GHANA BUSINESS AND INVESTMENT CLIMATE GUIDE 2017

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1. Business And Investment Climate

1.1 Companies

To incorporate a company in Ghana, an applicant must; acquire a tax identification number (TIN); complete, authenticate and file the prescribed forms with the Registrar of Companies; and pay a percentage of the company's stated capital as capital duty. The cost of incorporation depends on the type of company to be registered and the estimated time for incorporation is approximately 2 weeks. Companies registered pursuant to the Companies Act 1963 (Act 179) may be private or public, limited by shares or guarantee or with unlimited liability. Sector-specific permits and approvals may also be required prior to the commencement of business.

All companies in Ghana with foreign participation are required to register with the Ghana Investment Promotion (GIPC). An enterprise wholly owned by a Ghanaian may also register with the GIPC and shall be entitled to the benefits under the Act.

A foreigner may participate in a business enterprise in Ghana if:

- for a joint venture with a Ghanaian citizen, the Ghanaian holds not less than a 10% equity stake and the foreigner invests US$200,000 in cash or capital goods; or
- for an enterprise wholly owned by a non-Ghanaian, the foreigner invests a minimum of US$500,000 in cash or capital goods or both by way of equity capital in the enterprise.

A foreigner shall not engage in a retailing or trading enterprise, unless that person invests US$1,000,000 in cash or capital goods in the enterprise and employs at least 20 skilled Ghanaians. This minimum capital requirement however, does not apply to portfolio investments or an enterprise set up solely for export trading and manufacturing.

1.2 Regulatory Environment

The key regulations that govern in-bound FDI in Ghana are:

- The GIPC Act, 2013 (Act 865). This act regulates investment in many sectors of the economy and specifies the areas of investment reserved solely for indigenous persons. The act also establishes minimum capital requirements for foreign investors to enable them operate in specified industries. Businesses registered with the GIPC receive benefits that include tax incentives, absolute protection against nationalization or expropriation, a quota of employer-sponsored work visas based on the company's paid-up capital and a guarantee that capital, dividends and net profits may be transferred outside Ghana (subject to foreign exchange laws) in freely convertible currency.
- The Free Zones Act, 1995 (Act 504). The Free Zones Act regulates enterprises that export at least 70% of their annual production. Free zones status guarantees an enterprise preferential treatment and tax benefits including exemptions from income taxes for as much as ten (10) years, double taxation reliefs and specific exemptions from withholding tax.

- The Foreign Exchange Act, 2003 (Act 723). This act regulates the exchange and use of foreign currency in Ghana. The rules, among other things, permit Ghanaian residents to hold foreign currency in onshore and off-shore accounts held with local authorized dealer banks and to make payments in and out of those accounts subject to the submission of certain documentation. The rules also permit the repatriation of interest payments, loan principal repayments, dividends and return of capital by investors.
- Ghana is also signatory to a number of free trade agreements (FTAs) aimed at attracting foreign investment into the country. These include the US led African Growth and Opportunity Act (AGOA), the Economic Community of West African States Trade Liberalisation Scheme (ETLS) and the Economic Partnership Agreement (EPA) between Ghana and the European Union (EU).

1.3 Fiscal incentives and exchange control

1.3.1 Fiscal incentives

Under Ghana's Income Tax Act, 2015 (896) are the following tax concessions:

- An enterprise granted a licence under the Free Zones Act, 1995 (Act 504) enjoys 100% tax holiday on profits for the first 10 years from the date of commencement of operation.
- Companies engaged in the waste processing business enjoy a 1% tax concession for a period of seven years.
- The income of a qualifying venture capital financing company subject tax of only 1% for a period of 10 years.
- Companies engaged in various forms of agricultural businesses such as farming of tree cops, cash crops, livestock and agro processing business conducted wholly in Ghana enjoy a 1% tax concession for periods varying from 5 to 10 years.
- In calculating the income of a company from business in a year of assessment, companies may be entitled to an additional deduction of between 10% to 50% (depending on the number of new graduates employed during the year of assessment) of salaries paid to new graduates employed by the company.

Additional tax and other incentives may also be negotiated for strategic projects on a case-by-case basis.

1.3.2 Exchange controls

The Ghana cedi is the sole legal tender in Ghana. Thus, pricing, advertising, invoicing, receiving and making payments for goods and services are done in Ghana cedis, unless the BOG authorises otherwise. Companies involved in certain sectors such as energy and mining, may with BoG approval, be permitted to conduct business in a currency other than the Ghana cedi.

Subject to the provision of adequate documentation, there are no restrictions on the transfer of foreign exchange through a licensed dealer bank where the transfer is to meet bona fide external payment obligations. In relation to importers, documentation must be provided for business-related transfers abroad of amounts greater than $50,000 or where the Bank of Ghana, at its discretion, so requests.

Banks resident in Ghana may grant foreign currency loans for trade-related transactions with an international element. Exporters are permitted to repatriate export proceeds in full in accordance with the terms agreed between the trading parties. Such proceeds shall be credited to their Foreign Exchange Accounts (FEAs) and converted on need basis. Exporters may receive payments in foreign currency provided that the payer is a non-resident and the payment is made into the recipient's FEA. Exchange control measures include an annual limit of $10,000 on over-the-counter cash withdrawals from Foreign Currency Accounts (FCA) and FEAs and also a $10,000 annual transfer abroad without documentation.

1.4 Importation of Capital

Each transfer of foreign exchange to or from Ghana shall be made through a person licensed to carry out the business of money transfers or any other authorised dealer in Ghana. Each payment in foreign currency, to or from Ghana between a resident and non-resident or between non-residents, shall be made through an authorised dealer bank. All banks with a universal banking license are authorised dealer banks.

2. LABOUR REQUIREMENTS

2.1 Labour law requirements

The national daily minimum wage in Ghana was increased, in January 2016, to GHS8.00 payable in legal tender which depending on exchange rate fluctuations, hovers around USD 2.10 as at January 2017. The Labour Act, 2003 (Act 651), which regulates employment and labour issues in Ghana however, allows for remuneration in kind at a value equivalent to cash payment. Every employment contract made in Ghana for duration of more than six (6) months must be evidenced in writing. The minimum age of employment in Ghana is 18 years; however, a person below the age of 21 years may not be employed into hazardous work.

Ghana's labour laws protect the worker against unfair termination and unfair redundancy practices. To terminate an employment contract, the worker must be given sufficient notice and the reason for the termination must be fair. Where the employer seeks to lay off workers, redundancy procedures provided under the law must be followed. The formation and participation in trade unions is constitutionally protected.

The Pensions Act 2008 (Act 766) requires every employer to pay on behalf of each employee, an amount equal to 13% of the worker's salary as contribution towards the employees pension and deduct 5.5% from the salary of every employee at the end of each month.

2.2 Employment of Expatriates

2.2.1 Expatriate quota

An enterprise with a paid capital of not less than:

- US$50,000 and not more than US$250,000 shall be entitled to an expatriate quota of one (1) person;
- US$250,000 and not more than US$500,000 shall be entitled to an expatriate quota of two (2) persons;
- US$500,000 and more than US$700,000 shall be entitled to an expatriate quota of three (3) persons; and

upwards of US$700,000 the enterprise is entitled to an expatriate quota of four (4) persons.

3. TAX SYSTEM

Under the Income Tax Act, 2015 (Act 896), individuals are taxed at graduated rates (from NIL to 25%) depending on their taxable income. Other taxable persons such as companies and trusts are taxed at specific rates depending on the industry in which they operate. The general rate of corporate income tax is currently 25%. Sector specific rates are applicable to persons operating in specified industries. Mining and petroleum exploration companies for instance pay tax at 32% on profits, while hotels pay a reduced rate of 22%. Incentives exist in the form of reduced rates for targeted industries such as agriculture, agro processing and waste management companies which may be taxed at rates as low as 1% . Players in these industries may also enjoy reliefs for specified periods of time depending on the sector.

Ghana operates a worldwide income tax regime, and therefore, non-resident companies that operate through a permanent establishment or branch or may be deemed to have a permanent establishment in Ghana, are taxed at the same rates as Ghanaian resident companies on any income connected to that Ghanaian permanent establishment irrespective of the source of the income. Non-resident companies with permanent establishments in Ghana may also be entitled to certain reliefs in respect of repatriation of branch profits outside the country.

Companies are entitled to claim capital allowances in respect of the depreciable assets which they own and are used in carrying on business for each year of assessment. Capital allowances granted are to be utilized in the year of assessment in which they are received and may not be carried forward or applied to subsequent years.

Capital gains are included in the business income of a company and subject to tax at the applicable corporate tax rate.

Other taxes levied include Value Added Tax (VAT) and the National Health Insurance Levy (NHIL), which are jointly chargeable on the supply of goods and services in the country, with special exemptions available on specific products mainly within the agricultural and health supply industries. Additional taxes which are charged in Ghana include customs and excise duties, communication service tax on telecommunications and airport taxes on use of the international and domestic airports.

Additionally, Ghana has double tax treaties with Belgium, Germany, France, Italy, the Netherlands, the United Kingdom, South Africa and Switzerland. The country has recently signed a tax treaty with Mauritius which is yet to be ratified by Parliament.

Ghana has also enacted a revenue administration act, the Revenue Administration Act, 2016 (Act 915) which seeks to streamline the revenue administration and collection process and clarify administrative gaps in the existing tax laws.

4. CONTRACT ENFORCEMENT

Contracts entered into in Ghana are subject to Ghanaian law unless the parties elect to have a different governing law.

Ghanaian courts will enforce a contract according to the terms agreed between the parties provided that the contract is devoid of illegality and other vitiating factors. However, the courts will not necessarily grant a remedy if it is against public policy, if the principles of equity dictate otherwise, or if the court has discretion as to what remedy it grants. The enforcement rights of parties are also subject to laws relating to liquidation, insolvency, reorganisation and any other laws relating to or affecting the enforcement of creditors' rights generally.

An international business transaction, that is, a contract between the Government of Ghana and a foreign entity (or a Ghanaian entity with a significant foreign element) must be approved by Parliament. In the absence of such approval, the agreement is null and void.

Disputes arising from contracts can be resolved by litigation or by alternative dispute resolution mechanisms such as mediation and arbitration. A dispute between a foreign investor and the Government of Ghana in respect of an enterprise registered under the GIPC may be submitted to arbitration under UNCITRAL rules or other treaty based dispute settlement mechanisms. In the event that the Government and the investor disagree on the dispute resolution method, the applicable method shall be mediation under the Alternative Dispute Resolution Act, 2010 (Act 798). Ghana has an arbitration center that provides a forum for resolving civil disputes according to the rules provided under Act 798.

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