

Starting Business in Ghana

INTRODUCTION

For an investor to operate in Ghana, the incorporation or registration of the legal entity under the laws of Ghana is a fundamental prerequisite. There are two main types of business entities that may be established for the purpose of conducting business; an investor may either incorporate or register a company or incorporate a partnership, irrespective of nationality, in accordance with the provisions of any of the following legal instruments:

- The Companies Code, 1963 (Act 179)
- The Partnership Act, 1962 (Act 152)
- The Business Name Act, 1962 (Act 151)

The Ghana Investment promotion Centre Act 1994(Act478), however, gives legal entities other than companies or partnerships the opportunity to register as an investor.

A foreign investor may team up with Ghanaian entrepreneur or company for a joint venture, usually in the form of a partnership or a limited liability company. However, under the Ghana Investment Promotion Centre Act 1994 (Act 478), a minimum equity capital of US\$10,000.00 is required from the foreign investor who intends to enter into a joint venture partnership with a Ghanaian in any area of economic activity.

The foreign shareholder is required to satisfy this minimum equity capital either in cash transferred through Ghana Banking system or its equivalent in the form of goods, plant and machinery, vehicles or other tangible assets imported into the country especially and exclusively to establish the enterprise. The imported items must be covered by a Destination Inspection Report issue by an accredited inspection company, stating the value and condition of goods. Consideration for goodwill of a business or services rendered by partners cannot be used to satisfy the minimum foreign equity capital.

Foreigners are permitted 100 per cent ownership of an enterprise provided the investor satisfies Section 19(2b) of the GIPC Act, 1994 (Act 478). Wholly foreign-owned enterprises must have a minimum paid up capital, the equivalent of US\$50,000 in all areas of economic activity except import trading, where the minimum equity capital requirement is US\$300,000. In the cases of export trading and liaison (external) offices, there is no minimum foreign equity requirement.

Application for registration of a company is made directly, or through agents or solicitors, to the Registrar-General. A company is duly registered after the company's regulations have been submitted to the registrar of companies and a certificate of incorporation issued. A specified fee is paid on presentation for the regulations.

The information required includes:

- The name of the company with the word "Limited" as the last word in the name.
- The nature of the company's business.
- A statement that the company possesses all the powers of a natural person of full capacity.
- The names of the first directors of the company.
- A statement that the liability of the company is limited.
- The share capital and its division into shares of no par value.
- Limitation on the powers of the Board of Directors in accordance with Section 202 of the Companies Code.
- Any other lawful provisions relating to the constitution and administration of the company.

The requirements for a public company limited by shares are similar to those stated above, except that the

public can by shares.

GENERAL COMPANY REGISTRATION GUIDELINES

1. Name of Company

We advise that you propose at least 3 names for the company. A Search has to be first conducted to ensure that the name is not in use and will be acceptable by The Registrar of Companies (Note, proposed name has to be accepted by Registrar of Companies because certain names may not be permitted for various reasons.

- (a)
- (b)
- (c)

2. A Company must have a minimum of 2 Directors of Company (at least 2).

(a) It is important to note that at least one director of the company is required to be present in the country at all times.

(b) It is also important to note that a Non-resident director is not entitled to Notices of Board meetings

(c) Directors must provide the following details

- Present Name
- Former Name
- Nationality
- Residential Address
- Business Occupation
- Other Directorships in Ghana

3. Secretaries

The Company must specify a named Company Secretary (We arrange Company Secretarial and Registration Services By LT Nominees an Associated Company). Unless you have a specific person in mind we shall be pleased to provide that service.

4. Auditors

An Auditor must be named. Company Auditors (we can propose some names, but PKF, KPMG, PWC, Deloitte, Ernest and Young etc are all available in Ghana.

(a) Name of Auditors:

(b) Address of Auditors

5. Shares

The Company must specify the Number of authorised shares of the company (note shares in Ghana are of no par value shares)

The Company must specify the Number of shares to be issued initially.

The Company must specify the Price per share

6. Capital

The Company must specify the Stated Capital of the Company (Note Current Ghana Investment Code requires a minimum of US\$50,000 for Companies wholly owned by non-Ghanaians.. Where the Company is a joint Ghanaian-Foreign ventures, the minimum stated capital is US\$10,000.(For Trading and import export, the equity is \$300,000

7. Address and location of Principal Place of Business

(a) Address & location of Head Office

(b) Address & location of registered offices (Normally that of Auditors or Company Secretaries)

8. Subscribers (Shareholders)

The Subscribers for the regulations i.e the (Shareholders) must provide the attached details and NB if they are acting in a Representative Capacity they must obtain a duly certified power of attorney. If there is a company involved this power of attorney must come with a duly Certified Board Resolution AND attested to by Notary Public or Judicial Authorities

- Full Name
- Occupation
- Nationality
- Address
- Number of shares

- Age

9. Company Objects

It is very important to State the exact nature of business you wish to undertake this will have to be captured in the registered objects of the company e.g (import export, or trading and distribution or manufacturing etc
Note: This is a general guideline only and is not intended as a substitute for legal advice on company formation in Ghana there are a lot more issues involved which will require legal consultation.

COMMENCEMENT OF BUSINESS

Before commencing business, further information on the company must be provided. This includes the particulars of the company and declaration of compliance.

The particulars of the company are given on Form No. 3 and signed by the directors and the company secretary.

The information provided must include:

- Name of company.
- Authorized business.
- Particulars of directors (at least two) and a secretary.
- Name and address of auditors.
- Addresses of the company's registered office and principal place of business.
- Address at which register of members is maintained.
- Amount of stated capital; number of authorized and issued shares, amount paid (other than cash), and amount due for each class.

The declaration of compliance is made on Form No. 4. This states that the conditions of Section 28 of the Companies Code pertaining to a minimum capital issue of 25,000 cedis (¢) has been paid and signed by all directors and the secretary of the company. There is a stamp duty of 0.2 per cent of capital issue payable. Upon due completion and presentation of forms, the registrar issues the company with a certificate of commencement of business.

Annual Returns

Limited Liability Companies must file annual returns with Registrar of Companies showing its audited balance sheet and profit-and-loss statement after 18 months of incorporation.

The various forms required for registration of companies are obtainable from the Registrar-general.

Labour and Employment

The laws on labour and employment such as work permits and statutory obligations of employers and employees are all relevant and of some concern to investors. The principal law on labour in Ghana is the Labour Act, 2003 (Act 651). The Labour Act applies to all workers and all employees, except the Armed Forces, the Police Service, the Prison Service and the intelligence agencies. The Labour Act deals with employment trade unions and dispute resolution, amongst other things.

Other relevant laws are:

Factories, Offices and Shops Act, 1970 (Act 328) as amended

The Workmen's Compensation Law, 1987 (PNDC187)

The Social Security Law, 1991 (PNDCL247)

The Children's Act, 1998 (Act 560O)

The Immigration Act, 2000 (Act573).

TAXATION

The principal tax laws that affect investment are the Internal Revenue Act, 2000 (Act592) as amended, which is on direct taxation, the Customs Excise and Preventive Service (Management) Law, 1993 (PNDC330) as amended, which is on indirect taxation and the Value Added Tax, 1998 (Act546) as amended, which as the name implies imposes value added tax.

The Revenue Agencies Board established under the Revenue Agencies (Governing Board) Act, 1998 (Act 558) is responsible for the supervision and coordination of these agencies in the performance of their functions.

Investment-specific laws also have provisions on taxation. The Ghana Investment Promotion Centre Act provides that enterprises registered under the Act are entitled to all the incentives and benefits under Ghanaian tax law on direct as well as indirect taxation.

Brief review of the Ghanaian income tax laws

Section 1 of the Ghanaian Internal Revenue Act 2000 (Act 592) (as amended) imposes tax on the chargeable income of persons or corporate bodies on each year of assessment, which is from January to December.

Section 5 defines chargeable income as “the total of a person’s assessable income for the year from each business, employment and investment less the total amount of deductions allowed to that person for the year”.

Section 13 of the Act states the deductions that are allowed to be made from a person’s chargeable income include all outgoings and expenses wholly, exclusively and necessarily incurred during that period in the production of the income, and other deductions as may be prescribed by law.

Section 6 of the Act **inter alia** empowers the Commissioner of Internal Revenue to make assessment on; person whose income accrues in or is derived from Ghana.

By the provisions of Sections 6(1) (a) (b) this income is subject to assessment by the Tax Commissioner as long as the income from the business or employment or investment is accrued in or derived from Ghana even if that person is not a Ghana Resident.

Section 63(12) puts it beyond doubt that an income of whatever nature is treated as accruing in or derived from Ghana to the extent to which the income arises from an activity undertaken in Ghana. The section states as follows: “An income or inclusion in ascertaining income, whether or not mentioned in this section is also treated as accruing or derived from Ghana to the extent to which the income or inclusion arises from an activity undertaken in Ghana.”

Section 63(1) of Act 592 also states; “the gains or profits from any employment or a person shall be treated as accruing in or derived from Ghana to the extent to which the employment is exercised in Ghana regardless of the place of payment”.

Income from an employment is defined by Section 8(1) of the Internal Revenue Act 592 as the gains or profits or allowances or benefits paid in cash or given in kind to or on behalf of that person from that employment.

Employment under the Internal Revenue Act 2000 Act 592 means *inter alia* the holding of or acting in any office or in a position entitling the holder to a FIXED or ASCERTAINABLE remuneration...

Section 94 defines an Employer as “a person who employs or remunerates an employee”.

Where an employer gives the employee certain benefits like accommodation and vehicle in addition to the cash emolument the Second Schedule to section 8(2) of act 592 adds certain values to the total cash emolument of the taxable person before arriving at the chargeable income. The amount to be added to the said emolument is expressed as a percentage of the cash emolument. The percentage to be added depends on the nature of the benefit.

The following are the percentages that are added where the employee is provided certain free benefits.

- Accommodation with furnishing 15%

- Accommodation only 10%
- Furnishing only 5%
- shared accommodation 5%
- Vehicle with fuel 15%
up to a maximum of c300,000 per month
- Fuel only 7.5%
up to a maximum of c150,000
- Vehicle only 7.5%
up to a maximum of c150,000 per month

It must be noted however that under section 8 of Act 592 certain benefits such as medical care or allowance, free passage to and from Ghana (where the employee is not resident in Ghana at the time of employment) are not added to the cash emolument in ascertaining the chargeable income.

The percentage of the tax to be paid by the employee depends on his level of income. The rate varies between a minimum of 5% and a maximum of 30% of the employee's annual income. The first c1.5m of a salary in the year is exempt from tax under the 2004 Budget statement.

Under section 81 of Act 592 Employers are obliged to deduct the income tax of the employee at source by withholding such taxes and paying same to the Commissioner.

A withholding agent who fails to withhold tax in accordance with the law is personally liable to pay to the Commissioner the amount of tax which has not been withheld by the withholding agent. – Section 88(1)

The combined effect of Sections 138, 140 and 154 of Act 592 is to empower the Commissioner to by notice on a person or agent of the tax debtor holding an asset, including money, direct such a person to pay the tax liability of the non-resident. Where such payment is made on behalf of the non-resident in pursuance of the notice received from the Commissioner the person making the payment shall be deemed to be an agent of the non-resident and shall be indemnified against any proceeding whether civil or criminal, judicial or extra-judicial.

Developments in Taxation from 2004

The top personal income-tax rate is 30 percent, but that rate is encountered at an income threshold of \$5,400 per year. The 20 percent rate hits at \$2,700 and the 15 percent rate is applicable at \$270 per year.

Value Added Tax VAT is still at 12.5 percent.

The "wealth tax," is still suspended

Corporate tax reduces from 32.5 per cent to 28 per cent.

- Increase in the minimum tax free threshold from Ghanaian Cedis 1.2 million to 1.5 million
- Special tax rate of 25 percent for companies listing on Stock Exchange for the first time
- 5-year tax holiday for new agro-processing firms
- Revised taxes for agro-processing as follows:
 - Accra and Tema - 20 percent
 - Other Regional Capitals - 10 percent
 - Outside Regional Capitals - zero
- For 3 Northern Regions zero tax rates for Agro-processing firms irrespective of location

- 7-year tax holiday for waste processing enterprises
- 5-year tax holiday for companies investing in production of cocoa industrial by-products