



# Ghana

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## **DOING BUSINESS IN GHANA**

**BY BENTSI-ENCHILL, LETSA & ANKOMAH**

### **Political System**

Ghana has a constitutional government under a multiparty democracy.

### **Forms of Business**

- Unincorporated businesses / sole proprietorships
- Incorporated partnerships
- Statutory corporations
- Company limited by shares (the liability of shareholders for the debts of the company is limited to any amounts unpaid on their shares)
- Company limited by guarantee (the liability of shareholders for the debts of the company is limited to amounts that they respectively undertake or guarantee to contribute to the assets of the company in case of liquidation)
- Unlimited companies (there is no limit on the liability of the members. The few unlimited companies that exist are mostly law firms and other professional organisations that may be prevented from operating as limited liability companies by professional rules)
- External company (incorporated bodies formed outside Ghana that seek to operate in Ghana register as external companies if they establish a place of business in Ghana).

Companies may be either public or private.

### **Investment Climate**

The Constitution protects private property and prohibits compulsory acquisition except under due process of law. Parliamentary approval of international economic and business transactions to which the government is a party is required. Natural resource grants also require parliamentary approval.

Under the Ghana Investment Promotion Centre Act (GIPC Act) non-Ghanaians may invest and participate in the operation of enterprises in Ghana. In the case of a joint venture with a Ghanaian, the non-Ghanaian must invest at least US\$200,000 in foreign capital or its equivalent in capital goods by way of equity participation. The GIPC Act does not prescribe a maximum percentage of Ghanaian ownership in a joint venture enterprise, but the GIPC Act requires a minimum of a 10% Ghanaian shareholding in a joint venture. Where the enterprise is to be wholly owned by a foreigner there must be an investment of foreign capital of at least US\$500,000 or its equivalent in capital goods by way of equity capital. In the case of a trading enterprise involved only in purchasing and selling goods owned either wholly or partly by a non-Ghanaian there must be investment of foreign capital of at least US\$1,000,000 by way of equity capital and the enterprise must additionally employ at least 20 Ghanaians.

The above minimum capital requirements do not apply to portfolio investments or enterprises established exclusively for export trading.

Incentives granted under the GIPC Act include:

- an immigration quota limited to the amount of the paid-up capital of the company;
- personal remittances of wages through authorised dealer banks;
- free transferability of dividends and profits; and
- other special incentives that may be negotiated with the GIPC to promote certain identified industries.

## **Tourism**

The Ghana Tourism Authority (“GTA”) is the body that oversees the tourism industry. A tourism enterprise is defined to include hotels or any company engaged in the hotel industry. The object of the GTA is to promote the sustainable development of the tourism industry internationally and within the country. The Tourism Act, 2011 (Act 817) (the “Tourism Act”) requires that any person who exercises overall control over the daily operations of a tourism enterprise as the manager be registered with the GTA. The GTA is yet to prescribe the procedure for registration of a manager of a hotel. The current practice at the GTA is that the manager of the hotel must be a natural person knowledgeable in hotel management or a related qualification. Where the manager is a corporate entity the tourism enterprise must in addition have a natural person who is knowledgeable in hotel management or a related qualification.

A person will not be registered by the GTA as manager of a hotel if the person has been declared bankrupt or has been convicted of a serious offence.

The GTA grants licences, regulates and supervises tourism enterprises and regulates and monitors the activities of licensees. Under the Tourism Act, a person shall not operate a tourism enterprise unless that person holds a valid licence issued by the GTA in respect of that tourism enterprise. A person who fails to duly obtain a license commits an offence and is liable on summary conviction to a fine of not more than GH¢1200 and/or a term of imprisonment of not more than 6 months. A licence issued in respect of a tourism enterprise is for a period of 12 months and is subject to renewal at the end of the period.

A holder of a tourist accommodation licence is required to keep a register on the premises and must enter in the register the name and address of each guest who stays in the accommodation and other particulars that the GTA may prescribe. The register must be retained by the holder of the tourist accommodation licence for at least 5 years. Each guest must be provided with a registration card which must be completed by the guest and submitted by the licensee to the GTA as demanded in writing. A person who fails to comply or makes or permits to be made in any register or book kept for this purpose, an entry which the person knows or has reason to believe is false commits an offence and is liable on summary conviction to a fine of not more than GH¢1200 and/or a term of imprisonment of not more than 6 months.

The Tourism Act sets up the Tourism Development Fund. The sources of the Fund include among others, a 1% levy payable by a patron of a tourism enterprise.

## Import/Export

Companies which are licensed under the Free Zones Act, 1995 (Act 504) (the "Free Zone Act") may enjoy certain benefits under the Free Zone Act including:

- exemption from duties and taxes on imports or exports of goods ;
- a 10-year tax holiday;
- post-holiday tax rate of 15%;
- foreign employees are totally exempt from payment of income tax in Ghana on income earned in the free zone subject to the existence of a double taxation agreement between Ghana and the home country of that foreign employee and if the employee is liable to pay income tax in his home country;
- shareholders are exempt from withholding tax on dividends arising out of free zone investment;
- unconditional transfer through authorised dealer banks in freely convertible currency of
  - a. dividends or net profits attributable to the investment;
  - b. payments in respect of loan servicing where a foreign loan has been obtained,
  - c. fees and charges in respect of any technology transfer agreement registered under the Act; and
  - d. the remittance of proceeds (net of all taxes and other obligations) in the event of sale or liquidation of the enterprise or any interest attributable to the investment.

Sales of goods and services by a domestic enterprise from the national customs territory to enterprises in the free zone and single-factory zone are considered as exports. Again, a domestic enterprise is eligible to benefit from the prevailing export incentives available to a national exporter and does not require an export license for sale of any goods and services to enterprises in the free zone or single factory zone.

A free zone enterprise in Ghana can be 100% foreign owned, 100% Ghanaian owned or investors from different countries may come together to form a company or may be a joint venture between a Ghanaian and a foreigner. The minimum capital requirement for foreign investment under the Ghana Investment Promotion Centre Act, 2013 (Act 865) does not apply to free zone enterprises. Free zone enterprises must however, fulfil the minimum 70% export requirement.

## Customs Duties and Excise Duties

Ghana has adopted the rates of customs duty under the ECOWAS Common External Tariff System (the "ECOWAS CET"). The ECOWAS CET is a 5-band tariff system which was adopted by the Authority of Heads of State and Government, 29th session, adopted per Decision A/DEC.17/01/06, the ECOWAS CET for ECOWAS Member States.

The 5-band tariff structure of the ECOWAS CET is as follows:

Category	Description	Rate
0	Essential commodities	0%
1	Essential commodities, raw materials, capital	5%

	goods	
2	Intermediate products	10%
3	Consumer goods	20%
4	Specific goods for economic development	35%

Under the Excise Duty Act, 2014 (Act 878) as amended by the Excise Duty (Amendment) (No.2) Act, 2015 (the “Amendment No.2”), a manufacturer of excisable goods must register with the Ghana Revenue Authority. Goods liable to excise duty include malt drinks, bottled or sachet water, beer, wines, spirits, tobacco and plastics. The applicable rates of excise duty for the production of malt drinks are as follows:

- Where the quantity of local material that is used in the production is less than 50% of the total raw materials, an excise duty of 17.5% of the ex-factory price will be paid;
- Where the quantum of local raw materials used is between 50% and 70%, an excise duty of 10% of the ex-factory price will be paid; and
- When the quantum of local raw materials is above 70% of the local materials used, an excise duty of 7.5% of the ex-factory price will be paid.

Under the Amendment No.2, Cider beer has been included as an excisable good and the rate of excise duty payable is 17.5% of the ex-factory price.

The following are prohibited exports in Ghana:

- Illegal drugs;
- Weapons, Explosives and Ammunition – unless permission has been obtained;
- Knives and deadly weapons;
- Counterfeit money;
- Pornographic material;
- Diseased animals and animal carcasses; and
- Plants and seeds – unless permission has been obtained.

### **Minerals and Mining**

Mining in Ghana is regulated by the Minerals Commission and the Ministry of Lands and Natural Resources. The industry is governed by the Minerals and Mining Act, 2006 (Act 703) and its regulations.

The Minerals and Mining Act provides for a 10% carried interest for the government in mineral rights (reconnaissance, prospecting or mining). The government is not precluded from further participation in mining operations, provided this is agreed between the parties.

The holder of a mineral right which includes a reconnaissance licence, a prospecting licence, a mining lease, a restricted reconnaissance licence, a restricted prospecting licence or a restricted mining lease may be granted the following:

- exemption from payment of customs import duty in respect of plant, machinery, equipment and accessories imported specifically and exclusively for the mining operations
- exemption for staff from the payment of income tax on furnished accommodation at

the mine site

- immigration quota in respect of the approved number of expatriate personnel
- personal remittance quota for expatriate personnel free from tax imposed by an enactment regulating the transfer of money out of the country.

Small scale mining is reserved solely for Ghanaian citizens. The mining of industrial minerals is also reserved for Ghanaian citizens, however a non-Ghanaian citizen may be permitted to mine industrial minerals if the proposed investment is US\$10 million and above.

Investors in the mining sector of the country must satisfy the following requirements of law:

1. Incorporate a company in Ghana – the company may be wholly foreign owned;
2. Apply for licences or approvals from the Ministry of Lands and Natural Resources; and
3. Register with the Minerals Commission of Ghana.

There are local content regulations which, among other things, limit the employment of expatriates to given quotas. The regulations also require the procurement of locally available mining supplies.

The mining sector continues to face the challenge of illegal mining operations (“galamsey”) on large mining concessions. There are also frequent power fluctuations which impact negatively on mining activities.

## **Legal System**

Ghana operates a common law legal system based on judicial precedent. Customary law remains an important source of law in relation to land and succession. Legislation is the source of most new law.

The Ghanaian court structure comprises:

- Supreme Court
- Appeal Court
- High Court (fast track, commercial, human rights, labour, land, and financial crimes divisions)
- Circuit Court
- District Courts

A judgment obtained from a foreign country can be enforced in Ghana against a Ghanaian resident only where there is an agreement for the reciprocal enforcement of judgments between Ghana and the country in which the judgment was obtained. In every other case foreign judgments are enforced by way of a re-trial /re-hearing and the judgment may only serve as evidence of the liability of the other party.

Arbitral awards are enforceable under the Alternative Dispute Resolution Act if the award is made in a country which is party to the New York Convention or if there exists a reciprocal arrangement between Ghana and the country where the award was made.

## **Work Permits**

A work permit and residence permit are required for a foreign national to engage in gainful employment. Permits are obtainable from the Ghana Immigration Service. Assistance is provided by the regulatory bodies relevant to a particular investment.

## **Taxation**

The main law that regulates income tax in Ghana is the Income Tax Act, 2015 (Act 896). The Ghana Revenue Authority is the umbrella tax regulatory authority. It has the following divisions:

- Domestic Tax Revenue Division;
- Customs Division; and
- Support Services Division.

Income Tax in Ghana is payable on income accruing in or deriving from Ghana. For non-residents, tax is levied on income which has a source in Ghana. For non-residents with permanent establishments, tax is levied on income that is connected with the permanent establishment.

Companies registered to operate as free-zone developers/ enterprises do not pay corporate tax for the first ten (10) years of operation. After the 10-year corporate tax holiday has expired, the corporate tax rate should not exceed 8% for income earned from export to foreign markets and 25% for income earned from the domestic market.

The chargeable income of a company other than a company principally engaged in the hotel industry and income from goods and services provided to the domestic market by a Free Zone Enterprise after its concessionary period for a year of assessment is taxed at 25%. The chargeable income of mining and petroleum companies is taxed at the rate of 35%.

Value Added Tax (VAT) of 17.5% (which includes a National Health Insurance Levy of 2.5%) is levied on the supply of goods and services in Ghana, the importation of goods and the supply of any imported service other than certain exempt goods and services.

In relation to the following, withholding tax is charged on payments made to non-residents and which have a source in Ghana:

- |   |     |
|---|-----|
| • Dividends                               | 8%  |
| • Interest paid to individuals            | 8%  |
| • In case of any other interest           | 8%  |
| • Rent (residential property)             | 8%  |
| • Rent (non-residential property)         | 15% |
| • Natural resource payments and royalties | 15% |
| • Goods, works and services               | 20% |

## **Stamp Duty**

Under the Stamp Duty Act no instrument that is subject to stamp duty is enforceable or admissible in court as evidence if the document is not stamped. The Act sets out various rates applicable to specific matters or instruments.

## **Exchange Controls**

Ghana operates a floating exchange rate system. The Foreign Exchange Act has abolished exchange controls at the transactional level. Banks have to report foreign currency transactions to the central bank. The liberalised law and the well-developed banking system and privately owned forex bureaux as well as money transfer organisations make for easy conversion and transfer of foreign currency in and out of Ghana.

An individual may operate a foreign currency account with banks in Ghana. Investments to which the GIPC Act applies are assured of unconditional transferability of personal remittances of wages through authorised dealer banks and the free transferability of dividends and profits.

## **Securities**

The Securities and Exchange Commission (SEC) is the statutory regulator of the securities industry in Ghana. The SEC was set up under the Securities Industry Act (SIA). Under the SIA the SEC is mandated to:

- advise the government on all matters relating to the securities industry
- maintain surveillance over activities in securities to ensure orderly, fair and equitable dealings in securities
- register, license, authorise or regulate in accordance with the Act or any regulations made under it, stock exchanges, investment advisers, unit trust schemes, mutual funds, securities dealers, central securities depositories, and their agents, and to control and supervise their activities with a view to maintaining proper standards of conduct and acceptable practices in the securities business
- formulate principles for the guidance of the industry
- monitor the solvency of licence holders and take measures to protect the interest of customers where the solvency of any such licence holder is in doubt
- protect the integrity of the securities market against any abuses arising from the practice of insider trading
- adopt measures to minimize and supervise any conflict of interest that may arise for dealers
- review, approve and regulate takeovers, mergers, acquisitions and all forms of business combinations in accordance with any law or code of practice requiring it to do so
- create the necessary atmosphere for the orderly growth and development of the capital market
- perform the functions referred to in section 279 of the Companies Code 1963
- review and approve all invitations to the public to acquire or dispose of securities
- perform other functions specified under the SIA.

As part of its regulatory mandate the SEC licenses and regulates all brokers, investment advisors, custodians, trustees, stock exchanges and other players in the Securities Industry.

The SEC's regulations also set out disclosure requirements for listed companies and unlisted public companies which undertake invitations to the public covering among others the publication of annual and quarterly financial statements.

A key player in the capital markets is the Ghana Stock Exchange. The GSE was incorporated as a company limited by guarantee in July 1989. Trading commenced a year later on 12 November 1990. A 9-member Council governs the GSE. Criteria for listing on the GSE include capital adequacy, profitability, spread of shares, years of existence and management efficiency.

Ghana's current exchange control regime allows non-residents to invest freely in the capital markets without restriction. Non-residents are also guaranteed free transferability of their capital and income. However, in relation to government of Ghana Notes, non-residents are only allowed to invest in Notes with a tenor of 3 years and above.

### **Intellectual Property**

Ghana is a party to the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty (PCT), the World Trade Organisation (WTO) TRIPS agreement, the Locarno Agreement establishing an International Classification for Industrial Designs and the Harare Protocol. Ghana is a member of the World Intellectual Property Organisation (WIPO). Ghana has signed but has not ratified the WIPO Performances and Phonograms Treaty and the WIPO Copyright Treaty.

Ghana has within the last ten years passed six intellectual property statutes namely the Trademarks Act, Patents Act, Industrial Designs Act, Layouts - Designs (Topographies) of Integrated Circuits Act, Geographical Indications Act, and the Copyright Act.

The registration of a trademark is valid for ten years from the date of filing the application and is renewable for a further term.

A patent has a term of twenty years from the date of filing of the application. Annual fees are paid in advance. Where an annual fee is not paid the application will be deemed to have been withdrawn or the patent will lapse.

The Copyright Act expressly provides for protection of copyright without the requirement of registration. The term of protection of copyright has been increased from fifty years to seventy years. The rights of the author if he is an individual are protected during the author's lifetime and seventy years after his death. Public corporations and other corporate entities also have their registered works protected for seventy years. Copyright protection extends to computer programs.

Ghana follows the International Classification for the registration of Industrial Designs according to the Locarno Agreement establishing an international classification for Industrial Designs. The registration of an industrial design is valid for a period of five years from the filing date of the application and may be renewed for two further consecutive periods of five years. There is no further protection for industrial designs after the lapse of the ten years.

Protection for layout-designs is granted if the layout-design is original and if it is the creator's own intellectual effort (and is not common-place among creators of layout designs and manufacturers of integrated circuits at the time of its creation). A layout design consisting of a combination of elements and interconnections that are commonplace is protected only if the combination taken as a whole is original. Protection of a layout-design is valid for a period of ten years from the date of commencement of protection.

Geographical indications are governed in Ghana by the Geographical Indications Act which affords protection for homonymous geographic indications for wines or other products. It also allows a person or group of persons carrying on an activity as a producer in a geographical area and a competent authority to file an application. Protection for a geographical indication is available regardless of whether it is registered.

Ghana has also introduced the National Intellectual Property Policy and Strategy 2016 which has been prepared to strengthen the management of the intellectual property system in Ghana, encourage innovation and creativity within the system, identify the various aspects of intellectual property and provide strategies for the implementation of a functional and effective intellectual property protection system. This is expected to ensure the exploitation of intellectual property rights for the accelerated development and growth of industry, science, technology and the creative arts in Ghana.

The policy aims to bring Ghana's intellectual property rights in line with its international commitments under the WTO on TRIPS and international best practices. The policy identifies strategic policy objectives to be pursued in the next five years which include strengthening the institutional and legal framework for protection of intellectual property rights.

## **Labour Relations**

Employer-employee relationships are regulated by the 1992 Constitution and the Labour Act. The engagement of an employee beyond six months requires a contract of employment. A contract of employment may be terminated on any of the following grounds:

- by mutual agreement between employer and employee
- on grounds of ill health or sexual harassment
- where the employee is found to be unfit on medical grounds
- inability to work on grounds of proven misconduct, incompetence of worker, and sickness or accident.

Remuneration is based on the principle of equal work for equal pay. The statutory deductions are social security as required by the Social Security Law and income tax under the Income Tax Act.

Workers are obliged to work forty hours each week and are entitled to rest periods. Nursing mothers are entitled to one hour each day for nursing a child under one-year old. Any form of child labour or forced labour is prohibited. Employees have a right to join unions. Employers and employees may enter into collective bargaining agreements. In the event of disputes the first steps should be mediation and arbitration, and then lockouts and picketing. Every strike

action organized outside the Act is illegal. Any arrangement or amalgamation that results in the severance of the relationship between the worker and the employer or a diminution in the worker's status, prior to the arrangement or amalgamation, entitles the worker to compensation known as redundancy pay.

### **Land Ownership and Laws in Ghana**

Land in Ghana is held primarily by stools and families with the state and individuals or corporate entities holding the remaining. A Stool includes a person or body having control over community land, as a representative of that particular community.

Land and all incidences affecting land in Ghana are governed by customary law with the exception of those lands which have been acquired by the government of Ghana through various legislations. There is therefore a parallel system of land tenure in Ghana, namely, customary and statutory. The customary sector holds 80 to 90 percent of all the undeveloped land in Ghana with varying tenure and management systems. Customary law is not of general application throughout the country, it varies from community to community.

### **Restrictions on the alienation of land**

There are some constitutional restrictions on alienation of stool land.

No interest equivalent to a freehold interest can be created in stool land. A non-citizen of Ghana cannot hold a freehold interest in land and may only hold a leasehold interest for a term of not more than 50 years.

A written consent from the Regional Lands Officer is required for any valid disposition of a stool land or state land.

Additionally for stool lands, there is the requirement for the consent of the Traditional Council within which the stool land falls. The Lands Bill, 2016 which is under consideration by Parliament seeks to extend the freehold restrictions on stool lands to family lands and other communally owned lands.

### **Real Estate and Construction**

A booming residential and commercial real estate business is attracting a lot of investment from both local and foreign sources. Commercial real estate spans office buildings, shopping malls, hotel and recreational facilities, while residential real estate covers high rise apartment style buildings as well as country house styles. Funding is sourced from banks – local and foreign etc. and for residential estate prospective purchasers have mortgage finance support from the commercial banks.

### **Infrastructure**

Government continues to be the major source of infrastructure- roads, air and sea ports, railways, schools, hospitals. Government has introduced a PPP policy by which it intends to share the financing and associated risks as well as rewards with the private sector. This manifests in concession from the government for BOT, BLO and the many variants. The National Policy which is the basis of the current legal framework is to give way to a PPP Act

in the near future. The Ghana Infrastructure fund has been established and funded to improve access to financing of the PPP project.

### **Government Procurement**

The Public Procurement Act, 2003 (Act 663) as amended by the Public Procurement (Amendment) Act, 2016 (Act 914) (the “PPA”) applies to the procurement of goods, works and services, financed in whole or in part from public funds. Furthermore, the PPA applies generally to government ministries, departments and agencies. Any government Ministry, department or agency procuring goods, works or services must apply the procedures set out under the PPA.

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