Millennium Cities Initiative

Report on the Regulatory Framework for Foreign Direct Investment

GHANA

Prepared by

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Table of Contents

I. Introduction

This report on foreign direct investment in Ghana, and in particular the city of Kumasi, focuses on Ghana's regulatory framework for foreign investment and provides recommendations for practical ways to make the investment climate in Ghana more appealing to foreign investors. In preparing this report, we spent a significant amount of time in Accra, Ghana's capital, and Kumasi, Ghana's second largest city, interviewing government representatives at both the national and local level, Ashanti leaders, NGOs, representatives of the Ghana Investment Promotion Centre, the Minister for Lands, Forestry and Mines, the country's Chief Labour Officer, bank officials, judicial secretaries, officers of the judiciary, industry leaders, the local land secretariat, regional ministers and others.

II. Executive Summary

The goal of this report is to serve as a guide to the regulatory framework in Ghana as it applies to foreign investors. The report highlights those regulatory areas that are most likely to be of concern to foreign investors and makes suggestions for ways to improve the environment for foreign investment in Ghana, and in particular in the Kumasi area.

The first section of this report gives an overall view of the investment climate in Ghana in general and Kumasi specifically, and discusses several key economic, social and political issues that impact both positively and negatively on Ghana's and Kumasi's respective abilities to attract foreign investors.

Section B focuses on the structure of the national government. Because an independent, well-functioning judiciary is an important part of building investor confidence, this section centers on the analysis on the judiciary and the ways that it could be improved. The largest issues facing the Ghanaian judiciary include lack of independence, the prohibitive costs of using the system, an insufficient number of courts and specialized lawyers and judges, and the long amount of time it takes to dispose of cases.

Section C of the report reviews Ghana's foreign direct investment regime, including investment incentives and the Ghana Investment Promotion Centre Act. This report recommends further support of and allocation of resources to the Ghana Investment Promotion Centre (GIPC), which is intended to be a comprehensive resource for investors interested in Ghana. The GIPC should further emphasize the potential of Kumasi and dedicate resources to promoting Kumasi.

Taxation and Ghana's import/export regime are addressed in Sections D and E, respectively. Investors may take advantage of Ghana's reduced corporate tax rates and tax holidays, which are geared toward export industries. Ghana imposes relatively low tariffs, but several other taxes on imports add up to a steep overall charge. Ghana is competitive within its region in terms of the amount of time it takes to import goods into the country and export goods out of the country.

As discussed in Section F, Ghana is focusing on revising and updating its corporate governance and accounting practices to strengthen them and address issues such as the lack of board independence, efficiency, expertise, resources and enforcement. Ghana is to be commended on the ease of foreign exchange conversion and the lack of intervention by the government in the exchange market.

On the competition front, addressed in Section G, Ghana is still working to adopt comprehensive competition legislation. There are many ways the government could improve the openness of Ghana's market, which would help it achieve its goal of becoming the "gateway" to the West African market.

The intellectual property regime in Ghana (including copyrights, patents and trademarks) is the focus of Section H. Ghana's regime is consistent with the intellectual property treaties and agreements to which Ghana is a party, and thus commensurate with the protection given to intellectual property in the rest of the world. Copyright laws appear to be used and enforced.

Land ownership and land rights are complex in Ghana and vary from region to region, as explained further in Section I. Without a central overarching and coordinated authority, land issues are difficult to deal with in an efficient and streamlined manner. The rights of the traditional authorities in Kumasi to allocate land rights make ownership more stable in the Kumasi region. However, the process for acquiring land rights there is lengthy and burdensome.

Labor issues are addressed in Section J. Ghana has a large base of English-speaking workers. Although foreign investors may find that they need to offer training, the workforce is capable and generally hard working. Unions, strict collective bargaining agreements, severance costs and strikes have impeded employment growth. However, the government is in the process of making a number of changes to the current union's monopoly.

The final section of this report addresses corruption. Corruption has been moderated, especially at the higher levels of government. Ghana has less corruption than other countries in the region, but corruption still exists and affects numerous sectors in the country.

What follows is a more detailed description of each of the areas described above.

III. The Macro View: Economic, Social and Political Issues Impacting the Overall Investment Climate in Ghana and Kumasi

A. National Issues

Several individuals whom we interviewed identified a number of national issues impacting – positively and negatively – the economic development of Ghana as a whole:

1. Stability. Ghana is overall a very stable country and celebrated fifty years of independence in 2007, the longest that any country in sub-Saharan Africa has been independent. It is a peaceful country with a large, English-speaking workforce and a low crime rate. Ghana has experienced continuing and steady growth over the past six to eight years and has attracted many foreign investors to its shores. Credibility with citizens, rule of law, safety and disease management are priorities for the government, which has taken strides in those directions. Hyper-inflation and the devaluation of Ghana's currency have moderated

significantly over the past several years, creating a much friendlier business environment. The timing of change and progress is slower than many foreign nationals are accustomed to, especially those from the West, but change has been occurring and a more robust and steady economy is emerging.

2. Infrastructure. Ghana has developed a good road system over the past few decades, and its ports also serve Burkina Faso, Mali and other neighboring land-locked countries. As a result, there is significant overuse of and wear and tear on the road system, which is free to all users. Often, trucks sit for several days in traffic trying to access the port of Tema. The railroads that once linked Kumasi, Accra, Takoradi and Tema, the major population and commercial centers, are now largely non-operational. There is consensus that reopening, upgrading and extending these railroads will ease the flow of goods through the country. Towards that end, the Tema-Accra rail link was re-opened in December 2007. Canadian and Saudi Arabian investors are currently examining the viability of investing in these railroads, but no action has yet been taken.

3. Energy Crisis. The country suffered an energy crisis in 2007, with rolling and forced brownouts affecting Accra and Kumasi, due in part to the steady growth of the country and the change in weather patterns. The country is about 600 megawatts of energy short of its needs and is expected to require an additional 1,000 megawatts over the next five years. Ghana has, however, taken steps to deal with its energy shortfall. An existing power barge, the Osagyefo Power Barge, was recently activated and contributes an additional 185 megawatts of power. A new hydro-electric dam on the Volta River, the Bui Dam, is expected to provide 400 megawatts of energy. Construction of the dam has commenced and is expected to be completed in 2012. The West Africa gas pipeline for the supply of natural gas to Ghana from Nigeria, via Benin and Togo, is under construction and is expected to supply natural gas to various energy projects including the Osagyefo Power Barge and coal plants to be constructed. Lastly, the government announced in June 2007 that potentially 600 million barrels of light oil had been discovered off the coast of Ghana.

While Ghana relies on foreign investment to finance many of its power projects, Ghana also plans to provide its own financing for some projects and in 2007 floated sovereign bonds backed by several banks, including UBS and Citibank. This kind of financing was a first for a country in Africa and will provide the country access to outside capital at rates significantly lower than credit obtained within Ghana.

4. High Cost of Credit and Access to Credit. As noted above, credit is costly in Ghana, and is available only at an annual interest rate of 20-22%, making it difficult for local businesses and entrepreneurs wanting to access credit to expand and establish businesses. Only larger businesses can access lower-cost credit from overseas sources. While foreign investors are able to finance their Ghanaian investments through outside capital sources, it is important that foreign investors are aware that the overall ability of Ghana's economy to grow is limited by its tight credit markets.

5. Land Tenure. The land tenure system varies by region in Ghana, each of which has its challenges. The main issue is security of title or interest. Transfers of interests are often undocumented and subsequently challenged by rivaling family members, leaving third

parties exposed to challenges and subject to litigation. There are several initiatives targeting this problem, including a pending Lands Administration Project (which has not yet been adopted), and other local and traditional programs designed to record and document real estate transfers.

6. Manufacturing. The Ghanaian market is flooded with low-cost goods from Asia. Many local manufacturers are unable to compete and are being driven out of business.

7. Agriculture. The agriculture sector dominates the economy. It employs about 60 percent of the labor force.[1] There has been a gradual decline in agriculture production, however, especially cocoa production, due to the migration of youth from rural to urban areas.[2] The agricultural sector is highly dependent on natural weather patterns and suffers when there is poor rainfall and drought conditions. In order to reduce poverty among farmers, the United States and Ghana signed a five-year US$ 547 million Millennium Challenge Corporation (MCC) Compact in August 2006.[3]

B. **Local Issues**

Kumasi faces several specific challenges to its economic development, but also has some distinct strengths, as described below:

1. Garden City. Kumasi is known as the "Garden City" for its pleasant climate and the lush forests with their tropical plants that surround the city. The atmosphere and pace of life in Kumasi tend to be more relaxed than in Accra, even though Kumasi serves as the hub for inland domestic and international trade with its strategic location at the crossroads of the country's major thoroughfares. Kumasi houses the largest open air market in West Africa and is the capital of the Ashanti kingdom, a large and powerful traditional group.

2. Potential Industries for Growth. With its proximity to fertile lands and cocoa and palm plantations, Kumasi has the potential to develop an agro-processing industry. If coupled with enhanced farming technology, the area could see a dramatic rise in economic activity. The area is also rich in mineral deposits, such as bauxite and granite, right outside the city outskirts. Kumasi has skilled labor and existing factories to support the now-defunct industries of lumber processing, jute production and shoe manufacturing. For instance, 70% of the skilled population still has shoe-making expertise. With government support to refurbish the factories and proper production and marketing research so that Ghanaian products can compete in the global market, these industries could blossom once again. Informational technology is another area ripe for development, and several investors have already expressed interest. Infrastructure projects, including waste management projects, would create employment while helping Kumasi deal with some of its problems.

[1] United Nations Economic and Social Development, "Ghana Country Report on the Implementation of the Madrid International Plan of Action on Ageing (MIPAA)" (August 2007), http://www.un.org/esa/socdev/ageing.
[2] *Id*.
[3] *See* http://www.state.gov/secretary/rm/2006/69810.htm.

Kumasi is the home of a technical university, which includes a medical school, and many hospitals, including a high-quality neonatology center. Medical researchers in Kumasi are working to eradicate malaria and other diseases that further the cycle of poverty in the region and the country as a whole. Kumasi is in discussions to create the largest trauma center in West Africa, and has the potential to set the standard of health care for West Africa and attract national and foreign patients and their families. Other service industries that Kumasi could pursue are tourism and business hospitality. With some further enhancements to the infrastructure of the city as well as the construction of facilities and hotels, Kumasi could become an international conference center. Its central location and proximity to several distinct cultures in Ghana, a crater lake and the largest game preserve in the country create potential for growth in the tourism industry.

3. Land. Because Kumasi is the capital of the Ashanti Region and the seat of the Asantehene, the King of the Ashantis, the land rights disputes so prevalent in many regions of the country, including Accra, are relatively less frequent here: since most of the land in Kumasi is stool land, the land can only be leased. The Ashanti Stool Lands Secretariat has a leading role in ensuring that leases of land within the traditional system are properly recorded, documented and consolidated in a central land registry. To discourage Ashanti chiefs from terminating leases, Kumasi city officials are working to convince them that, even though a land use plan may impact traditional lands, the plan is in the best interest of the community as a whole. To that end, the Assembly is working together with the Stool Lands Secretariat on the land use plans. Some land disputes do result from the construction of buildings without permits.

4. Centralization. Accra, as the capital, has become the de facto center for services related to foreign direct investment. Although there are multiple daily flights between Kumasi and Accra, the fact that an investor must spend considerable time in Accra to set up operations in Kumasi serves as a barrier to entry to Kumasi. In addition, little has been done to promote Kumasi to potential investors who arrive in Accra looking for opportunities in Ghana, although more recently the Ghana Investment Promotion Center (GIPC) has made efforts to encourage investors to look at Kumasi. Further, the lack of reliable land transportation discourages investors from venturing outside Accra and the main port cities of Tema and Takoradi. In addition, most government contracts are handled out of Accra, making it more burdensome for bidding companies located in Kumasi to compete with companies in Accra.

5. Increased Coordination. There are multiple authorities with overlapping jurisdiction over Kumasi businesses and citizens. Federal authority is exerted from Accra, while the Kumasi Metropolitan Assembly governs within city limits. District assemblies have power over the portions of the city expanding into their jurisdictions, while the regional minister has power over the region. The Asantehene, King of the Ashanti kingdom, with its capital in Kumasi, and the chiefs serving under him also have certain authority over Kumasi and its environs. Although the roles of the various traditional and governmental authorities as they relate to one another are not clearly defined, it is clear that the Asantehene holds much power and control over the region. For instance, the Ashantis, separate and apart from the Ghanaian government, have successfully applied for and received a US$5 million World Bank grant for the construction of boreholes for clean water and schools in the Ashanti kingdom. The Ashantis are regarded as a separate ruling power not only by the Ghanaian government but also by international organizations.

An investor interested in the Kumasi area will have to deal with both the national and local governments when it comes to permits, tax concessions, registrations, construction, and other approvals, and also with the Asantehene and his administration for any activity involving non-governmental land in the Kumasi area. It is not apparent that there has been much conflict between these overlapping authorities, especially when it comes to land. However, having to deal with these various authorities as an outside investor is burdensome and time-consuming.

6. Infrastructure and Congestion. Kumasi's road system is inadequate to handle a resident population of approximately two million, an additional half million individuals entering and exiting the city on a daily basis, and the flow of cargo from the surrounding region through Kumasi to the ports. Moreover, the highways that once bypassed the city are now inside the city, which further exacerbates traffic. Also, the collapse of Ghana's only railroad system put even more strain on the road system. To deal with it clogged roadways, Kumasi has plans to expand its airport to handle larger cargo planes and night landings, but it has not received support from the national government and the project is languishing. Another plan is to finalize the inland port outside of Kumasi. Although land has been acquired and set aside for this purpose, there has not been sufficient funding to make the port operational. The city is actively looking for foreign support for both these projects.

A separate but related congestion problem is that the inflow of inhabitants from other areas into the city, including refugees, has caused shantytowns to be built on once-public spaces. Although the city has bulldozed a few of these settlements and attempted to resettle the residents, the issue remains controversial and emotionally highly charged, especially because some shantytowns have existed for decades. Kumasi has been growing at a rate of 5.4% (above the national average of 2.5%),[4] due in part from an influx of refugees from the forest fires in the 1980's, which destroyed many farms in the area. Initiatives to replant the area are underway in an effort to enhance Kumasi's "Garden City" reputation.

As a result of the severe traffic congestion, air quality in Kumasi has suffered. Rapid population growth has contributed to shortages of water and electricity, and made efficient waste management difficult. Kumasi has plans for a foreign-backed energy plant using the waste generated by the city, which will help alleviate two of the problems facing the city

7. Zoning. The Town and Country Planning Department in Kumasi is in charge of the zoning and development of the city and has developed a master plan. Unfortunately, the rapid population inflow into the city coupled with the difficulty of enforcing the zoning rules and regulations has led many to ignore zoning regulations, which has in turn caused uncontrolled development throughout the city, adding to the congestion and traffic problems. Residential areas have encroached into industrial zoned areas and small businesses, including manufacturing facilities, have been established in residential areas.

[4] Kumasi Metropolitan Assembly and Mayor of Kumasi interview on June 14, 2007.

IV. The Regulatory Framework

A. Overview of the National and Local Regulatory Framework

Ghana became a republic in 1960 after securing its independence from British colonial rule in 1957. The executive, legislative and judicial branches form the three branches of the government of Ghana. The 1992 Constitution of the Republic of Ghana (the "Constitution") governs the branches of the government.

1. Executive Branch

The President along with the Council of State form the executive branch of the government.

a. The President

Presidents are popularly elected for a maximum of two, four-year terms. There is a vice president who is designated by the president. The president serves as the head of state, the head of the government, and the commander in chief of the country's armed forces. The president also presides over the National Security Council which is charged with, among other things, safeguarding the internal and external security of Ghana.

The president may be removed from office for (i) acting in willful violation of the presidential oath, (ii) conduct that brings or is likely to bring the office into disrepute, ridicule or contempt or is prejudicial to the economy or security of Ghana and (iii) incapacity to perform the functions of president by reason of infirmity of body or mind.

President John Agyekum Kufour, the current president, was re-elected to the presidency in 2004.

b. The Cabinet

The president, with the prior approval of Parliament, selects ministers of state who together with the president and the vice president form the Cabinet. A minister of state must be either a member of Parliament or qualified to be elected as a member of Parliament. The majority of ministers of state are required to be members of Parliament.

c. The Council of State

The Council of State, which serves as a consultative body to the president, consists of (i) a former Chief Justice, a former Chief of Defence Staff of the Armed Forces and a former Inspector-General of Police, each appointed by the president in consultation with Parliament; (ii) the President of the National House of Chiefs, (iii) one representative from each region of Ghana, elected in accordance with the provisions of the Constitution; and (iv) eleven other persons appointed by the president.

2. Legislative Branch

Parliament exercises all primary legislative functions of the government and consists of a unicameral 230-member body. Parliament is presided over by the speaker of Parliament, who does not need to be a member of Parliament. The majority party in Parliament nominates the speaker for election by the entire body. The members of Parliament are popularly elected and serve four-year terms, except in wartime, when terms may be extended for no more than 12 months at a time.

To become law, legislation must be passed by Parliament and have the assent of the president, who can consult with the Council of State. However, Parliament is not required to consider comments from the Council of State. The president may veto all bills, except for those bills to which a vote of urgency is attached.

Because Parliament includes members who also serve as Cabinet members in the executive branch, there is no true separation of powers, which weakens the system of checks and balances and accountability. Also, citizens from regions outside of Accra complain that they feel isolated from the government.

Traditional rulers (*i.e,* chiefs) are recognized by the government as partners to the government, especially for the purposes of development of the areas under the control of the chiefs. Any bill that affects the chiefs is required to be referred to the National House of Chiefs before it is introduced in Parliament. Chiefs are restricted from taking part in active party politics and a chief wishing to run for a seat in Parliament must give up his title.

3. Judicial Branch

Ghana's laws are based on a mixture of English common law and doctrines of equity and customary law. Statutory law (largely based on English law) applies to most cases, including criminal law, and a mixture of statutory and customary law applies to other traditional matters such as the acquisition of land. The Constitution provides for the independence of the judiciary and empowers it to interpret the Constitution and laws of Ghana. The judiciary is required by the Constitution to ensure the speedy and unfettered administration of justice without fear or favor, and to provide a high standard of efficiency in the delivery of justice.[5]

Ghana's Constitution provides for a Judicial Council consisting of eighteen members and chaired by the Chief Justice of the Supreme Court. The remaining members include Supreme Court, Court of Appeal and High Court Justices, representatives of the Ghana Bar Association, a chief nominated by the National House of Chiefs and four persons appointed by the President. The Judicial Council advises the government on judicial reform and effectiveness of the judicial system as well as on the appointment and removal of judges and other staff of the judicial service.[6]

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[5] Judicial Service of Ghana, "Mission Statement of Judicial Service," November 22, 2006.
[6] Official Website of Ghana, www.ghana.gov.

Enforcement of foreign judgments in Ghana is based on the doctrine of reciprocity. On this basis, judgments from Brazil, France, Israel, Italy, Japan, Lebanon, Senegal, Spain, the United Arab Emirates, and the United Kingdom are enforceable. Judgments from the United States are not enforceable in Ghana at this time[7]

a. Court Structure

The judicial system consists of upper and lower courts and reflects the dichotomy between the country's traditional roots and the British system. The British legacy is reflected in the Superior Courts of Judicature, which consist of the following:[8]

- The Supreme Court of Ghana, which is the highest court in Ghana, with broad powers of review, including ruling on the constitutionality of any legislation or executive action at the request of an aggrieved citizen.
- The Court of Appeal, which hears appeals from Circuit Courts (for civil actions), the High Court and the Regional Tribunals.
- The High Courts of Justice, which have the power to issue writs of mandamus, certiorari, and prohibition. The High Courts include the Fast Track Courts division and the Commercial Courts division (described below in further detail).
- The Regional Tribunals, which have specialized criminal jurisdiction, and can try offences against the state and public interest. The tribunals have the same status as the High Courts.

Lower courts hear land cases and other simple civil cases that feed into the Superior Courts of Judicature. These courts include community, juvenile and family tribunals, district courts and circuit courts (or Chief Magistrate Courts).

The country's traditional roots are manifested in the judicial system through the Traditional Courts, namely the National House of Chiefs, Regional House of Chiefs and Traditional Council. This "second branch" of the judiciary deals primarily with matters involving land, inheritance, marriage, and the nomination, election, selection, installation or deposition of a chief. These tribunals tend to be less formal and more geographically accessible than the federal courts, which makes them preferable for most citizens. Appeals from this second branch are heard by the Supreme Court of Ghana.

Ghana has not been able to move cases quickly through its judicial system. To address this issue, in March 2003, the Acting Chief Justice of the Supreme Court inaugurated two Fast Track Courts within the High Court. These courts are automated or computerized, and have the goal of trying cases to conclusion within six months[9]. Fast Track Courts try cases involving banks, investors, human rights, electoral petitions, government revenue, prerogative writs,

[7] U.S. State Department, "2006 Investment Climate Statement – Ghana."
[8] Judicial Service of Ghana, "Annual Report 2004."
[9] Jurist, "Ghana," available at http://jurist.law.pitt.edu/world/ghana.htm.

defamation, specified commercial and industrial suits and criminal matters involving substantial public money or matters of "extreme public importance."[10]

In addition, Ghana inaugurated the Commercial Division of the High Court on March 4, 2005, to establish commercial law and handle dispute resolution for commercial matters. Between March 2005 and March 2006, out of the 472 cases that had been filed in Commercial Court, 164 of them had been successfully concluded.[11] Of these cases, 95 were withdrawn, 49 were settled at pre-trial settlement conferences and the remaining twenty went through trial.[12] The Commercial Court's jurisdiction covers commercial claims as well as disputes involving commercial arbitration and other settlement awards, intellectual property rights, commercial fraud, applications under the Companies Code, tax matters, and insurance and re-insurance cases. An interesting feature of this court is the requirement to use mediation or any other alternative dispute resolution mechanism in the pre-trial settlement conference stage.

b. Appointment of Judges and Magistrates

Judges in Ghana are appointed by the president with recommendations from the Judicial Council, and in the case of the appointment of Supreme Court judges, with the approval of parliament. A nominee must be a lawyer and must have been a lawyer in good standing for at lease fifteen years to serve on the Supreme Court and for at least ten years to serve on the High Court. A Judge can be removed only by the President on the recommendation of a committee appointed pursuant to the terms of the Constitution, and the grounds for removal must be either misbehavior, incompetence or inability to act due to infirmity of body or mind. A judge can move up the court system only by appointment, not promotion.

Magistrates are also appointed and must have at least a university degree. Those magistrate applicants without a law degree must go through a two-year training process before becoming a magistrate.[13]

c. Alternative Dispute Resolution

Ghana has adopted alternative dispute resolution as a mechanism to protect commercial and economic interests, bolster investor confidence in Ghana and provide an alternative to the judicial system. Toward that end, Ghana has enacted requirements for alternative dispute resolution before litigation under certain circumstances, become a party to several international conventions and treaties, and established alternative dispute resolution centers. The judicial service has also provided alternative dispute resolution training to a majority of its staff in order to promote these mechanisms.

The main alternative dispute resolution centers in Ghana are the Ghana Arbitration Centre and the American Chamber of Commerce's Ghana Commercial Conciliation Centre.[14]

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[10] *Id.*
[11] Judicial Service of Ghana, "Annual Report 2004."
[12] Official Website of the Judicial Service of Ghana, http://www.judicial.gov.gh.
[13] Acquah Interview.

The Ghana Arbitration Centre was established in 1997 to handle commercial disputes. It is a privately-sponsored organization and is situated in Accra, but its arbitrators can travel to the location of a particular dispute and can apply the Centre's rules or the rules specified by the parties. The Centre provides training and certification for its members and the business community, and has specific requirements for its arbitrators as well as third-party arbitrators who are asked to work with the Centre. Arbitral awards are enforced similarly to judgments from the High Courts. The Centre has handled foreign investment disputes and conducts its proceedings in English. The Centre is able to handle disputes efficiently, but is in need of funding to further train and educate, to establish a library and to broaden its presence outside of Accra.

Ghana has also enacted laws and ratified treaties and conventions dealing with alternative dispute resolution mechanisms. The Ghana Investment Promotion Act of 1994, the Arbitration Act of 1961, the Labour Act of 2003, the Free Zones Act of 1995, the Copyright Law of 1985, and minerals and mining laws address the referral of disputes to arbitration and dispute settlement procedures, and provide for arbitration when disputes cannot be settled by other means.[15]

Under Ghanaian law, foreign arbitral awards made in states identified by the Arbitration (Foreign Awards) Instrument of 1963 as reciprocating states, as well as awards made in Ghana pursuant to an arbitration agreement governed by foreign law, may be enforced in Ghana.

In addition, Ghana has signed and ratified the Convention on the Settlement of Investment Disputes in 1966, which allows for arbitration under the International Center for Settlement of Investment Disputes (ICSID). For energy sector matters, the government applies United Nations Commission on International Trade Law (UNCITRAL) rules. Ghana is also a signatory and contracting state of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which provides for binding international arbitration awards, including matters involving investor disputes.

d. Reform and Recent Events

The impartiality of the Ghanaian judiciary suffered from government interference in the recent past, which saw the establishment of separate public tribunals for political figures and under which several individuals were executed without full due process.[16] Though the tribunals continue to exist, since Ghana has held democratic elections, there have been court cases with judgments entered against the government. The government also recently announced a zero tolerance policy for corruption throughout the judicial system.[17]

A 2004 survey conducted by Global Integrity gave Ghana high scores on the judiciary's independence, the protection of witnesses in corruption cases and the protection of judges

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[14] Private Enterprise Foundation, "3rd Sensitization Seminar on Arbitration and Alternative Dispute Resolution Mechanisms in Ghana," May 3, 2006.

[15] *Id.*

[16] News from Africa Watch, "Ghana – Revolutionary Injustice – Abuse of the Legal System under the PNDC Government," January 31, 1992, Vol. IV, Issue No. 1.

[17] Summit Communications, "Friendly Welcome in an Oasis of Calm."

adjudicating corruption cases. Ghana also got favorable scores on its process for appointing High Court judges, although that process is not always transparent. It got a mediocre score for the accessibility of the judicial system to its citizens, and a poor grade on the accountability of judges.[18] Ghana is endeavoring to provide its citizens accessibility to the courts and has established a legal aid scheme. There is, however, no ombudsman. The Commission for Human Rights and Administrative Justice performs certain of the functions of an ombudsman including, among other things, investigating complaints of violations of fundamental human rights and freedoms and unfair treatment of persons by public officers.

Ghana continues to expand its judicial system, including providing the Commercial Court with additional resources to address commercial crimes and investment-related land cases. The government has undertaken several studies and programs to improve the efficiency of the court system with the help of USAID, the government of Japan, and the German Development Co-Operation.[19] In addition, as of June 2007, an alternative dispute resolution bill was pending in Parliament. This bill is intended to modernize the arbitration rules that were put in place under the 1961 Arbitration Act.

e. Issues Facing the Judicial System

Some of the concerns and obstacles facing the current judicial system include:

- People are wary of the judicial system due to its high costs and unpredictable outcomes.
- The court system has been slow in disposing of cases and has had trouble enforcing decisions, largely due to resource constraints and institutional inefficiencies. In the appellate courts interlocutory appeals have been slowing down most appeals. The judiciary has proposed an amendment to the Constitution to restrict such appeals.
- The number of trained lawyers and students enrolled in law school is low, resulting in a lack of qualified lawyers and judges, due in part to low judicial salaries.[20]
- The transcription of proceedings in the Fast Track Courts has failed to keep pace with the cases being tried due to the lack of personnel assigned to the courts. These courts have since appointed Court Managers, who are trained lawyers assisting the judges.[21] Whether this change will improve the situation remains to be seen.[22]
- There is currently only one court of appeals in Accra, which is insufficient to handle the caseload. The judiciary plans to establish a second court of appeals in Kumasi to handle the burgeoning number of appeals.[23]

4. Kumasi

Kumasi, due to its size, is administered by the Kumasi Metropolitan Assembly and the mayor, who serves as the city's Chief Executive. The Kumasi Metropolitan Assembly's

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[18] Global Integrity, "Ghana: Branches of Government," 2004 Country Report.
[19] Official Website of the Judicial Service of Ghana, http://www.judicial.gov.
[20] Acquah Interview.
[21] *Id.*
[22] *Id.*
[23] *Id.*

responsibilities include seeking funding from the national government, raising funds for road and hospital projects through municipal bonds, identifying problems facing the city, collecting local taxes, market tolls, license and permit fees, and land use planning. Since the Millennium Cities Initiative and the Millennium Villages Initiative were launched, the Assembly has taken a more active role in the business community, and is participating actively in business and trade organizations to develop ways to further enhance the business environment in the city. For example, the mayor's office appraised an existing but non-operational shoe factory and other factories. This is the first step toward finding investors willing to acquire and run such factories. Another priority of the mayor is to reduce congestion in Kumasi by relocating and consolidating industries and transportation hubs, resettling residences and shantytowns, and putting into place a feasible and enforceable land use plan for the city, which will minimize the ability of inspectors to be bought off.

The areas surrounding Kumasi are overseen by District Assemblies composed of representatives from the respective districts. The whole region is under the purview of the regional minister, who is appointed by the government (with the prior approval of parliament). The role of the regional minister is somewhat controversial because it is an appointed rather than elected office, and the regional minister does not need to come from the region. The regional minister is responsible for distributing funds from the central government to the districts and for reviewing and submitting budgets from the districts to the national government. The regional minister also oversees the use of internally-generated funds and the collection of royalties and taxes in the region. The main goals of the current regional minister include improving the general health of the population, reducing poverty in the area, enlarging the educational system, enhancing and expanding infrastructure development and increasing employment opportunities in the region.

B. **Entry, Protection and Standards of Treatment of Foreign Direct Investment**

Openness to foreign direct investment ("FDI") has been a tenet of government policy in Ghana for many years.[24] Begun in 1983 under the auspices of the World Bank and the International Monetary Fund, Ghana's economic recovery program is designed to encourage FDI.[25] And indeed, as the discussion that follows makes clear, it is in practice quite simple for foreigners to invest in Ghana, especially if the investor is aware of what to watch out for. On the other hand, investment is adversely impacted, by, among other things, limited Ghanaian purchasing power, relatively small market size, poor infrastructure and bureaucratic hurdles.[26]

[24] United Nations Conference on Trade and Development, "Investment Policy Review: Ghana, 2003" (hereinafter "Investment Policy Review").
[25] U.S. and Foreign Commercial Service and U.S. Department of State, "Doing Business in Ghana: A Country Guide for U.S. Companies, 2004" (hereinafter "Doing Business in Ghana").
[26] Doing Business in Ghana.

1. **Law**

a. Entry and establishment

In 1994, Ghana enacted the Ghana Investment Promotion Centre Act ("Investment Act") to regulate all FDI except in the mining and petroleum sectors and investment in free zones. Sector-specific regulations also apply to FDI in fishing, forestry, and certain services such as banking, insurance and real estate. The Investment Act is aimed at easing the establishment of businesses and attracting investment.

Under the Investment Act, investors intending to do business in Ghana must first register as business entities (*i.e.*, limited liability company, partnership or sole proprietorship) with the Registrar-General's Department (Part II, Section 19).[27] Enterprises with any foreign participation (*i.e.*, wholly foreign-owned enterprises or joint ventures) must then register with the Ghana Investment Promotion Center (GIPC). Minimum capital requirements for foreign investors are low compared to other developing countries. Under the Investment Act, wholly foreign-owned enterprises must have a paid-up capital equivalent to US$50,000 (Part II, Section 19(b)(2)). If the foreign investor intends to enter into a joint venture with a Ghanaian partner, a lesser minimum capital contribution of US$10,000 is required (Part II, Section 19(a)(2)). Foreign investment in trading companies faces more stringent entry requirements. In trading companies that are wholly or partly foreign-owned, the foreign investor must invest a minimum of US$300,000 of capital and the firm must employ at least ten Ghanaians (Part II, Section 19(3)). The higher minimum investment required for trading companies is clearly intended to dissuade foreigners from engaging in this kind of activity.[28]

An important component of the Investment Act was the establishment of the GIPC (Part I, Section 1). The GIPC's mission is to aggressively promote domestic and international investment activities as well as to collect information, facilitate investment promotion, collect data and advise companies on how to set up business in Ghana. It also seeks to facilitate the establishment of business through its investor services group, which consolidates immigration, customs, tax, and permitting services in one location. The GIPC expedites discussions with local banks, communication companies and agencies, and assists with commercial licensing and other matters related to doing business in Ghana. The GIPC tries to match its efforts to current government priorities such as agro-processing, technology and energy conservation.

The GIPC is working with the Kumasi Metropolitan Authority to showcase the city, its resources and workforce and the companies located there, and to educate Kumasi citizens about how to attract FDI to the area and how FDI can positively impact their lives. As of June 2007, the GIPC was working with Canadian and Saudi Arabian groups interested in re-building the railroads linking Kumasi to Accra and Takoradi in the south and Burkina Faso and Tamale in the north. The GIPC is also targeting the development of an inland port facility outside of Kumasi to handle inbound goods from Burkina Faso and neighboring countries in an effort to decongest Accra and push more activity to the Kumasi area. The GIPC is also encouraging Kumasi to

[27] Section references refer to provisions of the Investment Act.
[28] Investment Policy Review.

develop toll roads as a means of generating revenue while alleviating the current traffic problems.

Outside of Kumasi, the GIPC is working to create industrial parks of 100-acre parcels in each region of Ghana. The parks would be purchased by the GIPC, which would develop the infrastructure on the land and then lease plots to investors, along the lines of industrial parks found in Germany, Slovakia, Singapore and the Czech Republic. The parks would be close to the cities and could be designated as free zones.[29] The GIPC is also working to assist the Ghanaian government with its venture capital and export initiatives, which, although established in 2005, still have not funded any company as of June, 2007. The GIPC struggles with understaffing and resistance within some sectors and even from some government agencies that feel the GIPC is bringing in FDI to compete with local companies.

b. Treatment and Protection

For sectors not covered by the Investment Act, limitations on the right of establishment apply as follows:

- In the fishing sector, non-Ghanaians must own at least 50 percent of the interest in a tuna fishing vessel. In the mineral and oil extractive sectors, the Ghanaian government has the right to a 10 percent share at no cost to it.
- The transfer of public enterprises to the private sector has been an important element of Ghana's economic program since 1983. The divestiture process is open to foreign investors. No ownership requirements are imposed. However, preference is given to companies that have local participation of at least 25 percent.

The Investment Act does not make any specific reference to standards of treatment. Ghana has no overall economic or industrial strategy that discriminates against foreign-owned businesses. Indeed, in some cases, a foreign investor can benefit from additional incentives if the project is deemed critical to the country's development. U.S. and other foreign firms are able to participate in government-financed research and development programs on a national treatment basis.[30]

c. Protection against Expropriation

Guidelines for expropriation state that expropriation must be motivated by a public purpose, observe due process of law, be non-discriminatory and be guided by transparent rules in which expropriation is justified and compensation is determined.[31] Ghana's Constitution prohibits, with certain exceptions, the compulsory taking of private property without

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[29] *See* Subsection (d) below.
[30] Investment Policy Review.
[31] Organization for Economic Cooperation and Development, "Policy Framework for Investment" (setting forth certain guidelines for pro-investment government policies, including registration of land and other property, accessibility of contract enforcement, alternative dispute resolution, effective, accountable, limited and transparent expropriation policy and ratification of binding international arbitration for the settlement of investment disputes).

compensation.[32] The Investment Act provides that a foreign-owned enterprise shall not be subject to expropriation or nationalization unless appropriation of it is in the national interest and for a public purpose (Part II, Section 28). "National interest" includes national defense, public safety, public order, public morality, public health, town and county planning or the development or utilization of property in a manner to promote public benefit.[33]

In the event of expropriation, compensation is provided under the Investment Act on the basis of a "fair and adequate" valuation of the property. The Investment Act also provides that compensation shall be paid without undue delay and authorizes repatriation in convertible currency. The value of any expropriated property is to be determined by the High Court of Ghana.

According to the U.S. State Department, there have been no expropriation actions against U.S. investors in recent times, nor have U.S. investors been subject to differential or discriminatory treatment in Ghana. In addition, there are no known instances of "creeping expropriation" or *de facto* expropriation.[34] Critics of Ghana's expropriation policy recommend that it be amended to take into account recent jurisprudence in the area of expropriation, better define the criteria of indirect expropriation and public-interest exceptions, and provide more detailed investor-state dispute settlement provisions.[35]

d. Investment Incentives

Ghana provides a variety of incentives for foreign investors. These include tax holidays, capital allowances, location incentives, customs duty exemptions and other inducements.[36] Section C below includes more information on tax incentives for investment.

In 1995, Ghana passed the Free Zone Act, 1995. Article 504 allows industrial parks or individual firms that export 70 percent of their production to obtain free zone status. Any person may apply for a license to obtain free zone status,[37] and free zone companies may be entirely owned by foreign investors.[38] Among the incentives for free zone companies are a ten-year corporate tax holiday (with a maximum tax rate of 8% thereafter) and zero duty on imports.[39] Also, laws regulating the import and export of goods (except consumer goods for commercial purposes) do not apply to (i) the direct importation of goods from a country outside of Ghana into a free zone or (ii) the exportation of goods out of a free zone to a country outside of Ghana.[40] There are no restrictions on the issuance of work and residence permits to free zone

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32 U.S. Diplomatic Mission to Ghana, "Ghana: 2004 Investment Climate Statement," July 6, 2004 (hereinafter "Investment Climate Statement").
33 Doing Business in Ghana.
34 Investment Climate Statement.
35 United Nations Conference on Trade and Development and Japan Bank for International Cooperation, "Blue Book on Best Practice in Investment Promotion and Facilitation Ghana" (hereinafter "UNCTAD Blue Book").
36 Doing Business in Ghana.
37 Ghana Free Zone Act of 1995, Sections 11-14.
38 *Id.* at Section 29.
39 Investment Policy Review.
40 Ghana Free Zone Act of 1995, Section 21.

investors.[41] Three free zone areas were established in May 1996. One free zone is around the Tema steelworks in the Greater Accra Region, and the two other sites are located at Mpintsin and Ashiem near Takoradi. The seaports of Tema and Takoradi, the Kotoka International Airport and all the lands related to these areas are part of a free zone.

In addition to the various incentive schemes provided by law, the Investment Act allows certain incentives to be contractually negotiated with specific investors. Section 25 of the Investment Act provides that, for purposes of promoting strategic or major investments, the GIPC Board may, after consulting with other state agencies and with the government's approval, negotiate specific incentives with investors. In addition, Section 26 provides that the Board may specify priority areas of investment for which special incentives and benefits would be applicable.

Lastly, the Investment Act guarantees to all investors the free transferability of (a) dividends or net profits attributable to the investment, (b) loan payments to foreign lenders and (c) remittance of proceeds (net of all taxes and other obligations) to the investor in the event of the sale or liquidation of the enterprise in freely convertible currency through any authorized dealer bank.[42]

e. Relevant Treaties and Conventions

Ghana has bilateral investment agreements with the following countries: United Kingdom, Republic of China, Romania, Denmark, and Switzerland. These agreements were signed and ratified between 1989 and 1992. Italy and France are currently negotiating similar arrangements. Agreements with Germany, India, Pakistan, South Korea, North Korea, and Belgium are being considered.

The United States has signed three bilateral trade and investment agreements with Ghana: an OPIC Investment Incentive Agreement, a Trade and Investment Framework Agreement (TIFA), and an Open Skies Agreement.[43] These agreements include dispute settlement procedures.

Ghana has met the eligibility requirements to receive the benefits of the U.S. African Growth and Opportunity Act ("AGOA"), including the apparel benefits.

Ghana is a member of the Multilateral Investment Guarantee Agency ("MIGA") of the World Bank, which provides investment guarantees against non-commercial risk.

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[41] Doing Business in Ghana
[42] MGI Hydefynn & Osei, "Doing Business in Ghana," June 2006.
[43] U.S. Department of State, "2006 Investment Climate Statement – Ghana."

2. Practice

Other than the free zone benefits, the investment incentives Ghana offers are inadequate. Investors have pointed out the need for improvement in areas such as technology, education, access to credit and fiscal incentives.[44]

According to the U.S. State Department, foreign investment in Ghana is mainly in mining and manufacturing. The United Kingdom is Ghana's leading foreign investor with a stock of direct investment exceeding US$750 million. Major U.S. investors are CMS Energy (independent power producer), Regimanuel Gray Limited (housing and construction), Boeing, Coca-Cola Company, Affiliated Computer Services (data processing), Pioneer Foods (Star-Kist tuna), Phyto-Riker (pharmaceuticals), Millicom (telecommunications), Western Wireless International (telecommunications), and Newmont Mining.

Other foreign nationals have made significant investments in Ghana through the government privatization program. These include investments by: Gold Fields of South Africa in gold mining; Norwegian interests in Ghana Cement Works (GHACEM), a cement manufacturing plant; Bau Nord AG (IBN), a Swiss company, in the government-owned GAFCO; Walter Schroeder, a German company, in the government-owned West Africa Mills; and Telekom Malaysia in Ghana Telecom. Australian companies are also active in the mining section.

Between 1994 and 2005, the GIPC registered over 1,855 investment projects. The process of establishing a business, although relatively transparent, continues to be overly complex and time consuming in practice despite official statements to the contrary.[45]

In Kumasi, about forty investors have come together and formed the Association of Ghana Industries (AGI), an organization dedicated to improving investment in the Kumasi area. AGI has been collecting data to put together a business profile of Kumasi, including the areas for improvement and in which outside assistance is needed.

C. **Taxation**

Generally, Ghana's tax system imposes an income tax, a value added tax (VAT), social security contributions and a national reconstruction levy. Local jurisdictions also impose a variety of property levies. This section focuses on the corporate income tax.

The corporate income tax is generally 25% to 28% on taxable profits. Taxable profits are generally defined as gross profits less costs of materials and labor, and are further reduced by various deductions and tax exemptions. For free zone companies[46] that have been in operation

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[44] UNCTAD Blue Book.

[45] Foreign Investment Advisory Service, a joint service of the International Finance Corporation and the World Bank, "Ghana: Administrative Barriers to Investment Update, May 2003" (hereinafter "FIAS Report").

[46] *See* Section B.1(d) above.

more than ten years (and thus no longer eligible for the tax holiday described below), the corporate tax rate is 8%.

1. Certain Exceptions From Ghana Income Tax

There are several exceptions under Ghana's corporate income tax laws. First, Ghana offers a tax holiday for new businesses that provides the following exemptions from tax, in each case measured from the date of commencement of operations:

- Five years for income derived from construction for sale or letting of residential premises;
- Ten years for income of rural banks;
- Permanent exemption for income from cocoa farming and production;
- Ten years for income from cattle ranching and tree cropping (including coffee, oil palms, shea butter, rubber and coconut);
- Five years for income from livestock, poultry, fish farming, cash crop production and agro processing;
- Seven years for waste processing;
- Ten years for free zone companies;
- Hotels may apply for tax holidays varying from 4 to 10 years depending on their rating and location; and
- Travel and tour, recreational and entertainment and conference establishments may apply for tax holidays varying from 3 to 5 years depending on their location.

The second set of exceptions to the corporate income tax is in the form of tax rebates and reductions for companies that locate in designated areas:

- Manufacturing industries located in regional capitals other than Accra and Tema enjoy a 25% tax rebate, and manufacturing industries located outside of regional capitals enjoy a 50% rebate; and
- Agro-processing enterprises using local agricultural materials as their primary inputs, following the initial five-year tax holiday discussed above, pay corporate income tax at the following rates: (i) 20% in Accra and Tema; (ii) 10% in other regional capitals; and (iii) 0% outside the regional capitals and in all of the Northern, Upper East, and Upper West Regions.

2. Capital Allowances and Carry Forward Losses

Capital allowances are granted to persons who own depreciable assets and use these assets in the production of income. Un-utilized capital allowances may be carried forward indefinitely. For farming and mining enterprises and businesses that engage in manufacture for export, losses that may be counted against tax may be carried forward for five years but are lost if they have not been utilized at the end of the fifth year.

Ghana uses Double Taxation Agreements ("DTA") to ensure that investors do not pay tax twice on the same transaction (*i.e.*, in Ghana and in the investor's home country). Ghana has signed and ratified DTA's with the United Kingdom, the Netherlands, South Africa, Germany, Italy, and France. It has also signed and ratified a DTA with Belgium but it is not yet in force. Ghana has initiated but not completed DTA negotiations with Sweden, Switzerland, Syria, the United Arab Emirates, Yugoslavia, and the Czech Republic.[47]

D. Import and Export Procedures and Tariffs

1. Applicable Legislation.

Exports from and imports to Ghana are controlled by the Exports and Imports Act 1995 (Act 503).

2. Administration and Policies

a. Export

Exports are classified as "traditional" exports or "non-traditional" exports. Traditional exports include gold, diamonds, bauxite, manganese, cocoa beans, coffee, timber and electricity. Non-traditional exports include processed forms of the traditional exports and all other products, and are subject to an export tax of 8%.

Exports of antiques, wildlife, live plants and pets require permits from the Ghana Museums and Monuments Board, Department of Game and Wildlife and the Plant Protection and Regulatory Service of the Ministry of Food and Agriculture, respectively.

b. Import

Ghana uses the Harmonized Commodity Coding System (HS) for classifying goods. Under the current tariff structure, imports are dutiable at one of four tariff rates: zero, five, ten and twenty percent. The zero rate applies to agricultural and industrial machinery, solar, wind and thermal generating sets, electric generating sets of 375 KVA and above, solar cells and educational materials. Certain motor vehicles and mosquito nets may also be imported duty free. In addition, there is no duty on imported raw materials.

There is a five percent tariff applied to certain interchangeable tools and motor vehicles that do not qualify for the zero tariff. In addition, a five percent import duty is levied on various manufacturing inputs, as well as on materials used in prospecting for timber and other natural products.

The Ghana Investment Promotion Centre (Promotion of Tourism) Instrument, 2005 exempts from duty certain goods imported for use by hotels and restaurants, including refrigerators, deep freezers, television sets, air conditioners, public address systems, furnishings (including carpets), fans, radio sets and crockery. Other tourism enterprises such as recreational

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[47] *See* Ghana Investment Promotion Center, http://www.gpic.org.gh; *see also* Ministry of Finance, http://www.mofep.gov.gh and "A Quick Guide to Taxation in Ghana," http://www.pwc.com.

and entertainment companies and travel and tour enterprises may apply for exemptions from duty with respect to certain equipment, machinery and appliances used in their operations.

Twenty percent is the standard rate of duty and applies to all imports that do not qualify for one of the reduced rates. Imports of certain goods and services are subject to a 2.5% levy to fund the National Health Insurance Fund.[48]

Special import licenses are required for gold coins, uncut diamonds, goods bearing designs in imitation of money, handcuffs and machines for duplicating keys. Permits can be obtained from the Ministry of Finance and Economic Planning. Arms, ammunition and gambling machines require a special import license from the Ministry of Interior. Communications equipment requires a special import license from the National Communications Authority and pharmaceuticals require a special import permit from the Ministry of Health.

3. Procedures

a. Import Procedures

The first step in importing a standardized cargo of goods into Ghana is the preparation of documentation, which takes approximately seventeen days. The documents include the following:

- Bank of Ghana Form A.2;
- Bill of Lading;
- Import Declaration Form;
- Customs Bill of Entry;
- Duty Receipt;
- Delivery Order;
- Final Classification and Valuation Report;
- Invoice;
- Packing List; and
- Tax Clearance Certificate.

In addition, customs clearance and technical control take approximately five days, port and terminal handling take approximately four days, document preparation takes approximately seventeen days, and inland transportation and handling take approximately three days. Add all these days together, and the total duration of the import procedure is typically twenty-nine days.[49] By contrast, the average import time in the region is approximately forty-four days and about eleven days in OECD countries. It costs approximately US$895.00 to import a container of goods into Ghana, compared to US$1985.90 for the region and US$986.10 for an OECD country.[50]

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[48] *See* Section J.1(e) below.
[49] Doing Business in Ghana Report 2008, http://www.doingbusiness.org (hereinafter "Doing Business 2008").
[50] *Id*.

b. Export Procedures

The first step in exporting a standardized cargo of goods from Ghana is the preparation of documentation, which takes approximately ten days. The documents include the following:

- Bill of entry;
- Exchange Control Form A2 (in the case of traditional export goods);
- Ghana Export Form (in the case of non-traditional export goods);
- Sales Contract or Export Order (in the case of traditional export goods)
- Certificate of origin;
- Health Certificate;
- Invoice; and
- Packing List.

In addition, inland transportation and handling take approximately two days, customs clearance and technical control take approximately four days, and port and terminal handling take approximately three days. Add all these days together, and the total duration of the export procedure is typically nineteen days. This is lower than most countries in the region. For example, the total export duration is thirty-four days in Benin, forty-five days in Burkina Faso, and twenty-six days in Nigeria. It costs approximately US$895.00 to export a container of goods from Ghana. By contrast, it costs US$1167.00 to export the same container of goods from Benin, US$2096.00 from Burkina Faso, and US$1026.00 from Nigeria.[51]

4. Membership in International Trade Organizations

The Ghanaian government is seeking to make Ghana the "Gateway" to the West African market through a project sponsored by the World Bank.[52] Ghana is a founding member of the World Trade Organization ("WTO").[53] Ghana is also a signatory to the ACP-EU Partnership Agreement (commonly known as the "Cotonou Agreement"), a trade and aid agreement between the European Union and 46 of Europe's former colonies in Africa, the Caribbean and the Pacific (the ACP group). The Cotonou Agreement guarantees duty-free entry into EU member states for a number of commodities and products produced in ACP countries, including Ghana.[54]

Ghana is a member of ECOWAS, the Economic Community of West African States. ECOWAS's goal is to establish a customs union, which members hope will one day to lead to a full common market with free movement of goods and labor. Once the customs union is established, ECOWAS plans call for full tariff exemptions for companies that are at least 25% owned by citizens of a member state, and lesser exemptions for goods that are at least 40% manufactured within ECOWAS.[55] Ghana is a also member of the West African Monetary Zone (WAMZ), formed in 2000, along with Gambia, Guinea, Nigeria, Sierra Leone and Liberia.

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[51] *Id*.
[52] Doing Business in Ghana.
[53] *See* World Trade Organization, Ghana: February 2001 (hereinafter "Ghana: February 2001"); available at www.wto.org/english/tratop_e/tpr_e/tp157_e.htm.
[54] Doing Business in Ghana.
[55] *Id.*

Ghana is eligible for quota- and duty-free access to the U.S. market for a wide variety of products, including certain textile and apparel products, under the U.S. African Growth and Opportunity Act ("AGOA").[56] In addition, Ghana has bilateral arrangements with several trading partners, including Malaysia, the Czech Republic, Turkey, Trinidad and Tobago, Jamaica, Cote d'Ivoire, Egypt, Cuba, South Africa and the United States, under which imports of goods and services are paid for mainly by cocoa from Ghana.. As of June 2007, Ghana was negotiating agreements with Romania, Greece, Burkina Faso, Zimbabwe, and Libya.[57]

According to the WTO, increased access to foreign agricultural markets would help Ghana earn income that would, in turn, support its political and legal reforms. Ghana's trading partners can be of great assistance by ensuring stable, increased access to their markets, especially for the agricultural products in which Ghana has a strong comparative advantage.[58]

Ghana needs to step up implementation of its ECOWAS commitments, on which it has fallen behind schedule. At the same time, ECOWAS as a whole needs to progress more rapidly toward its goal of becoming a full-fledged common market with free movement of goods and labor.[59]

E. Corporate Governance and Accounting

Corporate law and corporate governance in Ghana are characterized by generally adequate legislation on the books, the effectiveness of which, unfortunately, is seriously hampered by bureaucratic delay and lack of enforcement. Efforts at reform are currently underway that are intended both to update applicable legislation and to greatly improve implementation.

1. Law and Regulatory Framework

The universe of corporate and securities laws and regulations applying to Ghanaian companies consists primarily of the following:

- The Companies Act, 1963 (Act 179), as amended;
- The Incorporated Private Partnerships Act, 1962 (Act 152), as amended;
- The Registration of Business Names Act, 1962 (Act 151), as amended;
- The Securities Industry Law, 1993 (PNDCL 333), as amended;
- SEC Regulations 2003;
- The Ghana Stock Exchange Rules; and
- The Ghana Investment Promotion Centre Act, 1994 (Act 478)(for foreign investment)

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56 *Id.*
57 *See* Ghana: February 2001; *see also* MOTI-PSI Trade Policy Team, "Ghana Trade Policy Background Paper," 2004.
58 *Id.*
59 *Id.*

Ghana's corporate law is found primarily in the Companies Act, 1963 (Act 179) (the "Companies Act"), a law that was based on U.K. corporate law legislation at the time. The Companies Act has not been significantly updated since; however, an update is planned.60 Companies incorporated in Ghana are regulated by the Registrar General's Department (the "RGD"), a department of the Attorney General under the Ministry of Justice.

Listed companies are also regulated by the Securities Law, 1993, which established the Ghana Securities and Exchange Commission ("SEC") and permitted the establishment of stock exchanges. The Ghana Stock Exchange is a self-regulated organization under the oversight of the SEC, and the two bodies have overlapping duties with respect to oversight and regulation of public companies. Finally, investment projects must be registered with the GIPC.

a. Incorporation and Related Requirements

The first step for both domestic and foreign businesses is to apply for incorporation with the RGD. As of May 2003, this could only be done by appearing in person at the RGD's office in Accra.[61] Applicants begin by completing various required registration forms that may be purchased from the RGD's Accounts Office. Once completed, the applicant must present the forms first to the unit responsible for assigning a number and entering the application into the system, and then to the search unit, which will conduct a search to determine the availability of the proposed name of the company. After the name search, the documents are reviewed for compliance with law, and the applicant is notified of acceptance or rejection orally or by mail. By law, the entire process should take no more than five days; however, in practice, it can take much longer.

For foreign investors, the next step is to comply with applicable minimum equity requirements under the Investment Act. For a joint venture with a Ghanaian company, a foreign investor must provide minimum capital of US$10,000. For a wholly foreign-owned venture, the foreign investor must make a minimum capital contribution of US$50,000, except if the venture is a trading enterprise, in which case the mimimum capital contribution is US$300,000. Companies with foreign investors must then register with the GIPC and pay the applicable fee. Finally, companies must register with the Ghana Internal Revenue Service and Value Added Tax Secretariat, and obtain any required environmental permits from the Ghana Environmental Protection Agency.

It is also possible for a foreign company (or "external company") to conduct business in Ghana through a branch office or other place of business without incorporating in Ghana. Within one month of establishing a place of business in Ghana, an external company is required to deliver certain information to the RGD, following which the company will be registered in the Register of External Companies.

Despite the need to register with multiple agencies, and notwithstanding the FIAS' recommendations for streamlining the process, the official process for creating a new company

[60] World Bank, "Report on the Observance of Standards and Codes, Corporate Governance Country Assessment, Ghana," May 2005 (hereinafter "World Bank Report").
[61] FIAS Report.

does not appear to create a *per se* a barrier to investment.[62] However, as discussed below, the delays and difficulties in carrying out the process do require attention.

b. Corporate Governance

Investor Protection and Shareholders' Rights. The basic rights of shareholders are, in theory at least, fairly well protected under Ghanaian law. The Companies Act provides that each Ghanaian company must hold an Annual General Meeting ("AGM") at intervals of not more than fifteen months and within three months of preparation of the company's financial statements for the previous year. In addition, five percent of the shareholders of a public company or ten percent of the shareholders of a private company have the right to request an Extraordinary General Meeting ("EGM"). Individual shareholders may propose resolutions at least six weeks prior to the AGM, and every shareholder has the right to ask questions at the AGM and obtain answers from the board of directors.

Shareholders may sue directors and insiders for breach of their duties of care and diligence, but this rarely occurs in practice. A director must act at all times in accordance with what he or she believes to be in the best interest of the company as a whole but may, where he or she is appointed by or as representative of a special class of shareholders, employees or creditors, give special but not exclusive consideration to that class.

Disclosure and Transparency. Every company registered with the RGD is required to file an annual return with the RGD that must include audited financial statements and updated company information. Shareholders must also receive a copy of the annual return. Bylaws of registered companies are available for inspection at the RGD's offices.

Listed companies have additional disclosure requirements. First, every company listed on the stock exchange is required to file a prospectus with the GSE. Second, listed companies must file with the SEC and the GSE consolidated annual financial statements within three months of year-end, and a full audited annual report within six months of year-end, and send copies to shareholders and bondholders. Listed companies are also required to disclose material events (defined as any event that would affect an investment decision and have a potential impact on share price) to the GSE. The GSE then disseminates the information to the SEC, the press and the market.

For the most part, requirements with respect to the non-financial portions of annual reports are weak. While the names of the 20 largest shareholders are required to be included in the annual report, there is no means of ascertaining ultimate beneficial ownership. Further, annual reports do not contain company objectives, stakeholder issues or governance policies. Annual reports do, however, discuss risk factors, related party transaction disclosure (at least in theory), and executive pay.

Company Oversight and the Board. Board independence is a weak point in Ghanaian corporate governance. Directors of public companies are appointed by the shareholders and nominations may be made by the existing board. There is no legal requirement that any of the

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[62] "Starting a Business in Ghana," http://www.doingbusiness.org.

directors be independent, although the SEC Guidelines recommend that the chairman of the audit committee be independent.

Directors have a legal duty of care and diligence, and there are several protections in Ghanaian law designed to ensure that the board will carry out those duties. For example, directors have civil and criminal liability for false statements in the prospectus, and signing directors have liability for false statements in the company's periodic filings. Furthermore, lawsuits are allowed against directors by the company, individual shareholders, and by means of shareholder derivative suits. However, these lawsuits are rare.

While there are certain legal protections afforded in theory to stakeholders, stakeholders do not play a major role in corporate governance in Ghana. According to the World Bank Report, the level of awareness of stakeholder rights is low.

Enforcement and Redress. As discussed above, Ghanaian law provides a number of mechanisms for enforcement of corporate and securities laws and redress of grievances. SEC enforcement is largely focused on disclosure, and fines are the main penalty for infractions. The SEC can also conduct an investigation if it suspects a violation of securities law, but it must refer any resulting cases to the Attorney General for prosecution. The GSE can suspend trading and suspend or cancel a company's listing. Further, as discussed above, companies and shareholders have legal redress for violations by the board of directors. However, in practice enforcement is limited and resort to legal redress is rare.

c. Accounting

The generally accepted accounting principles in Ghana are the Ghana National Accounting Standards, which are modeled after International Accounting Standards ("IAS") and are in material compliance with IAS. No national auditing standards have been adopted, but in practice U.K. standards are often used.

Ghanaian corporate law requires that annual reports be audited by "independent" auditors, although auditor independence is not defined by law. Listed companies are also required to have an audit committee, composed "as far as possible" of non-executive directors. The independent auditor reports to the board or to the audit committee.

2. Practice

Ghanaian laws and regulations in the area of corporate law and governance, while certainly in need of updating, are generally sufficient. Efficiency and enforcement are Ghana's main problems in this area, due largely to lack of resources, lack of expertise, and lack of investor awareness, and possibly also due in part to corruption within both government and corporate entities. The various reports issued by the World Bank, the FIAS and others make clear that what Ghana needs to modernize and improve its corporate law and governance is an infusion of expertise, capital and other resources. Below are a few examples showing the gap between theory and practice.

a. Lack of Resources and Expertise

The FIAS Report concludes that the RGD is "beset by a range of operational and resource problems that affect the transparency, efficiency and quality of services it provides to the business community and the government."[63] For example, as mentioned above, the process of registering a new company with the RGD should, by law, take no longer than five days. However, according to the Doing Business Report for 2008, it usually takes about forty-two days.[64] The largest stumbling block in the process is the name search because the RGD's records are so poor. Documents are not filed electronically and physical documents are stored in poor-quality facilities that make retrieval uncertain at best.[65] As a second example, the RGD's ability to inspect registered businesses' files for compliance with reporting and renewal obligations is limited by the agency's lack of resources.

The SEC provides further examples of this problem. In theory, the SEC is responsible for the investigation and enforcement of violations of its regulations. However, the SEC has no separate enforcement department. The small legal department and market surveillance department are responsible for these tasks, with the result, as mentioned above, that enforcement is largely focused on disclosure. Further, the SEC is the only regulatory authority that reviews financial disclosure, but the SEC staff lacks the expertise to do so in a meaningful way. When the lack of expertise at the SEC is considered together with the near-total lack of investor education with respect to financial and accounting matters, it becomes clear that even the most stringent disclosure requirements would be unlikely to have a real impact – there are simply not enough people capable of identifying problems. Additionally, if the SEC did uncover fraud or other violations of securities laws, it could only turn the case over to the Attorney General for prosecution, a slow and uncertain process. Other than the occasional fine, therefore, Ghanaian companies have little to fear in practice from an enforcement perspective, which certainly decreases their vigilance with respect to good governance practices.[66]

b. Lack of Investor Awareness and Activism

Shareholders are generally active only in small private companies. In most public companies, non-controlling shareholders – even those that are institutional investors – are largely passive and do not play a large role in corporate governance or oversight. Investors' lack of awareness is compounded by the lack of availability of documents that should be available. The failings of the regulators in this regard are compounded by the failings of the Ghanaian postal system, which is reportedly unreliable.

Without a culture of investor awareness and activism, one of the most useful means of ensuring that companies follow good corporate governance practices – the lawsuit – will not be

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[63] FIAS Report, page 30.
[64] Doing Business 2008.
[65] The government has plans for modernization and streamlining of this process. Interestingly from the perspective of the Millennium Cities Initiative, one proposal is apparently to set up a second RGD office in Kumasi. (Currently, as mentioned above, the RGD's only office is in Accra.) This would be a welcome development for encouraging investment in Kumasi.
[66] *See* Starting a Business in Ghana; s*ee also* Doing Business 2008.

practiced with any frequency. It should also be noted that investors do not have much incentive to bring legal action, given that the court system is, according to the FIAS Report, "over-burdened, slow and reportedly corrupt."

F. **Foreign Exchange**

Ghana has no restrictions on the conversion and transfer of funds. The country's foreign exchange regime was gradually liberalized over a period of years following the inception of the structural adjustment program in 1983.[67] By 1990, the exchange rate was determined by the market. In December 2006, the Exchange Control Act of 1961 and its implementing regulations were repealed by the Foreign Exchange Act, 2006 (Act 723). The new Foreign Exchange Act eliminates the requirements that the Bank of Ghana must approve foreign exchange payments and that the minister for finance must approve the purchase of shares in a Ghanaian company by a foreign citizen.

The Bank of Ghana is the regulatory authority.

1. Law

The Foreign Exchange Act requires that any payment of foreign currency to or from Ghana must be made through a bank.

Persons engaged "in the business of dealing in foreign exchange" are required to be licensed by the Bank of Ghana.

a. Payments within Ghana

The Bank of Ghana has issued certain notices regarding transactions in foreign currency and the operation of accounts denominated in foreign currency. Essentially, residents are permitted to maintain interest-bearing "foreign exchange accounts" with any authorized dealer bank in Ghana. These accounts may be credited with foreign exchange not converted into Ghanaian cedis, but transfers out of them must be justified by appropriate documentation to back the underlying transaction.

Non-resident and resident persons may open and hold "foreign currency accounts" with any authorised dealer bank in Ghana. These accounts may be credited with capital transfers and foreign exchange earned from sources other than, among other things, local sources of foreign currency and foreign exchange obtained from interest earnings, commissions and remittances. Transfers out of Ghana from these accounts and payments from the accounts may be made freely through authorised dealer banks in convertible currencies.

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[67] Doing Business in Ghana.

b. Foreign Investment

Section 27 of the Investment Act provides for the unconditional transferability through any authorized dealer bank in freely convertible currency of:

- dividends or net profits attributable to investment;
- payments in respect of loan servicing where a foreign loan has been obtained;
- fees and charges in respect of any technology transfer agreement registered under the Act; and
- the remittance of proceeds (net of all taxes and other obligations in the event of sale or liquidation of the enterprise or any interest attributable to the investment).

c. Currency

The unit of currency is the Ghana cedi (GH¢), which is divided into 100 pesewas (p). Major international currencies can be sold or purchased in numerous private forex bureaus in the main cities in Ghana. There are no government restrictions on the amount of money that may be exchanged.

There are no restrictions on the import of foreign currency provided that the foreign currency is declared at the point of entry. Foreign currency may only be exchanged for local currency through a bank or forex bureau. Travelers may carry abroad or re-import up to the equivalent of GH¢500.00 (five hundred Ghana cedis), which is roughly equivalent to US$429. Residents and non-residents traveling abroad are permitted to carry up to the equivalent of $10,000 or its equivalent in traveler's checks or any other monetary instrument for direct purchases. Authorized dealer banks may freely export foreign currency.

2. Practice.

Ghana cedis are easily exchanged for dollars and most major European currencies. There is growing use of inter-bank and private foreign exchange bureaus.

Ghana's foreign currency needs are met largely through gold and cocoa export revenues and donor assistance. The fall in world prices of these commodities since 1999 led to temporary foreign currency shortages, which caused delays in the acquisition of foreign exchange and constrained the transfer of funds even in the absence of official restrictions. These difficulties have since subsided and the government has asserted its commitment to achieving its balance-of-payments objectives without intervention in the exchange market or the introduction of quantitative controls.[68]

G. **Competition**

Although Ghana does not yet have in place any legislation on competition, it is in the process of enacting a new competition law. A draft bill has been undergoing legislative review

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[68] Investment Climate Statement.

since 2003. One objective of the new law is the establishment of an independent regulatory authority with responsibility for enforcement. The Ghanaian government is conscious of the importance of a well-enforced competition law that will protect consumers from unfair business practices and uncompetitive behavior. This issue is particularly relevant with respect to the privatization of public monopolies in which private investors, including foreigners, have been encouraged to invest. In the meantime, regulation of competition in Ghana is relegated to a few potentially relevant rules found in Ghana's company code and investment legislation. For instance the National Petroleum Authority Act prohibits the formation of cartels and monopolies in the petroleum downstream industry.

1. Law

Until such time as Ghana's enacts a new competition law, there appears to be no direct legal authority providing consumers with protection from businesses engaged in unfair and/or uncompetitive practices in the areas of anti-trust and consumer protection.

The Protection Against Unfair Competition Act, 2000 (Act 589) classifies certain acts as acts of "unfair competition," including the following:

(a) causing confusion with respect to another's enterprise or activities in, inter alia, the use of a trade mark or trade name or in the presentation of a product or service;
(b) damaging another person's goodwill or reputation from the dilution of the goodwill or reputation attached to, inter alia, a trade mark or trade name;
(c) advertising or promoting goods in such a way as to mislead the public; and
(d) "any act or practice by which a foreign producer of goods or services is granted special advantages in the country of production, including but not limited to direct subsidies and preferential tax treatment, which results in significant distortion of competitive strength in Ghana compared to Ghanaian producers."

Under the Act a person who is injured by an act of unfair competition may apply for an injunction to restrain the act and obtain damages.

a. Anti-trust

In February 2005, the Ministry of Trade and Industry ("Minister") launched a new Trade Policy accompanied by a five-year action plan known as the Trade Sector Support Programme ("TSSP"). A primary component of the TSSP is the enactment of new legislation aimed at (i) controlling price fixing and (ii) reducing barriers to market entry that result when monopolies or oligopolies are created by merger and acquisition.

In the early 1990s, Ghana developed a draft bill on competition with the assistance of the United Nations Conference on Trade and Development ("UNCTAD"). This bill, which includes elements of both competition and consumer protection, was never passed. Under the TSSP, the Minister envisions a process whereby the legislature, in consultation with various stakeholders and the international community, will use the 1990 bill as a starting point in the development of a new stand-alone "state of the art" competition bill focusing primarily on anti-trust issues.[69]

b. Consumer Protection

Although Ghana was considering consumer protection legislation as part of a draft bill on Competition and Fair Trade practices originally proposed in the 1990s and still under consideration in 2003, the TSSP five-year action plan announced by the Minister in February 2005 appears to have postponed any action on consumer protection.[70]

2. Practice

As discussed above, Ghana currently has no legislation on the books addressing either anti-trust or consumer protection. However, under the new TSSP, the Minister expects to push anti-trust legislation through the Parliament quickly. If this happens, Ghana will have made important progress in one of the key areas of competition reform.[71]

Unfortunately, consumer protection legislation appears to have fallen by the wayside. It will be important for the Ghanaian government to put this issue back on the table in the near future if Ghana is to keep pace with its neighbors.

H. Intellectual Property

1. Law

a. Relevant Conventions and Treaties

Ghana has been a member of the World Intellectual Property Organization (WIPO) Convention since June 1976 and a member of the Paris Convention since September 1976. Ghana joined the Berne Convention in October 1991 and the Patent Cooperation Treaty (PCT) in February 1997. Ghana signed the WTO TRIPS Agreement in January 1995, and the Harare Protocol on Patents and Industrial Designs with the Framework of the African Regional Industrial Property Organization (ARIPO) in February 1978.

b. Copyright Law

Ghana passed the Copyright Act (Act 690) (the "Copyright Act") in 2005. The Copyright Act provides that an author, co-author or joint author of any work shall be entitled to a copyright if the work is original in character; has been fixed in a tangible medium of expression so that the work can be perceived, reproduced or otherwise communicated; and is either (i) created by a citizen or resident of Ghana, (ii) first published in Ghana or subsequently published in Ghana within 30 days of its publication outside Ghana or (iii) a work with respect to which

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69 UNCTAD Blue Book.
70 *Id.*
71 *Id.*

Ghana has an obligation under an international treaty to grant protection. Note that folklore is protected by copyright, with the rights vested in the government of Ghana.

Copyrights are protected for the following durations:

- during the life of the author and for seventy years after his death;
- for joint works, during the life of the last surviving author and for seventy years after his death;
- for works owned by a public corporation or other corporate body, seventy years from the date on which the work was made or first published, whichever date is later;
- for an anonymous work or a work published under a pseudonym, seventy years from the date the work was made, first made available to the public or first published, whichever date is later, but if the identity of the author is known before the expiration, the term is life of the author and seventy years;
- for an audio-visual work, seventy years from the from the date the work was made, first made available to the public or first published, whichever date is later;
- for a sound recording, seventy years from the publication or, if the sound recording was not published from the fixation, seventy years from the fixation date;
- for expressions of folklore, the term is in perpetuity.

Any person who infringes on a copyright may be subject to fines and/or imprisonment. The owner of a copyright may bring suit for an injunction to prevent infringement or its continuation and for detention of the infringing goods by Ghanaian customs. When the offense is committed by a legal entity, every director or secretary (in the case of a corporation) or every partner (in the case of a partnership) shall be deemed to have committed the offense.

The Copyright Act created a Copyright Tribunal that hears and determines matters referred to it by contract and applications to settle royalties for rental of a work. The Copyright Act also applies to works created before the coming into force of the current copyright provisions.

c. Trademark Law

Trademarks are governed by the Trade Marks Act, 2006 (Act 664), which permits the registration of a trademark. Collective marks are also registrable under Act 664. The registration of a trademark confers on the person who registers it an exclusive right to its use.

The first user of a mark (or the person intending to use it) is entitled to registration of the mark. The initial registration of a trademark is valid until ten years from the date of application; thereafter, the trademark may be renewed indefinitely for consecutive periods of ten years. A registered trademark should be used in order to prevent the trademark from being removed from the register.

Trademark infringement proceedings can only be brought if the mark is registered. The available remedies for trademark infringement are injunction and damages. Certain other acts, such as forging a trademark and applying false descriptions to goods, are offenses under the Trade Marks Act. The High Court of Ghana hears all trademark infringement actions.

d. Patent Law

Ghana's Patent Act of 2003 (the "Patent Law") has been in effect since December 31, 2003. Patents that were effective before the Patent Law came into effect are treated as if they had been registered under the Patent Law.

In Ghana, a patent expires at the end of the twentieth year after the date of the filing of the application. Annual fees must be paid in order to maintain the patent.

Upon proving an infringement, the owner of a patent may be granted an injunction to prevent infringement or prohibit the continuation of an infringement, damages, or any other remedy provided by law. The High Court is empowered to grant a compulsory license to a person other than the registered owner if, after a stipulated period, a patent is not sufficiently used in Ghana

2. Practice

The intellectual property regime in Ghana (including copyrights, patents and trademarks) is not obviously lacking any significant protections. As a member of various international intellectual property treaties and agreements, Ghana has been required to make its intellectual property protections commensurate with those the rest of the world

It does not appear that there has been very much, if any, patent lawsuit activity in Ghana. This lack of patent activity may be attributable to the fact that Ghana does not have a marketplace sufficiently large to justify the costs of a patent lawsuit. However, there has been activity in the copyright and trademark areas. For example, a group of musicians in Ghana recently accused an organizer of entertainment events of failing to adhere to copyright laws by selling recorded awards ceremonies without the knowledge of the musicians. This case shows that people within Ghana are taking advantage of the copyright laws and the protections provided by them. As another example, Westinghouse Electric Corporation was successful in enforcing its trademark rights in Ghana. In that case, the High Court confirmed that another company was passing off its own products as Westinghouse products in a manner that would confuse consumers.

I. **Land Use and Environmental Law**

Ghana has a complex land tenure system, involving both national and traditional laws. Land is categorized as either public land owned by the government of Ghana, traditional land under the control of the traditional authorities, or private land held by families, corporate bodies, institutions and individuals. All public land and all minerals in the country are the property of the Republic of Ghana and are vested in the government under the Constitution. All traditional lands are vested in the appropriate traditional authority in trust and may not be given over as a freehold interest to anyone.[72]

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[72] Section 267(5) of the Constitution.

The Ministry of Lands, Forestry and Mines (the "Ministry") is empowered to regulate land, forest, wildlife and mineral resources in Ghana. In addition, the government has established several public and para-statal agencies to administer subject lands, including the Lands Commission, the Land Valuation Board, the Land Title Registry, the Administrator of Stool Lands (lands held by traditional leaders), the Minerals Commission, the Forestry Commission, the District and Municipal Assemblies, the Tema Development Corporation and the Town and Country Planning Department, among others.

1. Laws and Policies

The main policy governing land is the National Land Policy, which was originally adopted in June 1999 and was subsequently amended by the National Patriotic Party Administration in 2002. The policy reflects the government's strategy to reform land management and administration, and attempts to address the issues of equitable access to land and security of land tenure based on registered titles, community participation in sustainable land management and development practices, and prompt payment of fair compensation for land acquired by the state, among others.[73]

Following the launch of the National Land Policy, the government proposed the Ghana Land Administration Project (the "LAP"). Under the LAP, proposals have been prepared for the consolidation of all land laws into one comprehensive law and the merger of the six public land agencies into one institution. In addition, data have been collected in support of the development of an appropriate policy response to the outstanding issues of compulsory acquisitions and compensation for such actions. Three Customary Land Secretariats have been established and two existing Secretariats have been strengthened to improve customary land administration, and boundary demarcations of customary lands have begun in certain areas. A pilot program for an improved land titling system has begun in Accra and Kumasi. Meetings with the judiciary, traditional authorities and citizens have been taking place to create awareness of the LAP, to provide a platform for participation and to seek their cooperation with the fieldwork. Studies on the impact of the LAP on the land sector and on gender issues are being undertaken, as well as mapping projects throughout the country. The government has also begun re-appraising land to increase the tax base of municipalities. As of June, 2007, however, the LAP had not been passed, and the consolidation of the various agencies into one agency is proving controversial.

2. Restrictions on Ownership

The acquisition of land in Ghana is governed by statutory and customary law based on where the land is situated. Foreign ownership of land is not permitted, since under the Constitution, "no interest in or right over any land in Ghana shall be created which vest in a person who is not a citizen of Ghana a freehold interest in any land in Ghana."[74] However, foreigners may obtain leases on land for up to fifty years; such a lease may be renewable.

[73] "Land Title Registration Law, 1986," available at http://www.ghana.co.uk/properties/content/legal/registration_law.htm.
[74] Section 266(1) of the Constitution.

3. Kumasi

Urban sprawl has extended Kumasi by as much as thirty kilometers from the old city center.[75] This growth has led to disputes between traditional farmers and developers of industry and urban housing. In addition, over-farming to keep up with the growing population has resulted in the loss of soil fertility in the area.

In the Ashanti region, land is traditionally held by the village chief, who apportions the land to his subjects with help from the queen mother.[76] With the growth of Kumasi, land has become more valuable, and chiefs are now allocating land to outsiders without consulting with the rest of the community in exchange for money.[77]

Foreigners are often charged close to market price for land by the traditional authorities, and sometimes unscrupulous chiefs gouge. Allocations of traditional lands are subject to traditional restrictions, such as the requirement that allocated land must be developed within a certain timeframe. For residential uses, there is a strict requirement that development must begin within the first one to three years. For industrial uses, the time frame can vary depending upon the site plan and the agreement of the parties. Some chiefs are reluctant to grant land rights for industrial use if the land will not be developed for a longer time, which delays the chief's receipt of lease payments. In practice, it is rare that land is re-allocated once it is "sold," especially since the development requirement can oftentimes be satisfied simply by fencing the plot in question.[78] Instead, the chief sometimes will give a third party a "second" lease to the land to ensure development within a year. Also, chiefs have a right of re-entry on leased land if the lessor fails to develop the land as specified in the site plan or has not paid the rent due.

A good place for any investor in Kumasi to start is the Chief Executive Officer of the Kumasi Metropolitan Assembly, who will give an investor guidance on the process and agencies with whom to discuss establishing a business in Kumasi. Below is a summary of these agencies and their responsibilities.

a. Town and Country Planning Department. This agency is located in Kumasi and is responsible for physical planning in the Kumasi area, including subdivision planning. The department is a proponent of using existing industrial parks, which had been established but are now lying vacant after the jute and shoe industries collapsed during the military regime of the 1980's and 1990's. Most of these industrial parks are located on the old Kumasi-Takoradi railroad line to take advantage of the less congested seaport at Takoradi.

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[75] National Resources Institute – The Need for Agricultural Land in the City, Ghana, www.nri.org/InTheField/kumasi_per_urban.htm.

[76] *Id.*

[77] The amount paid for the land is referred to as "drink money," which is payment for the chief to consult with ancestors on the viability of the transaction. If any dispute arises after the payment of the "drink money" but before the lease is final, the "drink money" can be returned but only as a last resort and after replacement property is offered and other negotiations take place between the parties. There is no "purchase price" for traditional lands.

[78] Devas, Nick and Koboe, David, "City Governance and Poverty: The Case of Kumasi," Environmental & Urbanization, Vol. 12, No. 1, April 2000.

Investors deciding to locate in Kumasi will need to coordinate with this department to ensure compliance with zoning regulations. The approval and permitting process can take as little as four months from start to finish.

b. Stool Land Secretariat and Lands Commission. New investors interested in acquiring rights to lands in the Ashanti region, including Kumasi, must present their plans to the Stool Land Secretariat, the administrative agency of the Asantehene, and the Lands Commission, the national government arm responsible for land titling and the transfer and recordation of land rights. The process usually takes about six months with diligent efforts and involves the following steps:

(i) Identifying the area for the business and discussing the project with the divisional chiefs, who with the local chiefs are the administrators of the land;

(ii) Determining the amount of land required;

(iii) Preparing the site plan;

(iv) Checking with the Lands Commission to ensure that the land rights are available for transfer (the Stool Land Secretariat may check with the Lands Commission as well);

(v) Confirming that the land use is in conformity with the zoning regulations for the area. If use is not part of the overall plan already approved by the Kumasi Metropolitan Assembly, then the investor must check with the Town and Country Planning Department to get clearance for intended use;

(vi) Determining the amount to be paid to be able to use the land for the business;

(vii) Paying for the land rights in the form of "drink money," of which one-third will go to the local chief and the balance to the Stool Land Secretariat. This amount is not reflected in the lease and is often undocumented;

(viii) Submitting the site plan to the Stool Land Secretariat, along with the Secretariat's portion of the drink money;

(ix) Obtaining the endorsement of the site plan by the head of the Secretariat;

(x) Obtaining the lease agreement from the Lands Commission, which will have received the site plan from the Secretariat. The lease terms are usually fifty years for industrial or educational use and for foreign leases, and ninety-nine years for residential use by nationals. Most leases can be renewed for an additional, nominal fee;

(xi) Receiving the final lease back from the Secretariat endorsed by the Asantehene;

(xii) Paying a tax assessment at the rate of approximately ten percent of the rental payment to the Stool Land Secretariat. This amount can be reduced during the development of the property upon application to and approval by the Lands Commission and the Stool Land Secretariat;

(xiii) Paying an improvements fee to the Kumasi Metropolitan Assembly if structures are involved, which is based on the value and location of the property; and

(xiv) Registering the lease agreement and right to use the land with the Land Title Registry.

Assignments of leases of land are handled through the Secretariat and the Lands Commission. The Lands Commission prepares the original assignment, which is then sent to the Secretariat to determine the value of the assignment based on the property value. The final steps are the payment of the tax assessment to the Secretariat and the actual assignment.

Fees associated with the acquisition of land rights in Kumasi usually include: (a) presentation fees, (b) execution fees, (c) registration fees, (d) rent, (e) drink money, (f) stamp duty, (g) plotting fees, and (h) survey fees, which all vary depending on the type, intended use and location of the land.

The Secretariat cautions potential lessors that they should not sublease from sublessors but should rather approach the original lessor. They should also confirm title and availability of the land with the Secretariat before proceeding with any negotiations. The Secretariat usually handles any traditional land disputes and collects the land fees on behalf of the chiefs. Because of this more reliable documentation of land rights, it is possible to get financing secured by a leasehold interest in land in the Kumasi area.

4. <u>Issues</u>

Issues surrounding the acquisition of land rights in Ghana include the following:

- A process of acquiring rights to land that is complex, not transparent and often arbitrary;
- An incomplete land titling process that leads to uncertain title to land;
- Rapid urban expansion that is characterized by informal or illegal developments and met with slow and inefficient planning;
- Unclear legislation, complex or contradictory responsibilities between different levels of administration, and lack of human and technical resources;[79]
- A weak land administration system with not enough power to ensure compliance with zoning laws;
- Indeterminate boundaries of traditional lands;

[79] Ghana Land Administration Project.

- In Kumasi, land planning based on the 1963 colonial administration plan, which was centered on the timber industry that has now declined considerably as a significant industry for the area; and
- In Kumasi, city limits that are expanding into adjoining districts that Kumasi has not been able to assert its jurisdiction over because of political issues, with the result that zoning and planning efforts are hampered.

J. Labor (including Employment of Foreign Workers)

Ghana has a large pool of inexpensive, unskilled labor. English is widely spoken, especially in urban areas. Labor regulations and policies are generally favorable to business. Labor-management relations are fairly good.[80] However, in some ways Ghana's labor regulations and practices are restrictive, especially when compared with practices in other countries. For example, Ghana's labor force is not familiar with firm-level productivity-based pay schemes, which are not covered by current legislation.[81]

1. Law

In 2003, Ghana passed the Labour Act, 2003 (Act 651) ("Labour Act").[82] The Labour Act establishes a seven-member tripartite National Labour Commission ("Commission"), and consolidates and modifies existing laws relating to labor, employers, trade unions and industrial relations to bring them into conformity with the core principles of the International Labour Organisation ("ILO"), to which Ghana is a signatory.[83] The Commission promulgated the National Labour Commission Regulations ("Regulations") effective February 1, 2006.[84] Orders of the Commission may be enforced by application to the High Court (§ 172). Ghana has ratified seven of the eight core ILO conventions including Convention 182 on the Worst Forms of Child Labor.[85]

a. Employment and Termination Practices

Employment discrimination is prohibited "on grounds of gender, race, color, ethnic origin, religion, creed, social or economic status, disability or politics" (§ 14(e)). Special incentives are provided to employers who employ persons with a disability (§ 46(1)).

Employment may be terminated if a worker is medically unfit, or if the worker is unable to carry out his or her work due to sickness, accident, incompetence, or proven misconduct (§ 15(d) & (e)). Unfair termination of employment is prohibited (§ 63(1)). An employer

[80] Doing Business in Ghana.
[81] Investment Policy Review.
[82] Section references which follow refer to provisions of the Labor Act, unless otherwise identified.
[83] *See* Doing Business in Ghana; *see also* Ghana Investment Promotion Centre, *Procedures and Costs of Doing Business in Ghana* available at http://www.gipc.org.gh/Ipa_printinformation.asp (hereinafter "GIPC Doing Business in Ghana").
[84] *See* Labour Commission, "National Labour Commission Regulations," 2006 L.I. 1822.
[85] *See* 2008 Comprehensive Report on U.S. Trade and Investment Policy Toward Sub-Saharan Africa and Implementation of the African Growth and Opportunity Act (May 2008), available at http://www.ustr.gov (hereinafter "USTR Report").

responsible for unfair termination can be ordered to re-instate or otherwise compensate the worker (§ 64(2)). If jobs are eliminated due to changes in production schedule or corporate structure, workers are entitled to compensation (§ 65(4)). Disputes in the amount of compensation owed to an employee may be referred to the Commission for a final determination (§ 65(5)).

b. <u>Wages</u>

Employees are entitled to equal pay for equal work, without distinction of any kind (§ 68). The work week must not exceed a maximum of forty hours or eight hours per day (§ 33). Workers must be given daily continuous rest of at least twelve hours duration between consecutive work days (§ 41(1)). In addition, workers must be given 48-hour period of rest every seven working days (§ 42). Employees who agree to work extra hours must be paid overtime (§ 35). Workers are entitled to be paid for public holidays (§ 72). Special formulas apply to the compensation of casual (*i.e.* seasonal) and temporary workers (§ 76).

As of March 1, 2008, the minimum wage is 2.25 cedis per 8 hour day (or approximately US$2.31),[86] well below what is needed to support a decent standard of living. The National Tripartite Committee (composed of representatives from government, labor, and employers) sets the daily minimum wage and reviews it annually. Employers are required to make a statutory monthly contribution of 12.5% of a worker's base salary to the Social Security and National Insurance Trust.[87] Employers may not require employees to perform forced labor (§ 116). The minimum employment age is 15 years, or 13 years for employment that does not affect the child's school attendance, ability to benefit from school, and is not harmful.[88] The law prohibits night work and hazardous labor for those under 18.[89]

c. <u>Unions</u>

Workers have the right to "form or join a trade union" (§§ 10(d) & 80(1)). Employers have a right to "form or join an employer's organization" (§ 80(2)). Trade unions and employers' organizations must be independent of any political party, must register with the Chief Labor Officer, and must not discriminate against any person (§§ 82, 83 & 87).

Collective bargaining agreements (CBAs) may be concluded between one or more trade unions on the one hand and representatives of one or more employers or employers' associations on the other hand, subject to the provisions of the Labor Act (§ 96). Parties to the negotiation of such agreements must act in good faith and make every reasonable effort to reach an agreement (§ 97). Collective bargaining agreements must be for a term of at least one year (§ 107(1)).

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[86] Ministry of Information and National Orientation, http://www.ghana.gov.gh/ghana/tripartite_committee_announces_new_daily_minimum_wage.jsp (last visited July 11, 2008).
[87] GIPC Doing Business in Ghana.
[88] USTR Report.
[89] *Id*.

Employers who discriminate against union workers or who interfere in union affairs are guilty of unfair labor practice (§§ 127 & 128). Employers must provide reasonable facilities and time for union officers to confer with employers and union members (§129). The Commission is charged with investigating and resolving complaints of unfair labor practice (§§ 132 & 133).

Strikes and lockouts require a seven-day notice period (§ 160). Any termination of the contract of employment as a result of a lawful strike or lockout is void (§ 169(1)). An employer may not employ any person to perform the work of a lawfully striking worker except to perform minimum essential maintenance services (§ 170(1)). Picketing in support of a lawful strike is permitted (§ 171). Strikes and lockouts are prohibited during a period of negotiation, mediation or arbitration (§ 161). A strike or lockout is illegal if it is in support of or sympathy with a strike action taken by another group of workers (§ 168(1)). Disputes involving essential services are to be resolved by the Commission within three days of the referral of the dispute by compulsory arbitration (§ 162).

d. Benefits

Employers must provide workers with at least fifteen working days of paid vacation each year (§ 20). A worker may be permitted to take his or her vacation in two approximately equal parts (§ 28). Women are entitled to a twelve-week paid maternity leave (§ 57(1)). This may be extended for at least two additional weeks in prescribed circumstances. Public holidays and absences due to sickness, pregnancy and confinement may not affect a worker's vacation entitlement (§ 33). Any agreement by a worker not to take annual leave is void and unenforceable.

e. Health Insurance

The Labour Act does not require employers to provide health insurance. However, on September 12, 2003, the National Health Insurance Act, 2003 (Act 650) came into effect. Act 650 requires every person resident in Ghana to belong to either a public or private health insurance scheme. To fund the National Health Insurance Fund, starting on August 1, 2004, the Act imposes a levy of 2.5% on certain goods and services produced or provided in, or imported into, Ghana.[90]

Today, most health care is provided by the government in the form of socialized medicine, but hospitals and clinics run by religious groups also play an important role. Some for-profit clinics exist, but they provide less than 2% of health services. Health care is variable throughout the country. The major urban centers are well-served, but rural areas often have no modern health care. Patients in these areas either rely on traditional medicine or travel great distances for care.[91]

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[90] National Health Insurance (Commencement of Levy) Instrument, 2004 (L.I. 1973). The goods and services on which the levy is imposed include consumer purchases, services, accommodations, food in restaurants, as well as advertising, betting and entertainment. Employers who establish or contribute to a private health insurance scheme are not exempt from payment of the levy.

[91] Encyclopedia: Publicly Funded Medicine, available at http://experts.about.com.

f. Safety

Employers must "take all practicable steps to ensure that the worker is free from risk of personal injury or damage to his or her health during and in the course of the worker's employment" or "while lawfully in the employer's premises" (§§ 9(c) & 118(1)). Employees have the right to "work under satisfactory, safe and healthy conditions" (§ 10(a)). Employers are required to report occupational accidents and diseases which occur in the workplace within seven days. (§ 120).

Labor inspectors are empowered to carry out inspections at any hour to enforce the provisions of the Labor Act relating to working conditions and the protection of workers, including provisions relating to hours of work, wages, safety, health and welfare of the workers and the employment of young persons (§§ 122 & 124). Inspectors must maintain confidentiality and avoid any conflict of interest (§125).

g. Application for Work Permits

Work and residence permits are issued to expatriates employed by companies in Ghana against immigration quotas. A limited number of automatic work permits are granted when specified levels of capital are invested by foreign-owned businesses.[92]

A foreign enterprise that makes a direct investment through the GIPC under the Investment Act is automatically entitled to a specific number of visas and work permits based on the size of its investment. An investment of more than US$10,000 but less than US$100,000 entitles an enterprise to a visa and work permit for one expatriate employee; an investment of over US$100,000 but less than US$500,000 entitles the enterprise to two expatriate employees; and an investment above US$500,000 entitles the enterprise to four expatriate employees. The enterprise may apply for extra visas and work permits, but must justify why a foreigner must be employed rather than a Ghanaian. There are no restrictions on the issuance of work and residence permits to free zone investors.[93]

h. Relevant Treaties and Conventions

Ghana has been a member of the ILO since 1957, and has ratified 47 International Labour Conventions to date. In 2003, Ghana unified and modified its existing labor laws to conform to the four core principles of the ILO: (i) freedom of association and the right to collective bargaining; (ii) elimination of forced and compulsory labor; (iii) abolition of child labor; and (iv) elimination of discrimination in the workplace.[94]

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[92] Doing Business in Ghana.
[93] *Id.*
[94] *See* ILO, "ILO Declaration on Fundamental Principles and Rights at Work;" *see also* ILO, "List of Ratifications of International Labour Conventions."

2. Practice

Since Ghana's new Labour Act became effective in March 2004, numerous changes have taken place. The Chief Labor Officer now issues CBAs instead of the former Trade Union Congress ("TUC"). The National Labour Commission is responsible for resolving labor and management disputes, replacing the old labor courts. The Tripartite Committee was given a legal mandate and the authority to set the minimum daily wage. In addition, public and private employment centers were created to help job seekers find gainful employment.[95]

Today, many foreign firms pay substantially above the minimum wage.[96] While there are no statutory requirements for profit sharing, fringe benefits in the form of year-end bonuses and retirement benefits are included in most CBAs.[97] As for collaboration between management and labor, joint consultative committees in which supervisors and workers meet regularly to discuss issues affecting productivity are now commonplace.[98] Workers are allowed to form and/or join unions of their choice and unions are generally allowed to conduct their activities without interference from the government.[99]

Despite such progress, certain problems remain. Child labor continues to be a grave problem in the informal employment sector. The government, in conjunction with NGOs, is funding programs to combat child labor.[100] Educational and sensitization workshops are conducted with the police and local communities. Forums are held to implement an ILO Time-Bound Program, which is aimed to eliminate all forms of child labor within specified time periods.[101] The government generally cooperates with NGOs in working to eliminate child labor.[102]

The cost of severance pay is in most cases higher than the international norm, purportedly in excess of three years of wages, stifling the development of labor-intensive export production.[103] Employees with tenure of less than five years generally receive one month's salary for every year of employment; employees with five years or greater of service generally receive two months' salary for every year of employment up to a maximum of two years of severance. These amounts can be negotiated further resulting in even greater severance amounts. Moreover, labor rights provisions are generally negotiated under firm-specific CBAs, which can be a lengthy and difficult process. In recent years, strikes have resulted in the closure of several foreign-owned businesses, while labor unions competing for influence have caused serious disruption to certain other businesses.[104]

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95 Doing Business in Ghana.
96 Investment Policy Review.
97 Doing Business in Ghana.
98 *Id.*
99 USTR Report.
100 *Id.*
101 *Id.*
102 *See id.*
103 *See* The World Bank Group, *Doing Business in Ghana: Snapshot Comparison for 2006*, available at http://www.doingbusiness.org/ExploreEconomies/Default.aspx?economyid=76.
104 Investment Policy Review.

New dispute resolution mechanisms provide for, among other things, seeking redress before taking a strike action and expeditious settlement of grievances that involve essential service workers. Unfortunately, these new provisions are not enforced because the stakeholders lack an adequate working knowledge of the new labor laws. Recognizing the benefits that could be achieved if knowledge were more widespread, UNCTAD has recommended the preparation of informational material and the organization of a nationwide awareness program.[105]

K. **Corruption**

According to the Foreign Investment Advisory Service's ("FIAS") May 2003 report on Ghana, petty corruption in Ghana "is a pervasive issue and . . . has been apparently generally accepted as a reality of the business environment in Ghana." [106] As pointed out by the FIAS Report, corruption can influence investment decisions, impose costs on businesses and affect the economy at large. The petty corruption referred to by the FIAS Report appears to consist largely of the widespread practice of officials asking for bribes and favors. The U.S. Diplomatic Mission to Ghana explains that "[i]t is easy to make friends in Ghana who can facilitate business transactions. In return, these friends may ask for favors, some of which may conflict with U.S. business ethics or laws." [107] This is clearly a concern for potential investors.

On the other hand, the Investment Climate Statement points out that "[c]orruption in Ghana is somewhat less prevalent than in other countries in the region, and no U.S. firms have identified corruption as the major obstacle to foreign direct investment."[108] Furthermore, under President Kufuor, the government of Ghana has committed itself to fighting corruption.

The Constitution provides for the establishment of a Commission on Human Rights and Administrative Justice, which investigates instances of alleged and suspected corruption. In 1998, the government also established the Serious Fraud Office to investigate instances of public and private corruption.[109] Several corruption prosecutions have been brought against former officials of the previous administration.

[105] UNCTAD Blue Book.
[106] FIAS Report, page 130.
[107] Investment Climate Statement, page 6.
[108] *Id.*
[109] *Id.*

V. The OECD Policy Framework for Investment

This section compares Ghana's business laws, analyzed in Section IV, with the Organization for Economic Co-Operation and Development's (OECD) "Policy Framework for Investment," adopted in 2006. These policy guidelines identify key measures that, according to the OECD, are crucial for attracting foreign private investment. Each guideline is listed below followed by a brief comparison to Ghana's current investment framework.

A. Investment Policy

The quality of investment policies directly influences the decisions of all investors, be they small or large, domestic or foreign. Transparency, property protection and non-discrimination are investment policy principles that underpin efforts to create a sound investment environment for all.

Ghana's policy has long been to promote investment, including FDI. The Ghana Investment Promotion Centre (GIPC) has as its mission to aggressively promote domestic and international investment activities as well as to collect information, facilitate investment promotion, collect data and advise companies on how to set up business in Ghana. (See pages 13-14.) In addition, the laws and regulations governing investment and the conduct of business in Ghana are accessible and relatively clear. However, the process of incorporating and registering a company is, in practice, burdened by delays and difficulties. (See page 24.)

Property protection is enshrined in Ghana's Constitution, which prohibits the compulsory taking of private property without compensation. Furthermore, guidelines for expropriation state that expropriation must be motivated by a public purpose, observe due process of law, be non-discriminatory and be guided by transparent rules. The Investment Act provides that a foreign-owned enterprise shall not be subject to expropriation or nationalization unless appropriation of it is in the national interest and for a public purpose. Practice generally reflects adherence to these rules. (See pages 15-16.)

Ghana has no overall economic or industrial strategy that discriminates against foreign-owned businesses. It is true that investors are subject to certain requirements that domestic investors are not subject to (such as the requirement to register with the GIPC, to invest a minimum amount of equity capital, and to hire a minimum number of Ghanaians), and are restricted by certain rules that domestic investors are not restricted by (such as limits in the foreign ownership permitted in a company listed on the Ghana Stock Exchange). However, in some cases, foreign investors can benefit from additional incentives. (See pages 14-15.)

B. Investment Promotion and Facilitation

Investment promotion and facilitation measures, including incentives, can be effective instruments for attracting investment provided they aim to correct for market failures and are developed in a way that can leverage the strong points of a country's investment environment.

As stated above, Ghana's policy has long been to promote foreign investment. Ghana provides a variety of incentives for foreign investors, including tax holidays, capital allowances, location incentives, customs duty exemptions and other inducements. One measure merits particular attention. The Free Zone Act, 1995 allows certain industrial parks and individual firms to obtain free zone status, which results in various tax holidays and elimination of duties. In that regard, the GIPC is working on the creation of industrial parks to be purchased by the GIPC. The industrial parks would be close to cities and would be designated as free zones. More generally, the GIPC seeks to facilitate the establishment of business and generally assist companies doing business in Ghana. In addition, Ghana has bilateral investment agreements with several countries.

However, other than the free zone benefits, the investment incentives Ghana offers are generally considered inadequate. Investors have pointed out the need for improvement in areas such as technology, education, access to credit and fiscal incentives. (See pages 13-17.)

C. **Trade Policy**

Polices relating to trade in goods and services can support more and better quality investment by expanding opportunities to reap scale economies and by facilitating integration into global supply chains, boosting productivity and rates of return on investment.

Ghana is a founding member of the World Trade Organization and a signatory to several trade agreements. It is a member of the Economic Community of West African States and the West African Monetary Zone. Ghana is eligible for quota-free and duty-free access to the U.S. market for a wide variety of products.

However, Ghana needs to step up implementation of its ECOWAS commitments, on which is has fallen behind schedule. In addition, significant infrastructure problems including an insufficient road system, non-functioning rail system and small airports provide obstacles to the free flow of goods and services. (See pages 3, 6 and 22-23.)

D. **Competition Policy**

Competition policy favors innovation and contributes to conditions conducive to new investment. Sound competition policy also helps to transmit the wider benefits of investment to society.

Ghana does not yet have in place any legislation on competition, although its legislature is in the process of drafting a new competition law. The Ghanaian government is conscious of the importance of a well-enforced competition law that will protect consumers from unfair business practices and anti-competitive behavior. In the meantime, regulation of competition in Ghana is relegated to a few rules found in Ghana's company code and investment legislation. (See pages 30-31.)

E. **Tax Policy**

All governments must collect taxation revenue in order to function and carry out their duties. However, the level of the tax burden and the design of tax policy, including how it is administered, directly influence business costs and returns on investment. Sound tax policy enables governments to achieve public policy objectives while also supporting a favorable investment environment.

Ghana's tax policy is designed to serve its policy objectives of encouraging certain kinds of investment and industry. Ghana's tax system is not overly burdensome. (See pages 18-20.)

Ghana's tax system imposes an income tax, a value added tax, social security contributions and a national reconstruction levy. Local jurisdictions also impose a variety of property taxes.

Under current corporate tax law, the corporate income tax is generally between 25% and 28%. Free zone companies enjoy an initial 10 year tax holiday; after expiration of the tax holiday, they are taxed at a rate of 8%. A variety of other tax holidays and reductions exist for specific industries, and for industries located in certain geographical areas.

F. **Corporate Governance**

The degree to which corporations observe basic principles of sound corporate governance is a determinant of investment decisions, influencing the confidence of investors, the cost of capital, the overall functioning of financial markets and ultimately the development of more sustainable sources of financing. These questions provide a brief introduction to some of the key corporate governance issues that policy-makers and others should address to promote a sounder environment for investment. For a more complete assessment, policy-makers should turn to the OECD Principles of Corporate Governance and the assessment methodology developed by the OECD Steering Group on Corporate Governance, and if possible ask the World Bank for an assessment under the program of the Reports on Observance of Standards and Codes (ROSC) for Corporate Governance.

Corporate law and corporate governance in Ghana are characterized by adequate legislation, the effectiveness of which is hampered by delay and lack of enforcement. Efforts at reform are underway that are intended both to update applicable legislation and to greatly improve implementation.

The basic rights of shareholders are protected, at least in theory, under Ghanaian law. Ghanaian companies are required to hold annual shareholder meetings, and shareholders representing 5% of the shares, in the case of a public company, or 10%, in the case of a private company, may call a special shareholder meeting. Furthermore, shareholders may sue directors and insiders for breach of the duties of care and diligence. However, in practice, shareholders rarely sue directors or insiders. Also, directors are permitted to give special treatment to the shareholders they represent, so there is not completely equitable treatment of shareholders.

Disclosure and transparency are another area in which the protections provided by law are not always honored in practice. Registered companies are required to file annual reports that include audited financial statements. Shareholders must receive a copy of the report, and bylaws are required to be available for inspection. Listed companies have additional disclosure requirements. However, the requirements with respect to the non-financial portions of annual reports are weak. In addition, enforcement is weak in this area. The Ghanaian SEC focuses its enforcement actions and efforts on disclosure, but the SEC and the stock exchange are understaffed and enforcement not common. The main penalty for infractions is a fine.

Board independence is also a weak point in Ghanaian corporate governance. In practice, the board is largely captive to the majority shareholder or shareholders. Board members are bound by duties of care and diligence, but here, too, enforcement actions are rare.

Public awareness of the rights of stakeholders is low. (See pages 23-26.)

G. Policies for Promotion of Responsible Business Conduct

Public policies promoting recognized concepts and principles for responsible business conduct, such as those recommended in the OECD Guidelines for Multinational Enterprises, help attract investments that contribute to sustainable development. Such policies include: providing an enabling environment which clearly defines respective roles of government and business; promoting dialogue on norms for business conduct; supporting private initiatives for responsible business conduct; and participating in international co-operation in support of responsible business conduct

Ghana is a stable, peaceful country with a functioning democracy, which renders the promotion of responsible business practices possible. (See pages 2-3.) The creation in 2003 of two Fast Track Courts that hear, among other matters, cases involving banks, investments, and certain commercial and industrial suits may help with encouraging responsible business conduct, as may the creation of the Commercial Division of the High Court in 2005. These courts send a signal that the judiciary is paying attention to business conduct. In addition, the Ghana Arbitration Centre and the American Chamber of Commerce's Ghana Commercial Conciliation center, and the existence of laws and treaties regarding alternative dispute mechanisms, provide venues for promoting responsible business conduct However, while these measures provide some improvement, the Ghanaian judiciary and dispute resolution mechanisms in general remain slow and cumbersome. (See pages 9-10.) In addition, a low level of investor and stakeholder awareness, coupled with the still-prevalent problem of public and private corruption, provide obstacles to reaching high standards of business conduct. (See pages 27-28 and 43.)

H. Human Resource Development

Human resource development is a prerequisite needed to identify and to seize investment opportunities, yet many countries under-invest in human resource development due in part to a range of market failures. Policies that develop and maintain a skilled, adaptable and healthy population, and ensure the full and productive deployment of human resources, thus support a favorable investment environment.

Ghana has several advantages in human resource development. First, English is widely spoken, particularly in urban areas, and is generally the language of instruction in schools, making Ghana an attractive option for foreign investment. In addition, Ghana has labor law protections on the books, and management-labor relations are generally good. Furthermore, Ghana has socialized healthcare, so healthcare is widely available to the workforce.

However, despite laws aimed at preventing child labor from interfering with schooling, child labor remains a problem. This means that children are not universally obtaining a level of education that would promote human resource development. More generally, poverty continues to impede the investment that would result in an educated, skilled workforce. The minimum wage is currently well below the level required to support a decent standard of living. However, foreign companies with Ghanaian operations tend to pay well above the minimum wage. (See pages 38-43.)

I. Infrastructure and Financial Sector Development

Sound infrastructure development policies ensure scarce resources are channeled to the most promising projects and address bottlenecks limiting private investment. Effective financial sector policies facilitate enterprises and entrepreneurs to realize their investment ideas within a stable environment.

Ghana has developed a good road system over the past few decades. However, because Ghana's ports serve several neighboring, land-locked countries, there is significant overuse and wear and tear on the roads, as well as enormous traffic problems. In addition, Ghana's major railroads are not functioning. Repairing this infrastructure would significantly improve investors' ability to do business in Ghana. Other infrastructure problems, such as insufficient energy production with resulting brownouts, also impede development. (See page 3.)

Credit is costly (annual interest rates average 20-22%), making it difficult for local businesses and entrepreneurs to establish and expand their businesses. (See page 3.) Access to equity financing is also limited. There are currently only 33 companies listed on the Ghana Stock Exchange.

J. Public Governance

Regulatory quality and public sector integrity are two dimensions of public governance that critically matter for the confidence and decisions of all investors and for reaping the development benefits of investment. While there is no single model for good public governance, there are commonly accepted standards of public governance to assist governments in assuming their roles effectively.

Ghana is a stable democracy, with well-defined boundaries between the branches of government. However, the regulatory environment is characterized by a lack of resources, delay and lack of sufficient enforcement.

Petty corruption in Ghana is pervasive, and seems to consist largely of the widespread practice of officials asking for bribes and favors. However, corruption is less prevalent in Ghana than in other countries in the region, and does not appear to be a critical factor impeding foreign investment. In addition, the current president has committed his administration to fighting corruption. The Serious Fraud Office exists to investigate instances of public and private corruption. Recently, the government has brought several corruption prosecutions against former officials of the previous administration. (See pages 43-44.)

VI. **Conclusion**

As the oldest independent country in sub-Saharan Africa, Ghana has had a stable political and economic environment for the past decade. Even the transition from a military regime to a democratically elected government was peaceful. As a result, the economy has grown and the country is focused on continuing its economic growth and becoming a center for investment, trade and services for West Africa. The current government has many projects underway that will help it fulfill this goal. However, the realities of the large amount of time it takes to enact legislation and to process requests, as well as the severe energy crisis the country is currently facing, are very real obstacles to further development. Ghana is also not immune from debilitating diseases and poverty, which affect its ability to build a sustainable national economy. Nonetheless, the country has taken several steps to alleviate these issues and should be able to take many more as outlined in this report to help strengthen its economy, and as a result, its population's welfare.

There are many significant opportunities for foreign investors in all the sectors of the country, and especially in Kumasi. Not only can investors reap the benefits of the business prospects in the country, but they can also contribute to the economic growth and individual welfare through the funds and expertise they inject into the economy and through their demands for transparency and accountability. There are many reasons why Ghana is particularly attractive to foreign investors as stated in this report, and investment promises to be a significant contribution to the economic and social progress of the country and its people.

VII. Appendix – DLA Piper/New Perimeter Team

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