guidelines, 2021 – page 10

What is apparent from this table is that the Investment Policy is built around the Aygapa deal which as noted earlier has raised serious concerns among experts and civil society organizations. What is equally startling is that the creation of the Agyapa entity itself precedes the existence of the Investment Policy and is explicitly recognized as a recipient of as much as 75.6% of all royalties from large-scale gold mining companies. Other royalties outside the transactions are however available to the Fund for investments.

Asset Class	Target	Lower Limit	Upper Limit	Benchmark
Equities	75.6%	25.0%	80.0%	MSCI ACWI
International Bonds	15.0%	7.0%	20.0%	Bloomberg Barclays U.S. Aggregate Bond Index
Bank Securities & Other Money Markets	3.4%	2.0%	5.0%	91-day Tbills+1%
Cash	1.5%	1.5%	3.0%	Nil
Alternative Investments	4.5%	4.0%	6.0%	MSCI ACWI+1%
Total	100.0%			

Source: Minerals Income and Investment Policy and Guidelines – page 11

Concerning the asset allocation, the table above establishes the five asset classes to which assets may be allocated in addition to the benchmarks which would be used to determine the quantity of investments made in those specific assets. While these may theoretically meet investment rules on asset allocation and benchmarking, the situation is much more complex. The equity value of 75.6% here is not equity investments made in commercial entities but equity investments to be made in the SPV – Agyapa – incorporated by the Fund

itself. It is also not a simple case of sums of money being given in exchange for shares, but rather the transfer of rights to royalties potentially in perpetuity to the SPV. The problem with this so-called innovative funding solution has already been discussed at length in this paper and there is no use repeating the same here.

Also worth mentioning are the provisions of the Policy on engaging external fund managers. An external fund manager is expected to be a registered member (who is in good standing) of the Securities and Exchange Commission, Ghana Stock Exchange and other bodies. The selection by the Board shall be based on "prudent and due diligence procedures" of which nothing else is said.[87]

However, when the investment provisions of this Fund are compared to best practices, we find some permissible transactions which may adversely impact the Fund's governance. For instance, under section 3(e), the Fund can grant security or encumber the property and assets of the Fund. The Fund does not also prohibit local investment. In fact, it encourages it without any limitation. As already stated, a rationale for setting up NRFs is to control the inflow of foreign exchange into the local economy so as not to negatively affect economic indicators, especially in the area of exchange rate volatility. This will not portend well for overall economic development especially when MIIF takes decisions based on its narrow scope of increasing revenue as captured by the Act.

III. Management

Sound management of the NRF largely depends on the establishment of appropriate structures, the allocation of duties, and the introduction of ethical and professional rules of conduct. Where NRFs are poorly governed, the NRF is unable to meet objectives, resources are misused, and corruption is allowed to fester. For this reason, the governance of NRFs is often divided into two main areas: the macro management of the Fund and the organization of its internal affairs.[88] At the macro-level, a SWF should have a body which is ultimately responsible for the Fund.[89] This body approves or disapproves withdrawals and deposits, approves fund decisions and appoints or dismiss the Fund managers.[90] Countries may choose to make their legislature, and executive of central banks the bodies with ultimate control over the Fund. Closely related to this body is the actual Fund manager who sets investment policy and deposits or withdraws money.[91] The Fund manager may be a ministry of the executive, the central bank or a special body established by law. There is usually an advisory body of sort which provides investment advice and advice on

87 Ibid 52-56.

88 *Bauer, Toledano and Rietveld*, note 1, 36.

89 Ibid 38.

90 Ibid 37-38.

91 Ibid 38.

investment strategies.[92] In Ghana's petroleum sector, for instance, Parliament is responsible for determining which sums go in and out of the Petroleum Fund. The Central Bank, the Bank of Ghana, is the Fund manager and the advisory body is an Investment Advisory Committee with members competent in finance, economics, law, investment, et cetera[93].

At the internal level, there is an operational Fund manager to carry out the day-to-day operations of the Fund.[94] The operational manager appoints external fund managers and advises on investments.[95] The operational manager is constituted by a governing board which dictates strategic investment direction and approves budgets and other matters related to risk or reporting, the office of the executive committee or managing director, and a front, middle and back office.[96] The choice of the operational manager may be the Central Bank, a ministry, or a separate legal entity. Ghana's petroleum funds, for example, have the Central Bank as the operational manager. It is often suggested that where the Fund involves the management of relatively uncomplicated assets, the Central Bank may be a good place to house the Fund; otherwise, a dedicated institution will be a better idea though a separate institution gives rise to issues of non-transparency and accountability.[97] Conflict of interest, insider-trading and making private gains off the back of the Fund are recognized as serious problems and it is for this reason that there should be adequate codes or rules of conduct to guard against such unprofessional or unethical conduct by staff of the Fund.[98]

Our review of the MIIF Act shows that at the micromanagement level, the executive has the ultimate control over the Fund. We reach this conclusion based on provisions of the Act which give the President the power to appoint and dismiss the members of the governing board of the Fund, the chief executive officer of the Fund, and other staff and professional managers of the Fund.[99] In addition, the Minister of Finance whose executive power is drawn from the President has several roles in play in the management of the Fund. The Minister must also be consulted where the Board intends to carry out any activity not stated in the Act; when the Board intends to appoint the members of the Independent Investment Committee; when the Board intends to engage the services of asset managers to manage either the assets of the Fund or an SPV; and when the Board intends to make investment guidelines.[100] In other cases, the Minister's approval is needed, for example, when the Fund is opening a new office or branch whether in or out of the jurisdiction.[101]

92 Ibid 39.
93 PRMA, s 31(1).
94 *Bauer, Toledano and Rietveld*, note 1, 40.
95 Ibid 42.
96 Ibid 43-46.
97 Ibid 41.
98 Ibid 45-46.
99 MIIF Act, ss 5(3), s 21(2), s 24(1).
100 Ibid ss 4(1)(g), 14(2), 25(1), 39(1).
101 Ibid, s 26.

Also, when minerals rights vested in the Fund are transferred to an SPV, the Minister's consent must be sought.[102] It should also be recalled the Minister may give directions about the disbursement of the minerals investment income. The only instances where Parliament has some role is the ratification of stability or allocation agreements.

The formal fund manager it seems is the Ministry of Finance. With the powers given to the Minister to do all the above as well as a general provision in section 13 of the Civil Service Act 1993 (PNDCL 327) about ministries being responsible for policymaking, one can conclude that the Minister of Finance is the formal fund manager. However, the MIIF acts as the operational manager. The Fund is established as a body corporate with "perpetual succession, and a common seal, may sue and be sued in its corporate name and have in all respects the powers of a body corporate".[103] The governing board of the Fund is responsible for making operational policy and ensuring that the objects of the Fund are pursued.[104] The powers of the Board, the terms on which they may hold office, and the conditions under which they hold office, are all stated in the Act, as are those of the Investment Advisory Committee, and the chief executive officer.[105] The appointment of other staff and asset managers are all provided in the Act.[106] There are also rules on conflict of interest and the disclosure thereof for board members and members of the Investment Advisory Committee.[107] Any member of either the board or committee who fails to disclose any conflict of interest shall cease to be a member.[108]

The actual department in the MIIF Fund responsible for the actual investment is called the "Investment Department" and is responsible for:

> …for the analysis and efficient execution of all portfolio transactions consistent with the MIIF Investment Policy and Guidelines. The functions of the Department include, but not to be limited to maximizing the minerals income of the Republic through investments and monetization of all or a portion of MIIF's minerals income through special purpose vehicles, borrowing from domestic and external capital markets, developing investment modules for domestic mining companies, among others.[109]

From our assessment, there is in place a clear structure with clear duties and responsibilities devolving on several stakeholders, both at the macro and micro levels. However, the appointment process of its governing board is quite unsatisfactory. It appears almost imperial, giving the President the right to appoint and dismiss at will. Furthermore, acting as an entity with overall control over the fund and as the Fund manager is at odds with

102 Ibid, s 30(2).
103 Ibid, s 1(2).
104 Ibid, s 7.
105 Ibid, ss 5-12, 13-19, 21-23.
106 Ibid s 24.
107 Ibid s 11 and 18.
108 Ibid s 11(2) and 18(2).
109 Investment Guidelines, para 66.

principles of independence and transparency. The room for supervision is much narrower in that instance as the entity which should have had overall control is the same entity supposed to check the formal fund manager. We believe the legislature through its committee system should have had a much greater role to play in critical processes involving the fund such as disbursements, receipt of minerals income and minerals investment income, and the transfer of mineral rights to SPVs. Without enough wiggle room, reporting requirements in the Act especially reporting to Parliament will not be sufficient to achieve much as Parliament will not have enough powers to take timely action.

IV. Transparency and oversight

In addition to all the various components of good natural resource fund governance discussed above, there is the need for transparency and oversight to protect the Fund against mismanagement. According to the RWI-NRC/VCC, independent oversight bodies are important because they identify gaps in governance and assist the State in implementing reforms to plug those gaps, draw attention to mismanagement thereby putting pressure on the State to take remedial and corrective measures, and prevent the overconcentration of power in the hands of either the executive or the fund manager.[110]

Independent oversight bodies and mechanisms may be external or internal. Where they are internal, external independent bodies can still play a role in checking internal oversight bodies or mechanisms.

Independent oversight bodies identified include the legislature, the judiciary, regulatory agencies, independent auditors, multi-stakeholder groups, the media and independent organizations. The legislature may check the NRF in a number of ways. Where the law allows, the legislature may approve the budget of the Fund and some of its plans. The legislature may also receive reports, hold hearings and check for non-compliance. The judiciary as the bulwark of justice has the power in many jurisdictions of judicial review, and this can be used to identify issues of non-compliance and compel compliance. The office of the auditor-general in many jurisdictions is expected to be an independent audit body responsible for auditing the finances of government entities and making those findings known. In some cases, the law may create multi-stakeholder groups, like the Public Interest and Accountability Committee (PIAC) established under the PRMA[111] which is responsible for monitoring compliance with the PRMA and other relevant laws, carrying out independent assessments about the use and management of petroleum revenue and providing a platform for debate for matter concerning petroleum revenue. Free media can also report on non-compliance and give civil society organizations the impetus to act. International bodies like the IMF and the IWGSWF either report on SWFs or encourage members to voluntarily

110 *Bauer, Toledano and Rietveld*, note 1, 80-81.

111 PRMA, s 51. The PIAC functions almost like a civil society organization with membership from various professional, religious, labor and Indigenous bodies.

report. These and other forms of international transparency indicators place pressure on SWFs to conform to good governance standards lest they are assessed unfavorably.

From our review of the MIIF Act, there is some commitment to independent oversight though this does not go far enough. The Board under section 37 is to keep good records in a form approved by the Auditor-General and submit its accounts to the Auditor-General within three months after the financial year ends. The Auditor-General has the responsibility of auditing the accounts within six months after ending of the financial year.[112] After the audit report is ready, it is forwarded to the Board and a copy is given to the Minister.[113] The Board will then add an annual report of its activities and send the audit report with the accompanying Board report to the Minister who will then forward same to Parliament within one month of receipt.[114] The audit report of the Fund's activities and the audit report are collectively called "annual report". Section 36(4) suggests that the Board must make annual reports of the Fund readily available to the public. There are no timelines within which the Board is to do it, and neither is a platform through which same is the made available to the public especially since the annual report embodies an audit report by the Auditor-General.

The provisions in the MIIF Act stand in sharp contrast to the more robust provisions in the PRMA which specifically recognizes the Petroleum Funds as public funds of Ghana.[115] By so doing, the Funds fall under the very stringent financial accountability rules in chapter 13 of the Constitution. These rules give Parliament the right to approve expenditure and withdrawals from the Fund.[116] The Auditor-General is tasked with auditing public funds.[117] In line with the provisions of the Constitution, the PRMA Act directs the Bank of Ghana to submit financial statements of the Fund to the Auditor-General within three months after the end of the financial year.[118] The Auditor-General is specifically asked to determine if

(a) the accounts have been properly kept;
(b) the payments due to and disbursements from the Petroleum Funds have been made, and
(c) the Petroleum Funds have been managed in accordance with the provisions of this Act.[119]

The Auditor-General shall then submit the reports to Parliament within three months of receipt of the financial statements from the Bank of Ghana and publish the reports within

112 MIIF Act, s 37(3).
113 Ibid.
114 Ibid, s 38(1).
115 PRMA, s 42.
116 1992 Constitution, arts 178 and 179.
117 Ibid 187.
118 PRMA, s 46(1).
119 Ibid, s 46(2).

thirty days after submitting same to Parliament.[120] The Auditor-General is asked to draw Parliament's attention to any irregularities. Parliament Accounts Committee which holds hearings to interrogate representatives of state entities based on the audit reports before it.[121]

The PRMA goes further. It provides for internal and special audits and gives guidance on the preparation of the annual reports of the Funds.[122] The annual report must contain information about withdrawals, deposits, and asset allocation.[123] The Fund takes transparency seriously and not only asks that petroleum revenue be managed in accordance with the highest internationally accepted standards but also creates an independent multistakeholder group called the Public Interest and Accountability Committee (PIAC) with representatives from organized labor, the National House of Chiefs and Association of Queen Mothers, the Association of Industries and the Chamber of Commerce, the Journalists Association, Bar Association, the Institute of Chartered Accountants, the Ghana Extractive Industries Transparency Initiatives, the Ghana Academy of Arts and Sciences and religious groups.[124]

When the oversight framework under the PRMA is compared to that of the MIIF Act, the gaps immediately become obvious. There is no room for internal or special audits. The annual report of the Fund is not specific about what information ought to be reported other than information about minerals income and investment income receipts, the report of the auditor general and the performance of the Fund relative to its objects. Asset allocation and the performance of these assets against benchmarks for instance is not captured. While the MIIF Act reiterates in similar language the need to manage the Fund in accordance with international best practices, it falls short of establishing a similar multistakeholder group such as the PIAC.

Also, it is unclear whether the MIIF Act is a public fund under article 175 of the Constitution, whether the financial provisions in the Constitution will apply to the Fund and whether the Fund's expenditure, deposits, and withdrawals will have to be approved by Parliament. The Act does not provide any answers. However, a reading of the Act shows that the disbursement of the money from the Fund under the Act is subject to two things: the Investment Policy Statement and the directives of the Minister of Finance. The Fund's expenditures, including its staff salaries, are all approved by the Minister and charged to the Fund. The hand of the executive arm of government is everywhere in the Act thereby edging out Parliament from any meaningful supervision of the Fund beyond the reporting obligations the Fund owes it every year. The only substantive role Parliament has in relation to the ratification of stability and allocation agreements which in themselves may constrain a state's ability to legislate.

120 Ibid, s 46(4).
121 Ibid, s 46(5).
122 Ibid, ss 44 and 47.
123 Ibid, s 48(2).
124 Ibid, s 54.

In addition to all of this, the Fund has not shown *true* commitment to transparency at the international level. The Fund is not a member of the IFSWF and principles like the Santiago Principles, while recognized as best practices to which the Fund ought to follow, are not mandatory as the Fund is not under the voluntary obligations of IFSWF.

To sum up transparency and oversight, the MIIF Act contain only broad and open-ended provisions on transparency and oversight. Reports prepared under the Act may not disclose critical information such as asset allocation and asset performance against benchmarks. Parliament's role in overseeing expenditure, deposits and withdrawals is diminutive since the Fund's management and control is almost entirely in the hands of the executive thereby bypassing usual financial approval provisions in the Constitution.

F. Recommendations and Conclusions

The establishment of the Minerals Income Investment Fund is clearly an important step towards safeguarding resources that accrue from the mineral sector in Ghana. What is obvious is that, despite more than a century of sustained mineral production in Ghana, the country is dissatisfied with what has been the benefit of the mineral sector to the overall development of Ghana. Creating a natural resource fund to set aside funds from the mineral resources sector will allow a well-reasoned and deliberate approach to investing the revenue from the mineral resources for the benefit of Ghana. However, the creation of the natural resources fund in and of itself does not lead to better management of the revenue. It is the institutional arrangement that governs the fund that gives it the chance to align its practices to ensure better management of the revenue accruing from the natural resources. In this regard, as has been noted, the institutional architecture around the minerals income investment fund aligns well with international best practices. What constitutes revenue for the fund has been clearly defined. The governance structure of the fund has also been spelt out by law. The decision processes around how the funds are received, disbursed and invested have also been provided for. There is a system of accountability that combines the oversight powers of the Auditor General of Ghana as well as the Parliament of Ghana.

Despite the above, a whole lot more can be done to further strengthen the minerals income investment fund. First, taking steps to come under the ambit of the Santiago Principles will bode well for the management of the Fund. In this way, there are clear guiding principles that the Fund must adhere to to maintain its membership. The peer-pressure/peer-review mechanisms under the international system ensure that the Fund will remain cutting edge as its practices will reflect best practices around the world.

In addition, one area that the government would have to reconsider is the institutional arrangements around the use of SPVs in the investment and achieving the aims of the Fund. The importance of the use of SPVs in the management of natural resource funds is not lost on the authors. Indeed, SPVs allow for flexibility in the marketplace. Among other things, they allow for the ring-fencing of risks so that the Fund can have the free hand to diversify its portfolio and invest in high risks and high returns portfolios. In addition,

SPVs allow for the insulation of businesses from the clutches of the usual bureaucracy and red tape that are often associated with government business. However, this must be balanced with the important norms of accountability, transparency and public participation. The ultimate rationale for the Fund is to ensure maximum beneficiation for the people of Ghana. A system that does not allow for increased public scrutiny defeats the whole purpose and risks public backlash. As it stands now, SPVs created under the Fund have almost unfettered powers in terms of their operations. In addition, they can be set up in tax havens and jurisdictions with little or no transparency in the ownership and running of companies. Although there may be corporate benefits of operating in tax havens and opaque jurisdictions, public participation and openness trumps any benefits that will accrue from setting up SPVs and operating them from opaque jurisdictions. The people must be carried along in all the business of the Fund. Where there is good news in its operations, it must be shared and where there is bad news it must equally be shared with the same level of prominence. It is in this way that the Fund can foster a true sense of ownership from the public and garner the necessary public support to ensure that good news is celebrated, and bad news is interrogated, and corrections effected without distorting the business of the Fund.

As things stand, the executive is too powerful and too present in the governance and management of the Fund. The President has a direct hand in the appointment of almost all the persons who run the affairs of the Fund. The President also wields the power of "dis-appointing" these persons. The powers of the President here have the propensity to affect the independence of the appointees. In Ghana, where the Constitution as well as the political culture create a strong executive presidency with a strict hierarchical system of administration, the powers of the president can be overwhelming and may choke the independence and professionalism of the appointed personnel.

In the area of investment advisory where the Act tries to create some semblance of independence, the executive is still ever present. For instance, the independent investment advisory council will have to consult the Minister of Finance in determining the investment policy of the Fund. The investment advisory council is supposed to be made up of accomplished professionals. If we consider the members of the investment advisory council to be consummate professionals in their field, then they should have a free hand to discharge their duties. After all, they have provisions of the Act as their guiding post as well as a check in the discharge of their functions. Having a board of directors in place and yet the investment advisory council bypassing the board to confer with the minister in the discharge of part of their work itself does not portend well for good corporate governance. There should be the necessary amendments in the law to ensure that the Fund frees itself from the powerful clutches of the executive. Perhaps, there should be a complementary role played by the executive and the legislature in the appointments of the officers and personnel of the Fund to ensure proper accountability. The executive can appoint the board of the Fund as well as its chief executive officer. Parliament through its sub-committees should appoint the members of the investment advisory committee.

The oversight and accountability mechanisms of the Fund can also be enhanced when parliament and executive play different but complementary roles. As it stands now, the oversight role that is played by Parliament is to receive the report that has been prepared by persons and institutions controlled by the executive. Here, the scrutiny by Parliament would be largely based on the document that would have been submitted to it by the Auditor General through the Fund. Whatever is not captured in the report is likely to fall under the radar of Parliament. An independent watchdog in the nature of PIAC as it exists under the PRMA in the oil and gas sector would be desirable. The independent watchdog with broad based representation and without any direct ties to the executive would have access to any source documents and prepare its reports directly to the people of Ghana through parliament. This will not only enhance accountability and transparency, but it will also encourage public participation.

Finally, the lack of clear boundaries around investment of the revenue of the Fund in the domestic market is a source of concern. One of the international best practices in the management of natural resource funds is to invest the funds outside the local market. It helps with the diversification of investment and also sterilizes the uncontrolled inflow of foreign currency into the domestic market with its attendant negative economic effects. In the case of the MIIF, it appears to be a prudent and pragmatic approach to allow investment in the domestic market. Indeed, one of the biggest concerns is that the mineral resources sector in Ghana is dominated by foreign interests. The reason for the foreign dominance has been attributed to the inadequate financial muscle of the local market to invest in the sector. In addition, Ghana as a developing country is always clamoring for foreign direct investment (FDI). However, the annual repatriation of dividends has always put a strain on the stability of the local currency. Thus, leveraging its own funds to invest in the mineral resources sector as well as other sectors and minimizing FDI with its associated annual capital flight is not a bad idea. Nevertheless, an unfettered power to invest in the domestic market would also not portend well for the overall aims of the funds. First, over-concentration of investment in the domestic market would defeat the purpose of diversification. Any domestic shocks in the local economy are likely to affect the health of the investments. Currently, with the executive wielding so much power in the management and operations of the Fund, there can be an unhealthy increase in domestic investments for short term political expediency. Unchecked, an increase in domestic investments may also lead to an increase in the supply of foreign currency into the domestic market which may have a long-term effect on the exports of the country. It is therefore important that some limitations are placed on the power of the Fund to invest in the domestic market. These limitations may be driven by the movement of economic indicators. They may also be in the area of portfolio allocation or actuated by a national development plan.