

AFRICA

A Legal Guide for Business
Investment and Expansion

GHANA



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GHANA

FIRM PROFILE: NTRAKWAH & COMPANY

Doing business in Ghana without a trusted partner isn't difficult. It's impossible.

Since 1984, Ntrakwah & Company has helped local and international companies navigate the challenges of Ghanaian law. Ntrakwah & Co. offers clients an insider's knowledge of business, banking and finance, tax, construction, corporate and commercial, litigation and arbitration.

International Expertise: Ntrakwah & Co. has been in existence for more than three decades. Our partners have been educated in England, USA and Ghana; and we are fluent in English, French and Twi.

The Authority on Ghanaian Law: Ntrakwah & Co.'s lawyers have helped to create much of Ghanaian business law. Founder and Managing Partner Felix Ntrakwah established the Ghanaian Corporate Law Institute; he also serves on the Committee of Experts for business law reform.

Public and Private Consultancy: Ntrakwah and Co. has unparalleled experience in guiding foreign corporations and government agencies through the Ghanaian business environment; with Felix playing a leading role in the establishment of corporate rules and guidelines.

Unquestioned Integrity: Ntrakwah & Co. has a strong reputation for ethics and trustworthiness; we have the skills, expertise and integrity of an international firm, while remaining 100% true to Ghanaian culture and values.

CONTACT:

KWADWO NTRAKWAH

kwadwontr@ntrakwahandco.com

+233 302 760776

www.ntrakwahandco.com



1. What role does the government of Ghana play in approving and regulating foreign direct investment?

The Government of Ghana continues to promote foreign direct investment in Ghana. In 2013, the Ghana Investment Promotion Centre (GIPC) Act was passed to replace the 1994 GIPC Act that was seen as unfriendly to investors.

The GIPC is the main government agency responsible for the encouragement and promotion of investment in Ghana. A foreign investor must comply with the requirements under the GIPC Act as well as with other industry specific laws. For example, an investor in the banking industry must not only comply with the GIPC Act but also with the requirements of the Banking Act.

A foreign investor may engage in any legitimate business activity in Ghana, apart from those including the operation of a beauty salon or a barber shop; the printing of recharge scratch cards for the use of subscribers of telecommunication service; and others.

Enterprises registered with GIPC are required to renew their registration every two years in order to continue investing in Ghana.

2. Provide advice on best entry strategies to employ in Ghana and common corporate structures used.

The common entry strategies in Ghana are licensing and franchising, mergers and acquisitions and joint ventures. The best entry strategy to employ would depend on the particular industry in which the foreign investor intends to invest. Foreign investors who want to provide goods and services in the petroleum industry will have to comply with Ghana's Petroleum Local Content Regulations, which requires them to incorporate a joint venture company with a local partner. Irrespective of the entry strategy adopted, having a trusted local partner is invaluable.

The following types of companies may be incorporated in Ghana:

- A company limited by shares (a company with the liability of its members limited to the amount unpaid on its shares);
- A company limited by guarantee (a company with the liability of its members limited to such amounts as the members may respectively undertake to contribute to the assets of the company in the event of the company being wound up);
- Unlimited company (a company which does not limit the liability of its members);
- By registration of an external company (a branch of a company incorporated outside Ghana).

The most common corporate structure used in Ghana is that of a company limited by shares.

To set up a company limited by shares in Ghana, each shareholder and director of the proposed company must apply for a Tax Identification Number (TIN). After obtaining the TIN, the company must register with the Registrar General's Department by filing the prescribed forms and paying the prescribed fees. Following registration, a certificate of incorporation and a certificate to commence business are issued.

After incorporation, any company with foreign participation must register with the Ghana Investment Promotion Centre and meet the minimum capital requirements.

3. How does the Ghana government regulate commercial joint ventures between foreign investors and local firms?

The Government regulates commercial joint ventures between foreign investors and local firms through legislation. Under the GIPC Act, a foreigner may engage in a joint venture with a Ghanaian only where the foreigner invests a foreign capital of not less than Two Hundred Thousand United States Dollars (US\$200,000.00) in cash or capital goods relevant to the investment or a combination of both, and where the partner who is a Ghanaian does not hold less than ten percent (10%) equity shares in the company.

Apart from the GIPC Act, other industry specific laws regulate joint ventures in Ghana. For example, in the petroleum sector a foreign company which intends to provide goods or services to a contractor, subcontractor, licensee or other allied entity within Ghana must incorporate a joint venture company with an indigenous Ghanaian company, and the Ghanaian company must have equity participation of at least ten percent (10%).

4. How does the [GHANA] government regulate proposed activities by foreign investors and are there any areas of the economy where they are prohibited (e.g., natural resources, energy, telecommunications or real estate)?

The Government of Ghana regulates proposed activities of foreign investors through legislation. A foreign investor must register with the Ghana Investment Promotion Centre.

Apart from the activities reserved for Ghanaians or Ghanaian-owned businesses outlined below, a foreigner may participate in a business if the following minimum capital requirements are met:

- In the case of a joint venture with a partner who is a Ghanaian, the foreigner must invest a foreign capital of not less than Two Hundred Thousand United States Dollars (US\$200,000.00) in cash or capital goods relevant to the investment or a

combination of both, and the partner who is a Ghanaian does not hold less than ten percent (10%) equity shares in the company;

- Where the enterprise is wholly owned by a foreigner, the foreigner must invest foreign capital of not less than Five Hundred Thousand United States Dollars (US\$500,000.00) in cash or capital goods relevant to the investment or a combination of both by way of equity capital in the company;

- Where the foreigner is engaged in trading, the foreigner must invest in the company not less than One Million United States Dollars (US\$1,000,000.00) in cash or goods and services relevant to the investments and shall employ at least twenty (20) skilled Ghanaians.

The following activities are reserved for Ghanaians or Ghanaian-owned businesses:

- the sale of goods or provision of services in a market, petty trading or hawking or selling of goods in a stall at any place;
- the operation of taxi or car hire service in an enterprise that has a fleet of fewer than twenty-five vehicles;
- the operation of beauty salon or a barber shop;
- the printing of recharge scratch cards for the use of subscribers of telecommunication services;
- the production of exercise books and other basic stationery;

- the retail of finished pharmaceutical products;
- the production, supply and retail of sachet water;
- all aspects of pool betting business and lotteries except football pool.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

Every worker in Ghana is treated equally. Foreign employees are required to obtain work permits to enable them work in Ghana.

Employers must enter into written contracts with employees where the employment is for a period of six (6) months or more, or for a number of working days equivalent to six (6) months or more within a year. The employment contracts must expressly state the rights and obligations of the parties to the contract.

Foreigners may be employed to occupy managerial and non-managerial positions. With respect to non-managerial positions, a citizen of similar qualification and experience shall have the first option.

The maximum number of working hours in Ghana is eight (8) hours a day with one-hour break or forty (40) hours a week. Employees are entitled to overtime pay for overtime work. This, however, does not apply to businesses which require overtime services.

The statutory annual leave in Ghana is a minimum of fifteen (15) working days with full pay. An employee is

entitled to sick and maternity leave. There is, however, no statutory provision for paternity leave but this may be granted at an employer's discretion.

Employees may form or join trade unions and enter into collective bargaining agreements with their Employers.

Employees are entitled to equal pay for equal work done. Employers are prohibited from imposing pecuniary penalties upon workers for whatever reason or from making any other deductions unless permitted by law.

Ghana is a member of the International Labour Organisation (ILO) and has ratified several ILO Conventions.

6. Capital availability and access considerations in Ghana – any major capital, infrastructure or labour constraints to be aware of and strategies to mitigate?

There are currently about thirty-four (34) licensed banks and four hundred and twenty-nine (429) licensed micro-finance institutions in Ghana. The banking legislation allows foreign banks to open representative offices in Ghana and as at March 2016, four (4) foreign banks had representative offices in Ghana.

Despite the numerous financial institutions in Ghana, access to capital still remains a challenge especially for small and medium-sized enterprises. Most financial institutions in Ghana provide loans at high interest rates and often over collateralise. Some

institutions go as far as seeking joint and several guarantees from the directors of the borrower for the repayment of the loan. This remains a major constraint for any business looking to borrow on the local market. To mitigate this, some businesses seek funding from other jurisdictions.

Ghana also has a capital market that is regulated by the Securities and Exchange Commission (SEC) which has the legal mandate to protect investors and maintain the integrity of the securities market and the Ghana Stock Exchange (GSE). There are currently forty-two (42) companies listed on the GSE, representing some of the leading sectors in the Ghanaian economy. There is also the Ghana Alternative Market (GAX) which is a parallel market to the GSE and which focuses on small and medium-sized enterprises. Listing on the GSE or GAX gives companies the opportunity to secure long-term capital.

With respect to investment on the stock exchange, non-resident investors can also invest in Ghana. There is free and full foreign exchange remittability for the original capital plus all capital gains and related earnings. There is an 8% withholding tax (which is also the final tax on dividend income) for all investors, both resident and non-resident. There are currently twenty (20) licensed stock-broking firms, which have set up systems for serving non-residents.

7. What types of taxes, duties, and levies should a foreign investment in Ghana expect to encounter?

Tax administration in Ghana is administered by the Ghana Revenue Authority (GRA) through its Customs Division, Domestic Tax Revenue Division and Support Services Division. Ghana's new Income Tax Act, which was enacted in 2015, has brought about the consolidation of all Ghanaian tax laws.

A foreign investor in Ghana should expect to encounter various taxes, duties and levies. There may however be some tax incentives for investors, such as reduced tax rates, depending on the industry or location of the business.

CORPORATE TAX

This is the tax paid by companies on their profits in each year of assessment. The standard corporate tax rate is twenty-five percent (25%). Mining and petroleum exploration companies pay tax at the rate of thirty-five percent (35%) and hotels at the rate of twenty-two percent (22%). Companies in the agro processing, rural banking and waste processing sectors pay tax at one percent (1%) during the period of their temporary concession.

PERSONAL INCOME TAX

Self-employed persons are required to pay income tax at graduated rates in four equal instalments. The current Personal Income Tax rates took effect from January 2016 and they range between five percent (5%) and twenty-five percent (25%) of the income.

PAY AS YOU EARN (PAYE)

The PAYE contributions are withholdings from salaries of employees in order to satisfy their income tax responsibilities. The PAYE is computed with the Personal Income Tax rates.

STAMP DUTY

Stamp duty is administered under the Stamp Duty Act. The stamp duty is not a tax on transactions, but on documents brought into being for the purposes of recording transactions. It is therefore a tax on documents or specific instruments which have legal effect such as transfer of shares and conveyancing.

MINERAL ROYALTIES

This is a tax imposed on persons for the extraction of natural resources on or under the surface of the earth. In the case of natural resource payments and royalties, tax is withheld at the rate of fifteen percent (15%).

COMMUNICATIONS SERVICE TAX (CST)

The Communications Service Tax (CST) is a tax levied on charges for the use of communications services that are provided by communications service operators. It is paid by consumers to the communications service providers, who in turn pay all CST collected on a monthly basis. The rate is six percent (6%).

VAT AND NHIL

Value Added Tax (VAT) is a broad-based tax imposed on the expenditure of consumers when they purchase goods and services. It is collected by businesses which are

registered to charge the tax in stages on the “value added” from the manufacturing to retail level. The businesses then account for the tax so collected at the end of every month. The current standard rate of the tax is fifteen percent (15%). A zero (0) rate is also applied to all exports. The following supplies are exempted from VAT: agricultural inputs; livestock and agricultural products in a raw or preserved state; machinery for use in agriculture; fisheries; horticulture; and animal care, among others

The National Health Insurance Levy (NHIL) is a levy imposed on goods and services supplied in or imported into the country. All goods and services are subject to the levy unless they are otherwise exempted. The levy is charged at a rate of two and a half percent (2.5%) on the VAT exclusive selling price of goods supplied or service rendered.

WITHHOLDING TAX

Resident entities are required to withhold tax at various rates when making payments to resident and non-resident persons. Some of the withholding tax rates are as follows:

Resident Persons:	
Payment to petroleum sub contractor	15%
Interest Income	8%
Dividend	8%
Non-Resident Persons:	
Payment to petroleum sub contractor	15%
Interest Income	8%
Dividend	8%

In the case of rent paid to an individual for non-residential property such as shops, tax is withheld at the rate of fifteen percent. In the case of rent paid to a person other than an individual for residential property, a withholding tax of eight percent is withheld. With respect to the remuneration of directors of companies, tax is withheld at the rate of twenty percent. With regards to the fees or allowances to a resident director, manager, trustee or board member of a company or trust, tax is withheld at the rate of twenty percent.

DOUBLE TAXATION TREATIES

Ghana currently has double taxation treaties with countries including Germany, France, Italy, the Netherlands, UK and South Africa among others.

8. What are the main IP law provisions likely to be most relevant to inbound investors and/or foreign imports and their distributors (e.g. trademark protection, licensing, other)?

Ghana has improved its intellectual property laws over the last fifteen (15) years.

Ghana is a member of the World Trade Organisation (WTO) and the African Regional Intellectual Property Organization (ARIPO). Ghana has laws on Copyright, Trade Marks, Patents, Layout-Designs (Topographies) and Geographical Indications, Industrial Designs & Textiles.

COPYRIGHT

In Ghana, copyright protection on any work affords the author automatic protection as long as the work is original. Registration provides prima facie evidence of ownership. To register with the copyright office, the author is required to submit a completed application form, three copies of the work and payment of the prescribed registration fees.

The duration of copyright protection is the lifetime of the author plus seventy (70) years after his death. An author may assign his economic right but not his moral rights.

TRADEMARKS

The registration of a trade mark is for a period of ten (10) years from the filing date of the application for registration and is renewable for consecutive periods of ten years.

PATENT

There are three routes for the protection of patents by a foreign investor who wishes to apply for the patent protection of an invention. These are the national route, the regional route (ARIPO) and the international route (PCT/Paris Convention).

The process for registration through the national route is as follows:

- File and submit patent request form together with patent application documents at the Registrar General's Department
- Registrar of patents conducts formality and substantive examinations

- Successful applications are published and granted
- Duration of protection is twenty (20) years from date of application
- Annuities must be paid yearly to maintain application and grant.

An investor in Ghana should make use of the various laws and register his copyright with the Copyright office as well as register its trademarks, patents, industrial designs, layout-designs or geographical indications with the Registrar General's department.

In the event that an investor's intellectual property rights have been infringed, there are various agencies such as the Ghana Police Service, the Custom's Division of the Ghana Revenue Authority, the Registrar General's Department and the Courts of Ghana to which an investor can resort in order to protect his intellectual property rights. For example, where an investor has evidence that counterfeit products are being imported into Ghana, with the assistance of the Customs Division of the Ghana Revenue Authority and the courts, the said counterfeit products could be seized and destroyed.

9. If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?

Both the local courts and International arbitration are beneficial modes for resolving disputes in Ghana.

Ghana's legal system is based mainly on the Constitution, which provides

that the laws of Ghana are the Constitution; enactments made by or under the authority of parliament (statutes); orders, rules and regulations made by the power conferred by the Constitution; the existing law; the common law.

Ghana's Constitution guarantees the independence of the Judiciary which includes the superior courts of judicature—Supreme Court, Court of Appeal, High Court and Regional Tribunals.

Ghana established the Commercial Division of the High Court known as the 'Commercial Court' in 2005 to handle commercial claims. The Commercial Court rules provide for mandatory pre-trial settlement within three (3) days after pleadings have closed. At the pre-trial stage, the pre-trial judge attempts to resolve the dispute through negotiation, mediation or any other mode of settlement within thirty (30) days or an extended period of a maximum of fifteen (15) days, failing which the court administrator will fix a date for the hearing of the dispute. The introduction of the Commercial Court has improved the speed with which commercial disputes are determined. That notwithstanding, international arbitration is increasingly becoming the preferred mode of dispute resolution in Ghana, especially for large value commercial disputes.

Ghana's Alternative Dispute Resolution Act 2010, Act 798 is based on the UNCITRAL model Law.

Ghana has also adopted the United Nations Convention on the

Recognition and Enforcement of Foreign Arbitral Awards, and the Convention on the Settlement of Investment Disputes between States and Nationals of other States. Foreign arbitral awards are therefore enforceable in Ghana, once the Ghanaian court is satisfied that:

- the arbitral award was made by a competent authority under the laws of the country in which the award was made;
- a reciprocal arrangement exists between Ghana and the country in which the award was made;
- the party that seeks to enforce the award has produced the original award and the agreement pursuant to which the award was made;
- there is no appeal pending against the award in any court under the law applicable to arbitration.

10. What laws and business practices are peculiar to Ghana?

Investment opportunities in Ghana may involve the government of Ghana. In contracting with the government of Ghana, an investor should be mindful of Article 181 of Ghana's Constitution, which imposes the requirement for parliamentary approval of an 'international business or economic transaction to which the Government is a party'. The failure to comply with Article 181 of Ghana's constitution will render the agreement void.

Under Ghana's constitution, foreigners cannot have a freehold interest in land. In addition, a foreigner cannot have a leasehold interest or right over

any land in Ghana for a term of more than fifty (50) years at one time.

As mentioned earlier, some businesses or enterprises are restricted to Ghanaians.

Shareholders and directors, whether resident in Ghana or not, are required to obtain Tax Identification Numbers.

11. What are the regulations, protocol, and practicalities around public procurements and financing in Ghana?

The Public Procurement Act of Ghana is the act that regulates public procurement in the country. The Procurement Act establishes a Public Procurement Board. The object of the Procurement Board, which is a body corporate, is to harmonise the processes of public procurement in the public service to secure the judicious, economic and efficient use of state resources in public procurement and ensure that public procurement is carried out in a fair, transparent and non-discriminatory manner. The Procurement Act also makes administrative and institutional arrangements for procurement and stipulates tendering procedures for procurement.

The Procurement Act applies to:

- the procurement of goods, works and services, financed in whole or in part from public funds except where the Minister decides that it is in the national interest to use a different procedure;
- functions that pertain to procurement of goods, works and services including the description of requirements and invitation of

sources, preparation, selection and award of contract and the phases of contract administration;

- the disposal of public stores and equipment;
- procurement with funds or loans taken or guaranteed by the State and foreign aid funds except where the applicable loan agreement, guarantee contract or foreign agreement provides the procedure for the use of the funds.

The process of public procurement is started by the procuring entity, which solicits tenders from potential suppliers of the goods and services in question. A tenderer in public procurement must possess among other things the necessary professional and technical qualifications and competence, financial resources and the personnel to perform the contract.

Some of the procurement methods used are Competitive Tendering Two-stage Tendering, Sole Sourcing and Restricted Tendering.

12. What kind of actions should investors take to avoid corrupt practices in Ghana?

An investor in Ghana should follow best international practices and ensure that his operations are above board. The investors must deal with the relevant regulatory bodies, avoid unauthorised intermediaries and use the services of professionals.

The USA's Foreign Corrupt Practices Act and the UK's Bribery Act are useful guides. The Parliament of Ghana also ratified the United Nations

Convention Against Corruption and the African Union Convention on Preventing and Combating Corruption on 18th October 2002.

The Constitution of Ghana as well as other pieces of legislations such as the Criminal Offences Act, Anti-Money Laundering Act and the Whistleblower Act, have provisions governing anti-corruption in Ghana. The Whistleblower Act, for example, is aimed at encouraging and supporting individuals to report unlawful or illegal conduct and corrupt practices of other persons to the appropriate authority. The Whistleblower Act protects any person who exposes the corrupt or unlawful conduct of other persons.

There are also various institutions mandated to deal with corruption such as the police, the judiciary, the Commission for Human Rights and Administrative Justice (CHRAJ) and the Economic and Organised Crime Office (EOCO). Those bodies notwithstanding, corruption remains a challenge. An investor who is faced with corrupt practices should immediately report to the appropriate law-enforcing authorities.

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www.meritas.org

800 Hennepin Avenue, Suite 600
Minneapolis, Minnesota 55403 USA
+1.612.339.8680