



Accountants &  
business advisers

# Doing business in Ghana



*PKF – Doing business in Ghana*

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# PREFACE



PKF is an International grouping of independent, autonomous firms of Chartered Accountants, Business Advisors and Management Consultants. Operating a network of 350 offices, our firms are staffed by over 7,800 professionals. PKF firms operate in over 110 countries throughout the world, embracing East, West and Central Europe, the Mediterranean and the Middle East, East and West Africa. Southern Africa, the Caribbean, North America, Central and South America, Southern Asia, China and the Far East, Australia and New Zealand.

PKF-GHANA is located in the West African region of Africa.

The Ghanaian practice of PKF, established in 1949, has four Partners and over 80 staff, situated in three offices – Accra, Tema and Kumasi. The Accra Office is located at Valley View, Farrar Avenue. Its address is P.O.Box GP. 1219, Accra.

The practice has built up a wide range of public and private sector clients and has carried out audits in most sectors of the community. By deliberate policy, the practice retains high Partner involvement in the provision of professional services so that all clients can expect a Partner-led service

PKF is bound by the high ethical standards of the accounting profession. These conventions require complete independence, objectivity, full disclosure of material factors affecting findings and conclusions, and protection of the confidentiality of financial data provided. These standards are brought to bear in the undertaking of each specific assignment. In addition, every practice within the PKF network is subject to independent international review and quality control.

Pannell Kerr Forster (PKF) is an International grouping of independent, autonomous firms of Chartered Accountants, Business Advisors and Management Consultants. Operating a network of 350 offices, our firms are staffed by over 7,800 professionals. PKF firms operate in over 110 countries throughout the world, embracing East, West and Central Europe, the Mediterranean and the Middle East, East and West Africa, Southern Africa, the Caribbean, North America, Central and South America, Southern Asia, China and the Far East, Australia and New Zealand.

## OUR EXPERTISE

### Assurance and Advisory Services

Assurance and advice are two complementary aspects of our core expertise and cover a wide range of services to clients of all sizes in many different sectors.

#### Assurance Services

As the name implies, assurance services provide value to decision-makers by providing comfort that information they use is reliable. It relies on independence and objectivity, which is ensured through appropriate selection, allocation and training of partners and staff, together with the application of high standards of quality control. Services include:

- Statutory audit, which provides a high level of assurance to those using the annual accounts of companies and other entities
- Non-statutory audit and supplements to statutory audit, which can be tailored to the particular needs of users and circumstances of the entity being audited.
- Internal audit, providing assurance to management that its systems and controls are effective both in design and in operation.
- Special-purpose reports for particular users who seek independent corroboration of financial information supplied by a business.

- Report on the reliability of non-financial information supplied by entities for various purposes.
- Reporting to regulators on financial and non-financial information produced by regulated businesses
- Specialized fraud reviews

## Advisory Services

Effective management is what turns ideas, products and services into steady profits, but business need stable foundations and even the most creative commercial ideas have to stack up financially. Services include:

- Helping clients set up reliable accounting and control systems (both computerized and clerical)
- Assisting clients with the preparation of regular management information, including management accounts.
- 
- Helping clients with the preparation of annual accounts that meet statutory and other requirements.
- Providing sound and insightful financial advice and commentary based on reviewing the accounts and other information.

Our partners and staff have amassed a wide a range of knowledge, skills and experience working with large and small clients across a very broad range of industries and sectors. They can bring these to bear on your business to ensure that you get maximum value out of an audit,

an advisory assignment or even a simple accounts preparation task.

## Taxation Services

We pride ourselves on the quality of our tax specialists and their ability to deliver a comprehensive yet flexible compliance service to a wide range of business and private clients. This is complemented by the knowledge and experience required to provide sound, efficient tax advice – essential given the increased scope and complexity of tax legislation. Expertise is available on the following areas:

- Capital taxes – capital gains tax, inheritance tax and estate planning
- Corporation tax compliance and planning
- Taxation of professional partnerships
- Income tax, PAYE and NIC planning
- Employee remuneration and benefits planning
- Investigations
- Value-added tax compliance and planning

We have an excellent working relationship with the Inland Revenue Service Department developed through years of negotiating with them on our client's behalf. We know their rules, we respect their expertise. In return they respect our role and skills in representing our clients and ensuring their interests are given priority.

## Business Tax Planning

It is all too easy for businesses to find themselves swamped in tax complications. We aim to ease the burden remove the stress from management and provide commercial solutions, leaving clients with more

time to get on with running their businesses. We prepare corporate and partnership tax returns carry out tax planning exercises, advice on PAYE and VAT procedures. Our solutions are relevant and practical.

For our corporate clients, careful tax planning is required for purchases and sales, business reconstructions, valuations, flotation and management buy-outs, employee incentives and pensions. For unincorporated businesses we regularly provide advice and support on incorporation, mergers and partnership profit-sharing strategies (especially upon withdrawal of the cash basis of accounting). Our clients come to us for commercial and independent advice. We save them money; we save them time and the results are measurable.

### Personal Tax Planning

We offer an independent and confidential service. We offer advice on personal financial planning and minimizing tax liabilities as well as looking after personal tax returns.

### Investigations

No-one wants to become the focus of an investigation by the Inland Revenue Service Department. But with random enquiries now within the Revenue's armory, no-one is immune from scrutiny and apparently innocent questions can easily turn into a full-scale enquiry. Such investigations cause worry, consume time and can have significant cost implications. Specialists within our tax practice deal with investigations – they reduce the pain, negotiate with investigation officials and minimize the liability.

## VAT

VAT has gained notoriety for complexity and difficulty. Our VAT specialists will assist in minimizing liability, negotiate with Customs & Excise and provide tax-efficient planning advice.

## Due Diligence and Valuations

We specialize in financial investigations and valuations of companies and business in all sectors, providing:

- Pre-acquisition and pre-lending investigations for trade buyers and financial investors
- 
- Post-acquisition investigations to assist in the integration of newly acquired business
- 
- Vendor due diligence, pre-disposal due diligence for vendors and potential acquirers
- 
- 
- Long-form investigations and reports for stock exchange flotation and transactions
- 
- Market valuations of companies and businesses for sale, purchase or fundraising
  
- DCF valuations of Greenfield businesses, assets and fast-moving technology

## Mergers and Acquisitions

Our team has an excellent track record in marketing and negotiating the sale of companies and in identifying acquisition opportunities. We can advise on:

- Grooming the business for sale
- Identifying purchasers
- Preparation of sales documentation
- Taxation planning
- Structuring, valuation and fundraising
- Handling sales negotiation and completion

## Raising Finance

We can assist in the search for the right partner on the right term. Our services include:

- Explaining the process of raising equity capital
- Assisting in and advising on the preparation of business plans and forecasts
- Identifying sources of capital and introducing clients' proposals
- Advising on optimizing personal and corporate tax positions
- Carrying out due diligence for potential investors
- 

## Management buy-outs and buy-ins

- We have the experience to provide a down-to-earth and practical approach which includes: Assessing whether your MBO/MBI is feasible and providing advice to increase the chances of success.

- Valuing the business and assisting in approaching and negotiating with the vendor.
- Providing tax advice to optimise your personal and corporate tax positions.
- Assessing whether your MBO/MBI is feasible and providing advice to increase the chances of success.
- Valuing the business and assisting in approaching and negotiating with the vendor.
- Providing tax advice to optimise your personal and corporate tax positions.
- Assisting in the preparation of your business plan and advising on the most appropriate financial for the transaction.
- Assisting in the preparation of your business plan and advising on the most appropriate financial for the transaction.
- Assisting in the preparation of your business plan and advising on the most appropriate financial for the transaction.
- Identifying, approaching and negotiating with appropriate venture capitalist and other providers of finance.
- Carrying out due diligence for potential investors.

## Flotations

To float or not to float? As reporting accountants, we can provide advice on:

- The long and short-term prospects for your company
- The development of a strategy to lead to flotation

- The choice of advisors and brokers

## Design and Implementation of Management Information Systems

While IT-based financial management systems are the norm in Western companies and institutions, their application is less widespread in emerging markets, and particularly so in the public enterprise sector.

Our consultants are skilled in the full range of services required in these areas, from the development of user requirement specifications through to identification and selection of appropriate IT solutions. We also assist in the implementation of the selected approach.

## Privatisation and Restructuring Assignments

Many emerging nations (and numerous developed countries) carry out the burden of historical investment by the public sector in commercial and semi-commercial activities. In the past decade there has been an increasing commitment to transfer these activities back into the private sector or, at a minimum, to introduce private sector operational practices into these public sector organizations.

## Company Secretarial

We offer a comprehensive range of consultancy services in the allied fields of public enterprise restructuring and privatization.

Companies trading in Ghana must comply with a number of legal requirements and procedures. Breaching these requirements and procedures can lead to a company being struck off or its directors prosecuted. Our sister company, Lennap & Company, can ensure that your business is set up correctly to meet regulatory obligation in Ghana, through incorporation of companies (Private/Public Liability), unlimited companies, Partnerships, Liaison Offices (External Companies) and Companies Limited by Guarantee.

We can undertake the ongoing administration by acting as the companies registered office and as company secretary, to ensure that preparation and filing with the Registrar of Companies, statutory records including changes in particulars, annual returns, attending and recording minutes at all meetings of shareholders and Board of Directors are completed correctly and on a timely basis.

We can also liaise with the Registrar of Companies, the Bank of Ghana, the Ghana Investment Promotion Centre and other state institutions in all matters concerning our clients.

# Chapter One



## INTRODUCTION

### Country Profile - Ghana

Population - 21.8 million (UN 2005)

Capital - Accra

Area - 238,533 sq km (92,098 sq miles)

Investments in the Country - Investments in Ghana are regulated by Ghana Investment Promotion Centre. (GIPC)

Constitution - Presidential System (Unitary)

Communications -

Major Languages- English, African Languages, including Akan, Ga, & Ewe

Major Religions - Christianity, Islam, indigenous beliefs

Legal System -

Main Exports - Gold, Cocoa, Timber, Tuna, Bauxite, Aluminum, Ore, Manganese, Diamonds

Main Imports - Petroleum Products, Machinery & Spare Parts, Textiles, Cereals.

Life Expectancy - 56 years (Men), 57 years (Women) (UN)

Monetary Unit (Currency) - Ghana Cedi

GNI per Capita - US\$450 (World Bank 2006)

Internet Domain - .gh

International Dialing Code - + 233

Investment in Ghana- All foreign investments are welcome provided their operations are transparent and legal .All negotiations are to be transacted at arms length.

Import Control- No import restrictions. However goods imported should comply with the regulations of Ghana Standard Board, Foods & Drugs Board and other regulating bodies.

Exchange Control

Source of Finance - Loans from financial institutions including venture capital fund and leasing companies. Raising capital through the Ghana stock exchange There is however challenges in obtaining trade finance facilities such as export credit, insurance and guarantees.

Availability of foreign currency through commercial banks is a problem.

Country Business Number -

Government Policy on Foreign Investment in the country.

- Privatization



## Chapter Two

# BUSINESS STRUCTURES

The Ghana Investment Promotion Centre (GIPC) is responsible for investments in all sectors of the Ghanaian economy except the following:

- a) Petroleum Exploration and Extraction (by Ministry of Energy)
- b) Mineral and Mining Exploration and Extraction (by Minerals Commission)
- c) Portfolio Investments (by the Ghana Stock exchange)
- d) Free Zone Activities (by the Ghana Free Zones Board)
- e) Export Promotion (by the Ghana Export Promotion Council)

### SETTING UP.

This involves the following steps:

- 1) Register with the Registrar-General's Department to obtain
  - a) Certificate of Incorporation
  - b) Certificate to Commence Business

### c) Company Regulations

- 2) Register with the GIPC to obtain Investment Registration Certificate
- 3) Secondary Clearance
  - a. Obtain an immigration quota from the Ghana Immigration Service through the GIPC
  - b. Register with the Internal Revenue Service(IRS) and the VAT Service for statutory tax purpose
  - c. Register with the Environmental Protection Agency(EPA) to obtain environmental permits

The GIPC Act 478 requires that enterprises with foreign participation must register the minimum foreign capital (figures stated below) with the GIPC. These requirements apply to enterprises which are Joint-Venture or wholly foreign-owned.

The registration entails the following:

- 1) Completion and submission of GIPC Registration Form (R1)
- 2) Payment of a registration fee
- 3) Submission of Incorporated documents from the Registrar General's Dept.  
These are certified true copies of
  - a) Company's Regulations
  - b) Certificate of Incorporation
- c) Certificate to Commerce Business

If the application Form satisfies the above requirements, the GIPC issues a Certificate within five working days.

Registration with the GIPC entitles the Company to enjoy benefits including the following;

- 1) Quota support to the Ghana Immigration Service
- 2) Import duty exemption on certain equipment and machinery
- 3) Assistance in getting certain utilities such as electricity, water and telephone connected
- 4) Assistance in getting land
- 5) Other support and recommendation to relevant Government Agencies and departments for the required permits.

Section 24 of the Ghana Investment Promotion Centre Act provides that an investor is required as a first to incorporate or register a legal entity in Ghana under the relevant law. In Ghana, two main types of business entity may be established for the purposes of conducting business; an investor may either incorporate or register a company or incorporate a partnership. The Ghana Investment Promotion Centre Act, however, gives legal entities other than companies or partnerships the opportunity to register as an investor. These include a sole proprietorship, a partnership, a private or public limited liability company, a co-operative society, an external company, a statutory body and a quasi-governmental institution.

## Companies

A company is usually the preferred form of legal entity investors establish. Where the investor decides to incorporate a company, the relevant law is the Companies Code, 1963 (Act 179), as amended. Section 3 of the Companies Code provides, among other things, that except where otherwise provided, the provisions of the code shall apply to all companies formed in Ghana. The Companies Code recognizes the existence of sector-

specific laws that deal with the formation and operation of companies in specific sectors. Thus the provisions of the Companies Code, the relevant investor-specific law, such as the Ghana Investment Promotion Centre Act or the Free Zone Act as amended and the sector-specific law, if any, should guide an investor incorporating a company.

## Types of Companies

The investor has a choice with regard to the type of company to incorporate. The investor may incorporate either a limited liability company or an unlimited company. The liability of the members of a limited liability company is limited to the amount, if any, of unpaid shares held by its members. The liability of the members of an unlimited liability company, on the other hand, is unlimited. Unlimited as well as limited liability companies may be public or private companies.

A private company is a company which, by its regulations, restricts the rights of its members to transfer shares and has a maximum of fifty members and debenture holders. This number excludes anyone who is employed by the company or its former employees or persons who were shareholders or debenture holders whilst they were employees of the company. Where two or more persons hold shares or debentures jointly, they are considered and treated as a single shareholder. A private company by its regulations also prohibits the making of invitations to the public to acquire shares or debentures in the company. It is also prohibited from making invitations to the public to deposit money with the company for fixed periods or payable on call. Such an invitation may not be made whether it bears interest or not. All other companies

formed for the purpose of making profit are public companies.

## Regulations of Companies

The basic document that controls the administration of a company is its regulations.

The regulations of a company should contain the following:

The name of the company ;( The name of the company should not be the same as the name of any other existing company, and it should not be misleading)

A limited liability company must have the word “limited” as the last word in its name.

The number of authorized shares, the number of issued shares and the value of each share.

The first directors of the company, the auditors and the company secretary.

The objects of the company or the nature of its business that is the business the company is authorized to carry on. These objects cannot be vague and general in terms but must be specific.

Companies are legal persons and it must be stated that the company has all the powers of a legal person except what is specifically excluded by the regulations.

The number of shares taken by each shareholder and the consideration paid or to be paid for the shares.

The regulations must also state that the powers of the directors of the company are limited in accordance with section 202 of the Companies Code.

## Shares and Shareholders

Ghanaian law does not prescribe a minimum number of shareholders a company must have, however if the company is a private company it cannot have more than fifty shareholders. With regard to joint ventures between Ghanaians and foreigners, the Ghana Investment Promotion Centre Act and the Free Zone Act, do not specify a minimum percentage of shares that must be owned by the Ghanaian partner. However, in some sectors, sector specific laws specify the percentage of shares that must be held by Ghanaians and foreigners in the joint venture.

The Companies Code does not restrict the number of shares a company may issue; this decision is left entirely to the company. Likewise, the value to place on each share is also at the discretion of the company. Shares in companies in Ghana are of no par value. Therefore the value of a share of a company is not fixed to the value given to a share on incorporation. With regard to companies operating under the Ghana Investment Promotion Centre Act, the requirements of the Act on minimum capital contribution must be satisfied.

Shares are paid for in cash as a general rule. This is paid to the company when the company calls up shares. Shares may also be paid for in kind. Payment for shares in kind must be evidenced by an agreement. A foreign investor may pay for shares in cash or in kind. The only restriction on payment for shares in kind by foreign investors is provided under the Ghana Investment

Promotion Centre Act. Under this Act, goodwill as well as other intangible contributions such as the rendering of services may not be credited to the investor as payment for shares in kind. Where the company agrees to payment in kind, the company is required to deliver to the Registrar of Companies an agreement evidencing the terms of payment within twenty-eight days after the shares have been allotted. The regulations of a company may provide for different classes of shares. In this regard, some shares may have attached to them preferred, deferred or other special rights or restrictions. Such rights or restrictions may relate to dividend, voting, repayment or any other matter permissible by law.

### Shareholdings by Non-residents

There are no restrictions on non-residents in acquiring shares in Ghana.

### Registration requirements and Filing Procedures for Public Securities (Shares)

Registration and filing for public securities (shares) are regulated by the Securities And Exchange Commission. The procedure for registration and filing are outlined under Sections 50 to 63 of the Securities and Exchange Commission Regulations, 2003 (L.I. 1728)

The actual listing is done by the Ghana Stock Exchange (GSE) which has over 30 shares listed. These include shares of three (3) foreign companies: Anglo Gold Ashanti Ltd., Golden Star Resources, Trust Bank (Gambia) Ltd.

### LISTING REQUIREMENTS FOR SHARES ON THE GHANA STOCK EXCHANGE

A company applying for listing of any class of its shares is expected to meet the following requirements:

- 1) Have a minimum stated capital after a public floatation of GH¢500,000 for a Second Official List
- 2) Have a minimum of 25% of the number of shares issued by the Company( unless reasonable justification is provided for a smaller percentage)
- 3) Shares must be fully paid for
- 4) The spread of shareholders existing at the close of an offer should be adequate with at least 50 shareholders after the public offer.
- 5) The Company must have published or filed audited financial statements in accordance with the Companies Code, 1963 (Act 179), for at least 3 years immediately preceding the date of its application for listing. For Second Official List (SOL), in respect to shares, the period is 1 year.
- 6) Profitability must have been reasonable through the periods stated above or the Company must have strong potential to be profitable
- 7) Directors & Management are to meet the following:
  - a. There must have been continuity in the management of a company seeking admission to the GSE
  - b. The character and integrity of the directors and management of the company will be the criteria taken into account by the Council of the Exchange
  - c. At least 50% of the Board must be non-executive directors and of this number at least 2 or 25% shall be independent.

## LISTING REQUIREMENTS FOR DEBT SECURITIES

A company seeking the admission of debt securities to the GSE may be considered if the security concerned has a minimum total issue amount of GH¢1million face value or there are at least 50holders of such securities.

Debt securities for which listing are sought shall be created and issued pursuant to approval by the Securities And Exchange Commission of the Offer prospectus.

Conditions 5, 6 and 7 above also apply to application for listing in respect of debt securities.

### Directors of Companies

Every company in Ghana is required to have at least two directors. No nationality requirement is provided under the Companies Code, and both directors may be non-Ghanaians. However, a residence requirement is provided under the Code: at least one director should be resident in Ghana at all times. A breach of this provision of the Companies Code attracts a fine and also renders contracts entered into during the period unenforceable. The Companies Code disqualifies some persons from being directors of companies. Those disqualified include infants and persons found by a court of competent jurisdiction to be of unsound mind. An undischarged bankrupt is also disqualified from acting as a director. Where it appears that a person is guilty of any criminal offence or any breach of duty or fraud in relation to a body corporate, the person is also considered unfit to be a director of a company in Ghana.

Both private and public companies may remove their directors by ordinary resolution. Notice of intention to remove a director at a meeting of the company stating the reasons for removal must be filed at least thirty-five days before the meeting. Copies of the notice must be served on all members of the company, including the affected director. The director affected is entitled to submit a written response or be heard at the meeting where his removal will be discussed. A simple majority removes the director.

## Officers of Companies

A company is also required to have a company secretary, who keeps the records of the company. The records to be kept include the names of all the shareholders and directors, the minutes of board meetings and annual general meetings as well as any changes to the regulations of the company. The secretary is also required to ensure that all the obligations of the company to the Registrar of Companies are met and kept. A body corporate may act as company secretary. All companies are also required to have auditors. The auditors chosen by the shareholders must signify in writing that they have agreed to act for the company. Auditors must be qualified accountants who are qualified to practice as auditors in Ghana. The primary responsibility of the auditors of a company is to audit the financial statements of the company annually.

## External Companies

An external company is a body corporate formed outside Ghana, which has an established place of business in Ghana. The Companies Code defines an external company as a branch, management, share, and transfer or registration office. A factory, mine or other fixed place of business also qualifies as an external company. An agent who habitually exercises general authority to negotiate and conclude contracts on behalf of the parent company falls within the definition of external company as well as an agent who stocks merchandise of the parent company from which orders are met on behalf of the parent company.

Any company incorporated outside Ghana which intends to operate as an external company in Ghana must register with the Registrar of Companies. It is required to deliver to the Registrar of Companies its establishment documents from its country of origin. These documents should be certified copies of the instruments constituting or defining the constitution of the company. In addition to its basic instruments, the external company is also required to provide further particulars which should include the name and the nature of business of the company. If the company has shares, the number and the nominal value of its authorized and issued shares and the amount paid for the shares and the amount yet to be paid must also be disclosed. The company is also required to provide the address of its registered or principal office in the country of incorporation and its address and principal place of business in Ghana.

## Officers of External Companies

The Companies Code recognizes and provides for two officers of an external company who are described as the local manager and the process agent.

The local manager is the person or persons appointed by the external company to manage its business in Ghana. The external company is required to supply to the Registrar of Companies the names and addresses of its local manager or managers, who must be a person who is competent to be appointed a director of a company in Ghana. The acts of a person registered as a local manager bind the external company as a general rule.

A process agent is a person authorized by an external company to accept service of court processes and other documents on behalf of the external company. The external company is required to supply the Registrar of Companies with the name and address of the process agent. A process is deemed to be served on the company if it is served on the process agent.

## Foreign Companies

Foreign Companies mainly refer to companies which are not registered in Ghana as local companies or external companies.

- a) Foreign Companies, providing services only which are wholly owned by foreigners are required to have a minimum capital of \$50,000 before they can be registered by the Resister-General.
- b) Foreign Companies, engaged in trading, which are jointly owned by foreigners and indigenes require a minimum capital of \$ 300,000
- c) Foreign Companies, engaged in services, which are jointly owned by foreigners and indigenes (Joint-Ventures) require the minimum capital as follows:  
Foreign equity - \$10,000 in cash or in kind.

Indigenes – 10% of the total share capital.

Enterprises wholly reserves for Ghanaians include

- a) The sale of anything whatsoever in a market, petty trading, hawking or selling from a kiosk at any place
- b) Operation of taxi service and car hire service ( A non-Ghanaian may undertake this service provided he/she has a minimum fleet of 10 new vehicle)
- c) All aspects of pool betting business and lotteries , except football pools
- d) Operation of beauty saloons and barber shops.

## EXPATRIATE EMPLOYMENT

Quota	Amount (US\$)
1 Person	10,000 to below 100,000
2 Persons	100,000 to below 500,000
4 Persons	500,000 upwards

## Partnerships

Another legal entity that may be set up by a foreign investor for the purpose of carrying on business in Ghana is a partnership. The law on partnership in Ghana is the Incorporated Private Partnership Act, 1962 (Act 152) as amended by the Incorporated Private Partnerships (Amendment) Act, 1980 (Act 423). A partnership is defined under the Act as an association of two or more individuals carrying on business jointly for the purpose of making profit. This definition excludes an association, members of a company, body corporate or unincorporated association formed under any enactment in Ghana other than the Incorporated Private

Partnerships Act. It also excludes a body corporate incorporated under the laws of a country other than Ghana. A joint venture without a firm name established for specific projects is not a partnership within the meaning of the Incorporated Private Partnerships Act as amended. All other associations formed by more than one individual for profit are partnerships and must be incorporated under the Incorporated Private Partnerships Act. A partnership cannot consist of more than twenty members.

Partnerships in Ghana are regulated by agreements entered into between the partners. In order to incorporate a partnership in Ghana the partners are required to submit to the Registered General a copy of the partnership agreement. The partners are also required to submit the firm name of the requirements are the particulars of all other places where it does business, details of the partners, including their names, former names, if applicable, addresses and business occupation.

The Incorporated Private Partnerships Act provides that infants, persons of unsound, undischarged bankrupts and persons who in the preceding five years have been found guilty of fraud and dishonesty are similarly disqualified. Upon registration by the Register of Companies the partnership assumes a corporate character which is separate from its partners. It exercises all the powers of a natural person of full capacity as far as such powers can be exercised by a corporate entity. The liability of the partnership is unlimited, and every partner of the firm is jointly liable with the firm and all the other partners for the debts and liabilities of the firm incurred whilst such a person was a partner.

## Joint Venture

Joint Ventures with Ghanaian partners are encouraged but 100% foreign partnership is allowed.

Requirements for registration with the Registrar-General's Dept. are stated under Foreign Companies.

## Trusts

Trusts are required to be registered with the Deeds Registry.

# Chapter Three



Ghana is not a federation so the national taxes and levies apply in all ten regions of the country.

There are no state taxes.

In 2001, a new tax law, The Internal Revenue Act, 2000 (Act 592) was passed to administer Direct Taxes. The Internal Revenue Regulations, 2001 (L.I. 1675) was also introduced. There have been a number of amendments to the Law and Regulations.

## Levies

The only notable national levy in the country is the National Health Insurance Levy.

The National Health Insurance Levy of 2.5% is also imposed on certain goods and services and is administered on the lines of the Value-Add Tax.

## Taxes

Basically, these are Domestic Taxes and Customs and excise duties administered by the Ghana Revenue Authority (GRA).

The Domestic Taxes are made up of Direct Taxes and Value Added Tax administered by the Domestic Tax Revenue Division (DTRD) of the GRA.

The Customs and Excise duties are administered by the Customs Division of GRA

## Company Tax

Unless specifically exempted in the Law, companies (both resident and non-resident) are required to pay tax on income relating to business and investment, derived from, accrued in, brought into and received in Ghana after the necessary adjustment are made to it in line with the tax laws. The rate of tax is generally 25%. There are different rates applicable to certain companies. (Refer to incentives under B).

The corporate entity is taxed separately from its share holders.

All companies have to file returns four months after their accounting year. It is also required that they make quarterly tax payment on current year's income based on provisional assessment made by the DTRD or the Company itself (where the DTRD has granted that permission).

## Fiscal Year

The fiscal year for Ghana is 1<sup>st</sup> January to 31<sup>st</sup> December.

**PKF** – *Doing business in Ghana*

## Capital Gains Tax

Businesses are required to pay tax on gains made on realization of chargeable assets.

### Chargeable Assets

Chargeable assets include land (which is not for agriculture in Ghana), building, shares, and goodwill, business and business assets among others.

### Non-chargeable Assets

Chargeable assets do not include, trading stock, securities of a company listed on the Ghana Stock Exchange during the first fifteen years of the establishment of the Stock Exchange, Classes 1, 2, 3 & 4 assets (e.g. vehicles, plant and machinery, air and sea transport, computers, etc)

### Exemptions

1. Gains derived from mergers, amalgamation, and re-organization of the company where there is continuity of underlying ownership in the asset of at least twenty-five percent.
2. Capital Gains of up to Fifty Ghan Cedis (GH¢ 50.00)
3. Where the person uses up the amount received to acquire a replacement asset.
4. Transfer of ownership of an asset to a former spouse in divorce settlement or genuine separation.

## 5. Transfer of asset to spouse or certain relatives.

### Calculation

The capital gain is calculated as the excess of consideration received from the realization over the cost base of the asset at the time of realization. The tax is imposed at the rate of 15%.

### Branch Profit Tax

A branch of any foreign company doing business in Ghana is taxed like any corporate entity in Ghana. With the aim of preventing tax avoidance schemes (e.g. transfer pricing, thin capitalization and income-splitting), the Commissioner of the DTRA of GRA. is entitled to adjust chargeable income of the branch, on the basis of the turnover of the whole group.

Where it repatriates its branch profit after tax, it will be required to pay 10% tax on the amount repatriated. This is in addition to any corporate tax paid.

### Sales Tax/Value Added Tax

These are indirect taxes paid by consumers on some goods and services to the state through registered individuals or businesses. The rate is 12.5% on the value of goods and services.

There are exemptions specified in the VAT Law. Exempt supplies include agricultural products and inputs, printed matter, approved medical and pharmaceutical supplies,

transport, financial services, land, building and construction.

Imports are taxable. Exports are zero-rated.

### Fringe Benefits Tax

With the exception of dental, medical, and health insurance expenses, all fringe benefits derived from employment are taxable. Benefits relating to accommodation and car have their own treatment specified in the Law. For all other benefits, the open market value or a reasonable value is added to taxable income and taxed.

Exception is made on accommodation facility enjoyed by employees who live on the working sites/places of timber, farming, mining and construction firms.

### Local Taxes

These are collected by the District, Municipal and Metropolitan Assemblies (authorities) from persons doing business within their localities. They are also responsible for the collection of property rate.

### Other Taxes

#### Gift Tax

Subject to certain exemptions, this is payable by every person on the total value of taxable gifts received by the person, by way of gifts within a year of assessment. The rate is 15%.

## Stamp Duty

This is the duty paid (at various rates) by a person who undertakes certain transactions including the following transactions:

- a. Conveyance or transfer on the sale of any property
- b. Appointment of a new trustee
- c. Natural Resource Lease or License(e.g. mining & timber)
- d. Agreement or memorandum of agreement.
- e. Award of cost in a matter of dispute
- f. Bill of Exchange (e.g. Issue of cheques).
- g. Bill of lading
- h. Insurance policy

## Mineral Royalties

Holders of mining leases are required to pay royalties at specified rates to the Government.

## Lodgment of Returns

Returns of income of a person is to be filed not later than four (4) months after the end of a basis period of that person ending within the year.

Chargeable income of a person is defined in The Internal Revenue Act, 2000 (Act 592) as;

“ the total of a person’s assessable income, from each business, employment, and investment, less the total amount of deductions allowed to that person for the year under sections 13 to 22 (relating to general and specific deductions), 39 (relating to reliefs), 57 (relating to life insurance), and 60 (relating to contributions to retirement funds)”

## **OTHER TAXES**

These include

- a. Communication Service Tax paid by cell phone service providers, public/corporate data operators, providers of radio(FM) broadcasting services and providers of free-to-air television services.
- b. Environmental Excise Tax imposed on polythene bags and other plastic packaging materials at the rate of 20%

## **Capital Allowances**

Capital allowances are granted in respect of fixed assets (depreciable assets), both tangible and intangible, acquired by persons in businesses for each year of assessment. To qualify for these allowances however, the following conditions must be met.

- (a) The assets should be capital in nature.
- (b) The asset should be owned by the business.
- (c) The asset should be in the business up to the end of the year.
- (d) The asset should be used in carrying on business during the period.
- (e) The Commissioner of DTRD of GRA. should be informed on any new asset acquired, one month after the usage in the business.

## **Treatment**

The Internal Revenue Act 2000 (Act 592) has categorized depreciable assets into six (6) classes. Classes (Pools) 1-4 assets are put in different pools and depreciated at various rates ranging from 20% to 80% on reducing balance method. Classes 5 (buildings) attract a rate of 10% on cost and 6 (intellectual or

industrial property) is depreciated over its estimated useful life.

Class	Assets	Rate
1	Computers and data handling equipment	4 %



Where all assets in a pool are disposed off, and yet there was not enough proceeds to take care of the written down value, at the end of the year, capital allowance is granted on the outstanding written down value to reduce the pool to zero

In case of Classes 5 and 6 assets, a different method is adopted. This method ensures that businesses recover cost in the case of a loss on disposal and are also not overly taxed in the case of gains.

### Capital Allowance on Leased Assets

The lessee of an asset, whether under finance or operating lease is not entitled to capital allowance on the asset. The rental payments made to the lessor are treated as allowable expense for tax purposes.

In the case of the lessor, capital allowance is claimed under an operating lease. The full amount of rent received, is included in the lessor's income for the year. Where the arrangement is a finance lease, the lessor does not qualify for capital allowance. The amount of rent payment included in taxable income for the year is reduced by capital amounts determined by the Commissioner.

### Depreciation

Depreciation of any fixed asset is not an allowable deduction in arriving at the assessable income. This is compensated for by the granting of capital allowance.

### Stock/Inventory

For the purpose of tax, stock and work in progress is valued at the lower of cost or market value. However, any method of stock valuation accepted by Accounting principle that is consistently applied is accepted.

## Capital Gains and Losses

Gains or Losses on disposal of assets as reported in financial statements, are not taxable or allowable respectively. Gains are deducted from profits and losses added to profits. This is in line with the GRA Law that does not recognize depreciation policies set out by businesses.

The pool system adopted by the GRA. for capital allowance purposes makes it almost impossible to ascertain whether a loss or gain was made on the disposal of a particular asset. However, there are adequate provisions for recovery of full cost of fixed assets disposed off (refer to disposal of fixed assets under Capital allowance).

Classes 1-4 assets do not attract Capital Gains Tax on Disposal.

## Dividends

A tax is paid by a resident or non-resident person or partnership who or which is paid a dividend by a resident company, other than dividend exempt, at 10%.

A capitalization of profit is treated as dividend paid to each of the company's shareholders in proportion to their respective interest in the company and is taxed at 8%.

Where a company (controlled by not more than five persons) records profit over a reasonable period but does not declare dividends, the Commissioner has the authority to treat part of the company income as distributed and demand tax on dividends.

## Exemption

Dividend paid by a resident company to another resident company where the recipient company controls directly or indirectly 25% of the voting power of the company paying the company. This exemption does not apply if the dividend paid is intended as a profit or dividend stripping arrangement.

## Interest Deductions

Interest incurred in respect of a borrowing employed by a business entity in the production of an income, is a deduction allowed for the purpose of ascertaining the assessable income of the person.

## Losses

### Tax losses

Tax losses are arrived at after adjusting losses reported in financial statements in line with tax principles. Manufacturing industries who export their products, farming and mining concerns are allowed to deduct the losses over a five-year period subsequent to the year in which the loss was incurred.

Until 2002, all business that recorded tax losses enjoyed this facility.

## Foreign Currency Exchange Losses

Any foreign currency exchange loss, other than a loss of capital nature, in respect of any debt claim, debt obligation, or foreign currency holding, incurred for the purpose of producing an income is an allowable deduction, but subject to the fulfillment of certain conditions.

## Foreign Sourced Income

Foreign sourced income brought into, or received in Ghana by resident persons is included in that person's income for the year and taxed. However the person is allowed the deduction of foreign tax credits or entitled to some reliefs where there is a double taxation agreement.

## Incentives

There are a number of incentives provided for in the I.R.S Law and other laws and enactments geared towards the development of certain sectors of industry and of certain parts of the country. These incentives include reduced rate of taxes, exemption from the payment of duties and other taxes for specified periods, higher rate of capital allowance, among others. These cannot be exhaustibly dealt with, but below are a few of such concessions granted.

### 1. Carry over Losses

This applies to business engaged in farming, manufacturing, or mining (refer to Losses above).

This concession is also to be granted to Venture Capital Investment on losses incurred on the disposal of shares, agro-processing, tourism and ICT industries from year 2006.

## 2. Locational Incentives for Manufacturing Business

Tax rates for manufacturing concerns vary depending upon the location of the business and are as follows: -

Location within Accra and Tema	28%
Location in regional capitals of Ghana	21%
Location in free zone enclave	0%
Location elsewhere in Ghana	14%

## 3. Locational Incentives for Agro-Processing Business

Tax rates for manufacturing concerns vary depending upon the location of the business and are as follows: -

Location within Accra and Tema	20%
Location in Regional Capitals of Ghana (except the 3 Northern Regions)	10%
The 3 Northern Regions	0%
Outside Regional Capitals	0%

## 4. Sectorial Incentives (Reduced Tax Rates)

Tax rates vary depending upon the area (sector or industry) from which the income is coming from as shown below: -

Hotel industry	25%
Export of non-traditional production	8%
Loans granted to a farming enterprise	20%
Loans granted to a leasing company	20%
Companies listed on the Ghana Stock Exchange	28%
Companies that will be listed on the Ghana Stock Exchange after 1 <sup>st</sup> January, 2004	25% (for first 3 years)

## 5. Industrial Concessions (Exemption Period)

The income of a person from the following industry or sector of the economy is exempted from tax for the years stated against them.

Farming tree crops	10 years
Livestock	5 years
Farming cattle	10 years
Processing business	3 years
Rural banking	10 years
Construction for sale letting of low cost affordable residential premises for companies which partner the Ministry of Works and Housing	5Years
Cocoa farming	5 years
Processing of Cocoa by-products	Indefinite
Processing of waste materials	5 years
Agro-processing (effective 2006)	7 years
	5 years

## Foreign Tax Relief

In ascertaining the income of a person for a basis period, accruing in or derived from outside Ghana, any



foreign income tax paid, with respect to that income is deducted. There are however certain adjustments to be made to the income depending on what type of income was received and whether there is Double Taxation Agreement between Ghana and the country the income emanates from.

## Corporate Groups

Corporate groups, irrespective of their affiliations, prepare accounts separately, and are taxed separately. Capital allowance is not transferable.

Though nothing in the Law disallow related party transactions, the Commissioner has authority to disregard or reverse any transaction that is geared towards tax avoidance.

## Withholding Tax

Tax is withheld at various rates for the following transaction:-

### Income

Residents	% Rate
(a) Payment of employees graduated	
(b) Directors' fees.	10
(c) Payment of interest (excluding individuals).	10
(d) Fees to part-time lecturers, teachers, examiners etc.	15
(e) Payment of dividend to shareholders.	10
(f) Commission to insurance and sales agents.	15
(g) Commission to lotto agents and receivers.	7.5
(h) Payment for goods and services supplied.	5.0
(i) Rent	8

(j) Management and Technical service fees	15
(k) Dividends	8

## Non-Resident

(a) Management and technical service fees	20
(b) Royalties, Natural Resource Payments & Rents	15
(c) Endorsement Fees	20
(d) Dividends	10
(e) Repatriated Branch after tax profits	10

## Exchange Control

Ghana has an Exchange Control Act that regulates, among other things, the following;

1. Use of foreign exchange among residents
2. Trading in gold (coins and/or bullion)
3. Exports and import on bank notes
4. Exports and export proceeds
5. Capital and money market instruments

The IRS Regulations sets a formula for calculating the amount of profits that a foreign company may repatriate to its home country at every point in time. There are restrictions to the amount allowed to be repatriated.

## Personal Tax

Individuals are required to pay tax on gains or profit from the employment, business or investment. For a resident person he or she is to pay tax on income accruing in, derived from, brought into, or received in Ghana and for a non-resident person on income accruing in and derived from Ghana whether the income is received in Ghana or not.

An individual is considered resident, if he/she has stayed in Ghana for an aggregate period of 183 days or more in any twelve month period.

All incomes are aggregated and taxed, after the various adjustments relating to the type of income earned are made. The aggregated income excludes capital gains, gifts and rent income.

The tax rates are graduated with rates ranging from 0% to 25%. Annual income up to Two Hundred and forty Ghana Cedis (GH¢1,008) is taxed at 0%. Any income in excess of Nine Thousand six hundred Ghana Cedis (GH¢16,200) is taxed at 25%.

### Treaty and Non-Treaty Withholding Tax Rates

In the absence of any treaty with the Government of Ghana, the provisions of the Income Tax Law apply for the treatment of all tax matters. Thus, tax rates applicable on various incomes apply.

Where there is a treaty with the Government of Ghana, the terms of the treaty prevails over all provisions of the income tax law. However where the rates of taxes set out in a treaty are higher than those of the laws of Ghana, the lower rates are used.

Currently the notably Double Taxation Treaties Ghana has are with the United Kingdom and France. Parliamentary approval has been given to that of Italy, South Africa, Belgium and Germany.

<u>Income</u>	<u>United Kingdom</u>	
<u>France</u>	%	%
Management Fees	10	10
Interest	12.5	10
Royalties	12.5	10
* Dividends	7.5	7.5
Dividends (all other cases)	15	15

- o The recipient of the dividend must hold at least 10% shares

### Penalties

#### Penalty for late Submission of Returns (Companies and Self-Employed Persons)

Any company or a self-employed person who fails to furnish a return of income to the GRA within the time required is liable to pay a penalty of One Penalty Unit and Half Penalty Unit respectively for each day of default.

#### Failure to Pay Withholding Tax by Due Date

- Failure to pay up to 3 months - 20% of the unpaid amount
- Failure to pay exceeding 3 months - 30% of the unpaid amount

A further penalty 5% of the tax and penalty shall be imposed if the total amount remains unpaid.

## Repatriation of Profits and Transfer Pricing

A non-resident person carrying business in Ghana through a permanent establishment who repatriates profit is to pay tax at 10%

## Customs Duty

Customs duty is paid on certain goods and services that enter the country through the various points of entries. Some of the goods are exempt

## Superannuation Guarantee

This requires employers to provide a prescribed minimum level of contribution toward the employee's retirement from job.

This practice is not common in Ghana but a few tertiary institutions have this scheme in place.

## State Taxes

Ghana is a unitary state so there are no state taxes.

## Pay-roll Taxes

A state Tax imposed by each of the 6 states and Territories of Australia .

They are taxes which employers are required to withhold from employers pay-also known as withholding tax.

In Ghana we have the PAYE and Social Security Contribution.

## Land Taxes

There are no Land taxes in Ghana.

Lessees of land pay annual rent to the Stool Land Commission who are the custodians for the various Stools and families who own lands.

# Chapter Four



## GRANTS AND INCENTIVES

### 4.1 GENERAL INTRODUCTION

Incentives are based on government priorities which include the following:

- a) Manufacturing
- b) Infrastructure
- c) Tourism
- d) Energy
- e) Real Estate Development
- f) Waste Management
- g) Information and Communication Technology (ICT)
- h) Agriculture

Ghana has some few investment incentives:

### CORPORATE TAX

- I. All companies ..... 25%
- II. Income from Non-Traditional Exports..... 8%
- III. Hotels ..... 22%
- IV. Financial Institutions
  - a) Income from loan for farming ..... 20%
  - b) Income from loan for a leasing company..... .20%

TAX HOLIDAYS (From start of Operation)

- 1) Real Estate ..... 5years
- 2) Rural Bank ..... 10years
- 3) Agriculture and Agro-processing
  - a. Cocoa farmers and producers.....Exempt
  - b. Cattle ranching .....10years
  - c. Tree cropping (e.g oil Palm,Rubber etc).....10years
  - d. Livestock excluding cattle and poultry .....5year
  - e. Fish farming,poultry and cash crops .....5years
- 4) Agro Processing ..... 5years  
 (Payment of VAT on imported raw materials  
 For Agro-processing firms is zero-rated)
- 5) Waste processing(including plastics & polythene)  
 .....7years
- 6) Free Zone Enterprise/Development  
 .....10years and maximum of 8years  
 thereafter

## LOCATIONAL INCENTIVES(Tax Rebates)

- a) Manufacturing industries located in regional capitals other than Accra and Tema
  - a. Accra and Tema .....25%
  - b. Elsewhere .....50%
- b) After the initial 5-year tax holiday period, agro-processing enterprise, which use local agricultural raw materials as their main input, shall have corporate tax rates fixed according to their location as follows:
  - a) Accra-Tema .....20%
  - b) Other Regional Capitals(Except Northern, Upper East and Upper West Regional Capitals)  
.....10%
  - c) Outside Regional Capitals .....0%
  - d) Northern, Upper East and Upper West Regions.....0%

## EXEMPTIONS

Industrial plant machinery and parts thereof are exempted from Customs Import Duty under the Customs Harmonized Commodity And Tarrif Code.

## KEY INVESTMENT OPPORTUNITIES

- 1) Constitutional gurantees
- 2) Investment laws which gurantee 100% tranfer profit, dividend, etc
- 3) Bilateral Investment Treaties
- 4) MIGA membership

Incentives to both exports and imports include the following.

- a) Tariff exemptions

- b) Gateway Project
- c) Free Zones
- d) Duty Drawback
- e) Bonded Warehousing
- f) Tax incentives.

4.2 Federal Government Incentives - Ghana is a unitary state and the above incentives apply to all business entities located within the country.

4.2a Research & Development (R&D)- R&D expenditure is an allowable deduction in ascertaining the income of a person for tax purpose.

4.2b Export Market Development Grants – See exemptions above.

4.2c Regional Headquarters Concession- - See exemptions above

4.2d Export Finance and Insurance –The Ghana Export Promotion Council and the Export Finance Company provide a range of financial assistance to exporters.

\*4.2e Tariffs and Bounty Payments –

4.3 State Government Incentives -- Ghana is a Unitary State and there are no State Incentives except locational incentives stated above.

# Chapter Five



## Protection of Intellectual and Industrial Property

### REGISTRATION OF TRADEMARKS:

In Ghana, Trademarks are registered by the Registrar of Trademarks. The Trademarks registry is located at the Registrar General's office which is a department of the Ministry of Justice.

### National Legislation:

Trademark Act 1965 (Act 270) - Trademark Regulations 1970 (LI667)

## Membership in International Conventions:

Paris Convention for the protection of Industrial Property 1883, Stockholm Act of July 14 1967.

Convention on establishing the World Intellectual Property Organisation (WIPO) of July 14, 1967

World Trade Organisation - TRIPS Agreement.

In Ghana service marks are not registrable, although the new Trade Mark Bill makes provision for the protection of service marks and well known trade marks to comply with the provisions of the TRIPS agreement. The Bill is expected to be passed by the end of the year.

### General:

The trademark register is divided into Part A and Part B. A trade mark will be accepted for registration in Part A provided the trademark is 'distinctive'; namely, inherently adapted to distinguish in relation to the goods in respect of which the trade mark is registered.

A trademark will be registrable in Part B of the

register provided it is capable of distinguishing the goods from those of any other person.

The distinction between a Part A and Part B registration is important when relying on the infringement provisions set out in the Act. The registered proprietor of a Part B registration will not be entitled to rely on the infringement provisions where the defendant satisfies the court that his conduct is not likely to deceive or cause confusion or indicate a connection in the course of trade between the goods and the registered proprietor.

#### Requirements for Filing:

The requirements for filing a trade mark application are as follows:

1. The full name/address/description of the applicant.
2. The mark (word mark or label) and a list of goods/classes for which the trademark should be protected.

3. Ten (10) prints of the mark (for marks in a special form or device marks). The prints must not exceed 10 cm x 10cm. If the mark is registered in more than one class, then two additional representations of the mark for each class must be supplied.
4. It is possible to register a series of trademarks and four representations of each mark must be included in the application.
5. A Power of Attorney simply executed by the applicant company.
6. A certified true copy of a priority document if the applicant is claiming priority.
7. No legalisation or notarization is required.

#### Exclusions from Registration:

- symbols/marks that are similar to the national flag or national emblem, military flags or any decoration of a republic/country;
- symbols/marks related to politics;
- scandalous matter or matter contrary to law or morality;
- symbol/mark likely to deceive or cause confusion;

- geographic terms;
- generic names;
- service marks.

Defensive trademarks are registrable under the Act.

#### Examination:

Once the mark is examined, the applicant is advised on whether the mark has been accepted or refused registration. The trademark examiner issues a filing receipt number within six weeks from the date of the application. During this time the Registrar also examines the application and informs the applicant whether the trademark has been for registration.

#### Publication:

The publication of the acceptance of the trade mark in the Commercial and Industrial Bulletin may take between two to three years because the Trade Mark Registry has a backlog of applications to clear.

#### Expedited Examination and Registration:

This is not possible and every application must go through the usual procedure.

#### Opposition:

After publication oppositions must be filed by interested parties within two months from the date of advertisement.

#### Duration and Renewal of Registration:

The initial period of protection is seven (7) years from the date of filing. At the end of the initial period, subsequent renewal periods of fourteen (14) years at a time are possible.

#### Assignment:

The assignment document transferring ownership must be in writing and signed by both parties and does require notarization or legalization.

#### Non Use:

A trade mark may be removed from the register by any person aggrieved on the grounds that, up to one

month before the date of the request a continuous period of five (5) years or longer has elapsed during which there was no bona fide use of the mark or on the grounds that the mark was registered without any bona fide intention on the part of the applicant to use the trademark.

Registered User Recorders:

The recorder of a licensee as a registered user is available under the Act and any use by the registered user is deemed to constitute permitted use.

## REGISTRATION OF COPYRIGHT

The following works qualify for copyright protection:

Literary Works;

Musical Works;

Sound Recordings;

Broadcast;

Cinema Works;

Derivative Works; and

Programme Carrying Signals.

Computer programmes are not yet protected by the Act although the courts have indicated a tendency to

protect these works as literary works. A new Bill which is due to come into effect has been implemented providing protection for computer programmes and databases in order to comply with the TRIPS agreement.

A work will automatically qualify for copyright protection once it satisfies the requirements below. The copyright owner can elect to register the work at the Copyright Office. The procedure is simple and provides proof of ownership and the register of the works serves to publicize the rights of the owners.

A work must satisfy the following requirements to qualify for copyright protection:

it must be original;

it must be written down, recorded or otherwise reduced to a material form;

it must be created by a citizen of Ghana or a person resident in Ghana;

it must be published in Ghana. When published outside Ghana, it must be published in Ghana within 30 days.

a work under which Ghana has an obligation under an international treaty to grant protection.

### **Duration of Copyright Protection:**

Copyright subsists during the life of the copyright holder and 50 years after his death. When the work is owned by a public corporation or body corporate, the term of protection will be 50 years from the date when the work was first made public.

In the case of published works, copyright subsists for a period of 50 years from the date of first publication.

### **Transfer of Ownership:**

A work may be transferred by assignment, testamentary disposition or by operation of law.

The copyright holder may transfer the right either in whole or in part, although the transfer shall exclude transfer of the moral rights of the author. The agreement must be in writing and signed by the copyright holder or by a person authorized by him. A

license, in contrast, may be oral, written or inferred by conduct.

### Registration of Copyright:

Any work registered at the Copyright Office must be done within 3 months of publication.

Registration after the 3 month period will be penalized by a fine

Two copies of the best edition must accompany the application form;

The application will then be examined for originality;

Registration will take place within 2 weeks from the date of application;

Cinematographic films follow the same procedure for registration, although the manuscript is often registered prior to this as a literary work.

### Infringement of Copyright:

Copyright is infringed where a work protected by copyright is reproduced, duplicated, extracted, imported, or exhibited in Ghana for commercial purposes or distributed for sale.

In the event of an infringement of copyright, section 44 of the Copyright Law of 1985, PNDCL 110 provides for various remedies,

## Remedies for Copyright Infringement:

Injunction

Damages

An ex-parte application for the inspection of or the removal from the defendant's premises of infringing materials. (Section 44(2) - codification of Anton Pillar Order)

The Act also makes provision for the appointment of an arbitrator for the settlement of disputes. No regulations exist in respect of arbitration provisions, although the Minister is responsible for appointing the arbitrator on behalf of the parties.

## REGISTRATION OF DESIGNS

There are two types of design registrations, namely industrial design and textile design registrations.

### **Industrial Design Registrations:**

The registration of industrial designs are not processed at the Registry in Ghana and their protection falls under the Protocol on Patents and Industrial Designs, 1985.

An applicant filing an application for the registration of an industrial design may designate through the office of the Industrial Property Organisation for English speaking countries in Africa (ESARIPO). ESARIPO is empowered to grant registrations for industrial designs on behalf of the contracting states to ESARIPO in accordance with the guidelines set out below:

The requirements for the acceptance of an industrial design is that the design is new and that the design is capable of protection under the national law of each contracting state.

Each office in the designated state will examine the application to ensure that the formal requirements have been complied with.

The office at which the application is filed will notify the offices of the designated states that an industrial

design application has been filed and that the formal requirements have been complied with.

Within a period of 6 months each designated state must then make a written representation to the office where the application was filed indicating whether the design will qualify for protection in the state concerned.

If successful, the office of the designated state will publish the registration. If refused, the applicant may, within 3 months of being notified of the refusal, request that the application be treated as an application in accordance with the national laws of that state.

In order for Ghana to qualify under the TRIPS agreement, a new law for industrial design registrations is due to be enacted in the near future. In the meantime, any industrial Design filed at the UK Registry will automatically be protected in Ghana.

## Textile Design Registrations:

The Registrar maintains a separate register for textile designs which are protected in terms of the Textile Designs Registration Decree 1973 NRCD 213. A textile design means any pattern, ornamental feature applied to a textile article by printing, weaving or other similar process. A textile article means any article made from natural, man-made or synthetic fibres or from a combination thereof.

A textile design registration shall not be registered in the following circumstances:

- where it has been copied directly from a design registered by a different proprietor;
- if it is similar to any textile design to such an extent that it is likely to mislead purchasers in Ghana or to damage the business of any registered proprietor of a textile design;
- if it differs from another textile design only in immaterial details or in features which are variants commonly used in the trade; or

- if the design is substantially made up of well known traditional or indigenous motifs.

### Procedure:

- A registrability search is possible which takes approximately two (2) weeks.
- Where the search result is clear, an application form is filed along with five (5) original photographs attached to it.
  - The Registrar will only accept original photographs and bromides are not acceptable.
- The application is then examined by the Registrar which takes approximately one month after which the application is either accepted or refused. In the examination process, the Registrar may request an applicant to disclaim a portion of the textile design.
  - In the event of a refusal, the applicant is entitled to object to the refusal by submitting argument to the Registrar.

- Once the application is accepted, publication will follow in the Government Gazette which takes approximately one to three years depending on the funds available to the government for the publication of the gazettes.
- There is an opposition period of three months from the date of publication allowing third parties the opportunity to oppose the registration of the industrial design.
- Provided no opposition is filed, the registration certificate will be issued. Once the Registration certificate is issued, a specimen of the design is required measuring one (1) yard in length and 36 inches in breadth.

### **Duration of Textile Design Registration:**

A registration is valid for a maximum period of 15 years, which includes the protection of the registration of the design as well as the copyright, which vests in the design. After 15 years, the design and the copyright in the design fall in the public domain. The initial period of protection for the design is five (5)

years with the possibility of two renewal periods thereafter.

## Rights Granted by Registration:

The registered proprietor has the exclusive right in Ghana to make or import for sale or for use for the purpose of any trade or business or to sell or hire or offer for sale or hire any textile article for which the textile design is registered.

## PATENTS OF INVENTION

National Legislation:

The Patent Law 1993 (P.N.D.C.L 332).

## Membership in International Conventions:

Paris Convention for the Protection of Industrial Property (1883), Stockholm Act of July 14, 1967.

Convention on establishing the World Intellectual Property Organisation (WIPO) of July 14 1967.

World Trade Organisation (TRIPS Agreement)

ARIPO

Filing:

Applications may be filed by either the inventor or his legal successor or assignee.

**Naming of Inventor:**

Compulsory unless the inventor indicates in a special declaration addressed to the Registrar that he does not want to be named.

**Exceptions to Protection:**

Discoveries; scientific and mathematical theories; plants or animal varieties or essentially biological processes for the production of plants or animals other than microbiological processes and the products of such processes; schemes, rules or methods for doing business, performing purely mental acts or playing games; methods of treatment or products for use in any method of treatment of the human or animal body by surgery or therapy, as well as diagnostic methods; presentation of information; computer programs.

### Novelty:

An invention is patentable if it is new, involves an inventive step and is industrially applicable and it is not anticipated by prior art.

### Priority:

May be claimed as provided for in the Paris Convention, for one or more earlier national, regional or international application filed by the applicant or his predecessor in title or for any state party to the Paris Convention.

### International Applications:

May be filed in accordance with the Patent Cooperation Treaty signed in Washington on June 19, 1970 and regulations made there under in which case the Registrar's office in Ghana shall serve as a receiving office.

Requirements for filing (to be sent to resident agent for filing of application):

1. Power of Attorney, no legalisation nor notarization required;

2. Specification in English with claims and abstract fully supported by a description of the invention;
3. Drawings, if any;
4. If priority is claimed, indication of country, date and filing number of foreign application;
5. Full name and address of inventors, if applicable.

#### Examination Procedure:

Examination: The registry in Ghana will examine the patent application for formalities only. However, where the application is filed under the ARIPO system, the Registrar's office in Zimbabwe will conduct a substantive examination.

#### Amendment of Application:

The applicant may amend the application provided the amendment does not go beyond the disclosure in the original application. The applicant may appeal to the Tribunal against any decision of the Registrar.

### Granting:

From the time of application until the patent registration is granted takes approximately 8 months to 1 year.

### Publication:

Once the patent is granted, the particulars are published in the Government Gazette by the Registrar in the prescribed manner.

### Duration:

A patent expires at the end of the tenth year after the filing of the application. It is possible to renew the patent registration for two additional periods of five (5) years each, however, the proprietor must prove that the invention is being worked in Ghana or that there are legitimate reasons for failing to work the invention. The application to renew the registration must be filed not more than 12 months and not less than one month before the patent registration is due to expire.

### Annuities:

In order to maintain the patent registration, an annual fee must be paid in advance to the Registrar's office, starting with the second year after the filing date of the application. A grace period of six (6) months is granted for the payment of the annual fee along with a fine.

#### Compulsory licence:

After four years from the filing date of the application or three years from the granting of the patent, whichever period last expires, and any person may apply to the court to grant a compulsory licence on specified grounds provided for in the law.

#### Licences of Right:

The owner of a patent may request the Registrar to make an entry in the register to the effect that licences under the patent are to be available as of right.

#### Invalidation of Patent:

Any interested party may in proceedings instituted by him against the owner of a patent, request the court to invalidate the patent. A patent that has been

invalidated shall be regarded as null and void from the date of the grant of the patent.

Exploitation of patent by Government or by third persons authorized by Government:

Where a vital public interest, in particular national security, health or the development of a vital sector of the economy requires that certain acts be performed with respect to a patented invention, the Minister of Justice may decide that the patented invention, even in the absence of the authorization of the owner of the patent, be exploited by a government agency or by a third person designated by the Minister of Justice subject to the payment of remuneration to the owner of the patent.

## DOMAIN NAMES IN GHANA

The top-level country domain name for Ghana is com.gh. The domain name server for a registered domain under .gh must be located in Ghana. A domain should be active within six months after it has

been granted. The following sub-domain names are available:

- com.gh
- edu.gh
- gov.gh
- org.gh
- mil.gh

There is a formality that the applicant is required to comply with prior to filing an application for the top level domain name com.gh and that is to apply for the registration of the company name in Ghana. It seems that this requirement is not applied too strictly and the motivation behind this requirement is to avoid people registering a domain name of a well-known company. In other words, if an applicant applies to register a com.gh domain name, which bears no resemblance to a well-known company then the domain administrator will possibly waive the requirement of registering the applicant's company name in Ghana.

# Chapter Six



## IMMIGRATION

### **6.1 Immigration to the Country**

*Every visitor to Ghana requires a visor/Entry permit except ECOWAS citizens*

*And nationals from Kenya and Zimbabwe. Nationals of the under listed countries*

*Are entitled to Gratis visas issued at Ghana Foreign Mission;*

*Malawi*

*Lesotho*

*Egypt-Holders of service Passports only*

*Germany-Holders of Service Passport only*

*Holders of UN Travel certificate/Laissez passer*

*Visas/Entry Permits may be obtained from Ghana Missions abroad. Visitors from countries which*

*Do not have Ghana Missions may obtain Visa on Arrival up prior application to the Director of Immigration. All visitors are given up to sixty (60) days Visitors permit on arrival.*

*Extensions may be granted on application. The GIS may extend such permits up to a minimum period of three (3) months initially and a maximum of six (6) months.*

- *Application of visa on arrival may be submitted by visitors host, business partner, and representative or directly by fax or email. The letter should indicate the following;*
  - Purpose of visits*
  - Expected date of arrival*
  - Duration of stay*
  - Lodging/Hotel reservation*
  - Place of embarkation*
  - Contact address in Ghana*
  
- *Visitors who wish to extend their stay can apply following the below*
  - Fill Application for extension form*
  - Attach one (1) recent passport picture*
  - Photocopy of return ticket*
  - Letter of support from local institution/establishment.*
  
- *Re- Entry Permit*
  - Fill Application for Re-Entry permit Form*
  - Attach one (1) recent passport picture*
  - Attach an application letter from affiliated company(s)*  
*(Tourists need not attach any letter for a single Re –Entry to Ghana).*
  
- *Residence Permit*
  - Four (2) recent passport pictures*
  - Photocopy of approval of Immigrant Quota*
  - Company Tax Clearance Certificate*
  - Bond to be executed*
  - Copies of Marriage/Birth Certificate*
  - Sworn affidavit (where applicable)*
  - Letter of support from GIPC,GFZB (where applicable)*
  - Police clearance report from home country*
  - Medical Report*
  - Company Registration Documents*
  - Work contract document or appointment letter*

*All foreign nationals legally resident in Ghana are required to notify the Director of Immigration of the expiry of the residence permit if they would remain outside Ghana for an indefinite period. Failure to comply with this directive attracts the payment of penalties.  
(Ghana Immigration Service brochure)*

## **6.2 Permanent Residence**

- *Who is Eligible?*

*Foreign nationals wishing to live and work in Ghana require work and Residence permit. A work permit can be obtained on application to the Director of Immigration.*

### **Labor Agreements**

*Labour migration between Ghana and the E.U and other countries exist based on agreements and other conditions.*

- *Corporate bodies and other institutions that wish to employ foreigners may obtain immigration Quota from the Ministry of interior, the Ghana investment Promotion Centre(GIPC) or the Ghana Free Zones Board(GFZB)*
- **The Employer Nomination Scheme**  
*This allows Ghanaian employers to sponsor employees who are foreign nationals for a permanent visa to work.*
- **The Business Skills Migration Program**  
*Thus is where migration program gives priority to those with skills most needed. For example ICT, Medicine, Mining and Oil exploration, waste management, petroleum.*

### **6.3 Temporary Residence**

*All foreign nationals who wish to reside in Ghana temporarily either as a visitor or as a worker requires a visa/entry permit. Conditions under 6.1 apply.*

### **6.4 Visitors**

- **Business Development-Provisional**

*These are temporary visas to allow business people entry into Ghana for the purpose of investing in Ghana, managing a new or exiting business in Ghana, or establishing a new Business in Ghana.*

- **Business Development-Permanent**

*This is for people who have established the required level of business in Ghana  
While holding a provisional visa*

- **Business Visitors Visas**

*These are for business people to visit Ghana for business purposes; for example to attend a conference.*

*Requirements include the following:*

- a) A valid passport, with at least six(6) months validity remaining.*
- b) Four(4) passport-type photographs*
- c) A letter from the company of origin stating the purpose and duration of the trip and that the company in the country of origin will take care of all the financial expenses of the applicant during his stay in Ghana.*
- d) A letter of invitation from the host company in Ghana.*
- e) A copy of the Green Card(front and back) if the applicant is not a U.S citizen.*

- f) *Evidence of financial support( recent copy of bank statement or letter from bank/sponsors)*
- g) *Copy of round trip airline ticket or itinerary.*

- **APEC Business Travel Card**

*Asia Pacific Economic Cooperation(APEC) Business Card allows business travelers pre-cleared, facilitated short-term entry to Asia  
This is not applicable in Ghana.*

- **Electronic Travel Authority(ETA)**

*This allows one to apply for a short-term visa for travel to Australia.  
This is not applicable in Ghana.*

### **6.5 Working Permits**

Foreign nationals wishing to work in Ghana require a working permit. A work permit can be obtained on application to the Director of Immigration.

## References:

1. Ghana Stock Exchange
2. Securities and Exchange Commission Regulations, 2003 (L.I. 1728)
3. Internal Revenue Service
4. Ghana Investment Promotion Centre (brochure on Doing business in Ghana)
5. Ghana Immigration Service
6. [www.fugarand company.com.gh/intellectual property pub.doc](http://www.fugarandcompany.com.gh/intellectualproperty/pub.doc).