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The organisation of business activities in Ghana

The organisation of business activity in Ghana takes several forms, including unincorporated businesses, incorporated businesses, non-Ghanaian companies registered in Ghana as external companies and state-owned enterprises created by statutes. The relevant laws that govern the formation of entities that carry on business in the country are the Companies Code, 1963 (Act 179) ("Companies Code"), with regard to companies, the Incorporated Private Partnerships Act, 1962 (Act 152) ("IPPA"), with regard to partnerships, the Statutory Corporations Act, 1964 (Act 232), with regard to statutory corporations, and the Registration of Business Names Act, 1962 (Act 151), with regard to unincorporated business. The Registrar-General's Department is the government agency responsible for registration and regulation of business entities, except statutory corporations.

What kinds of companies may be formed in Ghana?

The various kinds of companies are as follows:

Company Limited By Shares

In a company limited by shares, the shareholder need not pay the whole amount of his shares to the company at once when acquiring the shares. The usual practice is that shareholders make payments when the directors make "calls" upon them to pay. The shareholder's liabilities are therefore limited to any amounts unpaid on the shares, and once a shareholder has fully paid for his shares, he is not to incur any further liabilities in respect of the company. Thus no contribution is required from any member, exceeding any amount unpaid on his shares, where the company is being wound up. However, the company may decide, by special resolution, to reserve any unpaid liability on shares until the company is being wound up.

The Regulations of a company limited by shares must expressly state the fact of the limited liability of members. The last word of the name of a company limited by shares shall be "limited", or its abbreviation "ltd."

Company Limited By Guarantee

This is a company having the liability of its members is limited to amounts that they respectively undertake or guarantee to contribute to the assets of the company in case of liquidation. Unlike companies limited by shares where the liability of the member may have to be implemented at any time during the existence of the company, that is, during the active life as well as during winding up, in the guarantee company, that liability need only be implemented after the commencement of the winding up of the company. The Companies Code provides for the total liability of members, and no further contribution shall be required from any member.

A guarantee company is not registered with shares and is not permitted to create any shares. This type of company is therefore only suitable if no initial funds are required or those funds are obtained from other sources, e.g. endowments and donations. The company is also not permitted to engage in trading. The company is not permitted to pay dividends or distribute/return any assets to members.

Whilst other companies may operate on a "one share, one vote" principle, the operating principle in respect of guarantee companies is "one member, one vote".

The Regulations of a guarantee company must contain the following mandatory provisions:

- That the liabilities of the members are limited

- That the income and property of the company shall be applied solely towards the promotion of its objects
- That no portion of the income and property shall be paid or transferred in any manner to the members, except payments is permitted by the Regulations, such as the payment of reasonable and proper remuneration to officers in return for services actually rendered, out-of-pocket expenses, interest not exceeding 6% on money lent to the company, and reasonable and proper rent for premises let to the company. Further, no director is to be appointed to any salaried office. These may be modified only with the approval of the Registrar
- That each member will contribute to the assets of the company in the event of its being wound up, to cater for the payment of the company's debts and obligations, costs of liquidation and other amounts required, up to whatever limit is prescribed by the Regulations. In respect of members, this liability extinguishes only where a person has ceased to be a member for more than a year. Note that membership of a guarantee company may end only by death, valid retirement or any other manner prescribed in the Regulations
- That upon winding up, the residue of the property shall not be distributed to members, but shall be either given to some other guarantee company with similar objects or applied to some charitable purpose. Members before the dissolution of the company shall determine the beneficiary.

Unlimited Company

This company is also registered with shares, and, there is no limit on the liability of the members. There are not too many of such companies in Ghana. The few that exist are mostly law firms and other professional establishments who may be prevented from operating as limited liability companies by professional ethics.

Public and Private Companies

Each of the above types of companies may be "private" or "public". A company is a private company if by its Regulations, it fulfills the following conditions:

- Where it is a company registered with shares, there is a restriction of the right to transfer shares
- The total number of members and debentureholders do not exceed 50. This number excludes genuine employees and ex-employees of the company who became members or debentureholders during their employment, and continued to be so after their employment. The exclusion of employees is designed to enable companies to institute co-partnerships schemes without forfeiting their private status
- The company is prohibited from making of any public invitations for the acquisition of its shares and debentures
- The company is prohibited from making an invitation to the public to deposit money for fixed periods or payable at call, whether interest-bearing or not.
- Any other company is a public company.

External Company

Corporate bodies formed outside Ghana that seek to operate in Ghana need not automatically incorporate subsidiaries in Ghana. Such a corporate body is allowed to established a place of business in Ghana after it has registered with the Companies Registry as an "external company". "Established place of business" means a fixed place of business such as a branch, registration office, factory or mine. The following are not considered as established place of business:

- An agency through which the external company makes purchases, except where the agency does more than mere purchases, for instance, exercising general authority to negotiate and conclude contracts on behalf of the body corporate outside Ghana
- Bona fide brokers

- General commission agents
- The established place of business of a subsidiary

An external company must appoint a local manager as its representative in Ghana. The local manager must have the qualifications required of a director of a Ghanaian company, i.e., he must not be an infant, lunatic, corporation, undischarged bankrupt or a fraudulent person. Persons dealing with a local manager are entitled to assume that he has authority to carry on the business in Ghana. This protection does not cover persons who know or ought to have known that the local manager is acting in excess of his authority. The names of local managers must be published in all trade circulars and letterheads of the external company. There must also be adequate publication in English its name, country of incorporation and, if it exists, limited liability status at the place of business and on letterheads.

External companies are required to file yearly accounts with the Companies Registry. Where the external company is wound up, is dissolved or has ceased to exist in accordance with the law of its home country, the local manager must within 28 days, cause a notice to that effect to be delivered to the Companies Registry for registration and publication in the Gazette.

Are there special kinds of companies?

Yes. The Companies Code permits the formation of special purpose companies that are regulated by special legislation. Some of these are:

Banks

Banks are regulated by the Banking Law, 1989 (PNDCL 225). Banks in Ghana operate under the supervision of the Bank of Ghana. No person is allowed to carry on the business of banking in Ghana unless that person:

- is a body corporate
- has obtained a license from the Bank of Ghana
- maintains the minimum paid-up capital prescribed by the law, the quantum of which differs, depending on whether it is a Ghanaian banking business, foreign banking business, development banking business or a rural bank.

The Banking Law provides that no person other than a bank shall use or assume the word "bank" or any of its derivatives of the work in whatever language, indicating the carrying on of the business of banking.

Insurance Companies

Insurance companies in Ghana operate under the supervision of the National Insurance Commission, established under the Insurance Law, 1989 (PNDCL 227). No person is allowed to carry on insurance business in Ghana unless:

- that person is a body corporate
- the Government of Ghana has an automatic 20% interest in the capital in that business, and at least another 40% of the capital is owned by a Ghanaian
- that person maintains a prescribed minimum paid-up share capital, part of which should be in Government securities and deposited as security deposit with the Bank of Ghana. The amount of minimum paid up capital varies, depending on whether the company is involved in life insurance, non-life insurance, composite (that is both life and non-life insurance), or re-insurance.

Non-Banking Financial Institutions (NBFIs)

NBFIs operate in Ghana under the Financial Institution (Non-Banking) Law, 1993 (PNDCL 328). The businesses affected by the provisions of this law are the taking of deposits, financing by way of loans or advances, dealing in securities without being licensed under

the Securities Industry Law, leasing, letting or hire-purchase, or where an insurance company carries on any business other than insurance. The following are however specifically classified as NBFIs under the schedule to the Financial Institution (Non-Banking) Law: Discount companies, finance houses, acceptance houses, building societies, leasing and hire-purchase companies, venture capital funding companies, mortgage financing companies, savings and loan companies and credit unions.

NBFIs operate under the supervision of the Bank of Ghana, and no person is allowed to carry on the activities of a non-banking financial institution unless it:

- is incorporated in Ghana
- has obtained a license from the Bank of Ghana
- maintains a prescribed minimum paid-up capital.

Finance Lease Companies

A finance lease is defined by the Finance Lease Law, 1993 (PNDCL 331) as an arrangement by which a Lessor leases to a Lessee, either the lessor's own already acquired assets or an asset that the lessor agrees to acquire from a third party, for the Lessee's use only and against payment of mutually agreed lease rentals over a specified non-cancellable period and under which the Lessee may exercise an option to purchase the asset outright after the period of the lease at an agreed price, subject to the agreement of the Lessor. Under the Finance Lease Law, a person is not allowed to become a lessor under a finance lease agreement unless that person

- is incorporated as a company
- is specifically licensed to engage in finance leasing
- complies with guidelines prescribed by the Bank of Ghana, including any prescriptions relating to minimum paid-up capital requirement.

GIPC-Registered Companies

Under the Ghana Investment Promotion Centre Act, 1994 (Act 478) non-Ghanaians may to invest and participate in the operation of any enterprises in Ghana, except petty trading, operation of taxi or car hire services (except he has a minimum of ten new vehicles), lotteries, beauty salons and barber shops.

However, such an enterprise must be incorporated or registered under the Companies Code and registered with the Ghana Investment Promotion Centre (GIPC). A non-Ghanaian engaged in an enterprise in Ghana must invest certain prescribed sums of money in dollars, depending on whether the enterprise is a joint venture, wholly foreign owned, or engaged in purchasing and selling goods. These minimum capital requirements do not apply to portfolio investments and enterprises set up solely for export trading.

What are the other forms of business that exist?

Unincorporated Businesses/Sole Proprietorships

The majority of business operations in Ghana are unincorporated, sole proprietorships. These deal in a wide range of productive and commercial activities, including agriculture, manufacturing, transportation, commerce and other services. Many of these unincorporated businesses are located in homes, market stalls, or operated by mobile vendors.

In principle, every person in Ghana is free to engage in any kind of lawful business activity. Ghana law does not require the registration of merchants or classes of businessmen. Commercial law is a part of the general law of the country and not as the law of a particular class of persons. There is no special body of rules regulating sole proprietorships; the general commercial law principles apply. The conflict between ownership and management, which is a feature of company law, does not arise and

there is no need for special rules to protect creditors because the trader is fully liable for the debts of his business.

Every individual (and indeed, a company) may carry on business under a name other than his or its own name. Such a name is known as a business name. Under the Registration of Business Names Act, 1962 (Act 151), such names must be registered with the Registrar of Business Names. In practice, however, there is very little regulation of these activities.

Traders may be subject to professional restrictions of a general nature, which apply to all persons engaged in a particular trade, business, profession or vocation. Only duly qualified, licensed or registered persons can carry on some businesses. It is, for instance an offence under the Legal Profession Act, 1960 (Act 32) for a person who is not enrolled as a lawyer to practice as a lawyer or prepare any document for reward to be used in or concerning any cause or matter before any court. Under of the Pharmacy Act, 1994 (Act 489) it is an offence for a person who is not appropriately registered or who does not have the requisite qualification to practise as pharmacist to hold himself out as such.

Partnerships

A partnership is an association of two or more individuals carrying on business jointly for the purpose of making profits. Partnerships are required to be incorporated under the IPPA. A partnership will not be registered where the membership exceeds 20. The reason for this may be found under the Companies Code, which makes it mandatory for any association, company or partnership that consists of more than 20 members, and has for its object the acquisition of gain to be incorporated as a company under the Code.

In Ghana, an incorporated partnership is a body corporate, distinct from the partners, and capable of exercising all the powers of a natural person of full capacity which are capable of being exercised by a body corporate. However, partnerships in Ghana do not have limited liability, and every partner is liable with the firm and the other partners, without any limitation, for the debts and obligations of the firm incurred while he is a partner. The terms of the relevant partnership agreement may however provide to a partner, rights to indemnity from the firm or contribution from the co-partners.

Every partner is considered to be an agent of the firm and all acts authorised or approved by the other partners or within the scope of the firm's business bind the partnership. Incoming partners are under no liability for acts or omissions committed or events occurring prior to the date on which they joined the partnership. A retiring partner remains liable for any debts incurred before his retirement.

Although partnerships have legal personality, the firm does not have direct income tax liability. Rather, a partner is taxed directly on his income, as if that income was the divisible income of the partnership for that period.

Voluntary Associations

These are associations of persons combining for purposes other than carrying on a business. Sometimes known as "clubs", such associations may be established for religious, educational, literary, scientific, sport, social or charitable purposes. It is possible to incorporate such associations as guarantee companies under the Companies Code. However, the rules regulating companies under the Companies Code, such as the filing requirements, may not suit the aims and operations of such associations.

The Trustees (Incorporation) Act, 1962 (Act 106) provides that the trustees/officers of any unincorporated voluntary association or body established for any of the above-mentioned purposes to apply for a certificate of registration as a corporate body. Upon the grant of the certificate, the trustees/officers shall become a body corporate by the

name described in the certificate, have perpetual succession, official seal, power to sue and be sued in the corporate name, hold and acquire property.

The incomes of certain voluntary organisations, namely statutory or registered friendly societies, are tax-exempt where such income is not derived from a business carried on by such society. Further, gifts made to religious bodies which use the gift for the benefit of the public, or a section thereof, are not taxable.

Statutory Corporations

Under the Statutory Corporations Act, 1964 (Act 232), the President may by legislative instrument, provide for the creation of a body corporate or the establishment of an existing unincorporated organisation or body established under the authority of a Minister, or which acts in accordance with the instructions of a Minister, or is otherwise under government control, as body corporate. These are known as "statutory corporations", and have perpetual succession, common seal, the power to sue and be sued in its name, and to acquire and hold property.

The term "statutory corporations" is also applied to corporations that were established directly by Acts of Parliament and not by the procedure set out in the Statutory Corporations Act.

In 1993, many statutory corporations slated for privatisation were converted to or incorporated as limited liability companies under the provisions of the Statutory Corporations (Conversion to Companies) Act, 1993 (Act 461). The affected statutory corporations are the following:

- (i) Agricultural Development Bank
- (ii) Bank for Housing and Construction (liquidated)
- (iii) Ghana Commercial Bank (privatized)
- (iv) National Investment Bank
- (v) National Savings and Credit Bank (merged with Social Security Bank to become SSB Bank Ltd)
- (vi) Architectural and Engineering Services Corporation
- (vii) Electricity Corporation of Ghana
- (viii) Football Pools Authority
- (ix) Ghana Airways Corporation
- (x) Ghana Cocoa Board
- (xi) Ghana Film Industry Corporation (privatized)
- (xii) Ghana Food Distribution Corporation
- (xiii) Ghana National Manganese Corporation
- (xiv) Ghana National Petroleum Corporation
- (xv) Ghana National Procurement Agency
- (xvi) Ghana National Trading Corporation
- (xvii) Ghana Oil Palm Development Corporation
- (xviii) Ghana Publishing Corporation
- (xix) Ghana Reinsurance Organization
- (xx) Ghana Trade Fair Authority
- (xxi) Irrigation Development Authority
- (xxii) Omnibus Services Authority
- (xxiii) Telecommunications Division of the P& T Corporation
- (xxiv) Precious Minerals Marketing Corporation
- (xxv) State Construction Corporation
- (xxvi) State Gold Mining Corporation
- (xxvii) State Housing Corporation
- (xxviii) State Insurance Corporation
- (xxix) State Shipping Corporation
- (xxx) State Transport Corporation (privatized)

(xxxii) Tema Shipyard and Drydock Corporation (privatized)

Co-operative Societies

A Co-operative society is a union of individual, e.g. farmers, formed for the prosecution in common of some productive enterprise, the profits being shared in accordance with the capital or labour contributed by each. Co-operatives are usually consumer-oriented, i.e. the customers of the society are the members who have voting and dividend rights. Under the Co-operative Societies Decree, 1968 (NLCD 252), a cooperative society, that is a society which has as its object the promotion of the economic interest of its members in accordance with cooperative principles, must be registered with the Registrar of Co-operative Societies, and may or may not have limited liability.

Building Societies

Under the Building Societies Ordinance, 1955 (No. 30), a building society is a society formed for the purpose of raising by the subscriptions of members a stock fund from which to make advances to members. The main purpose of a building society is to assist members to purchase their own residential property. The fund is raised by the issue to members of shares that are either paid up or payable in periodical or other installments. In Ghana, Building Societies must be registered with the Registrar of Building Societies. The income of a statutory or registered building society is tax-exempt except the income is derived from a business carried on by the society.

Unit Trusts

Under the Securities Industry Law, 1993 (PNDC 333), a unit trust scheme is an arrangement by which, usually under a trust deed, the managers of the trust acquire certain defined securities and transfer them to the trustees named in the trust deed. On the strength of the block of securities so held, the managers issue "units" or "sub-units", with a view to an invitation being made to the public to acquire such units. The investors are the beneficiaries under the trust deed and are entitled to a pro rata share of the dividends, interest or other income of the securities.

In Ghana, no person shall establish or operate a unit trust scheme unless the scheme is approved by and registered with the Securities Regulatory Commission. The manager of a Unit Trust must be a company incorporated in Ghana, and the trustee must be either a bank, insurance company or a wholly-owned subsidiary of either of them, that is distinct from the manager.

The interest, dividends or other income of an approved unit trust scheme or payable to a holder or member of that scheme is tax-exempt.

Joint Venture

A joint venture is essentially a commercial arrangement between two business groupings to undertake a particular project. The main advantage in joint venture is its flexibility: it allows the parties to cooperate without binding their entire undertakings with a full-scale merger. However, sometimes, a joint venture may take a corporate form, for which reason the rules on company law will apply. If the joint venture includes foreign participation, then the rules in respect of GIPC-Registered Companies will also apply.

Franchise Agreements

Under a typical franchise arrangement, a person having developed a concept for marketing goods or services (the franchisor) licenses another person having a retail outlet (the franchisee) to undertake the actual supply. The only caution about this mode of operation is for the parties to ensure that the terms of the agreement do not create such an intimate nexus between them as to render them partners, and hence be covered by the rules on incorporating partnerships.

Franchise agreements involving enterprises that have been registered with the GIPC fall under the definition of technology transfer agreements under the GIPC Act. The agreement must be registered with the GIPC, and be governed by the terms of the Technology Transfer Regulations, 1992 (LI 1547).

How are companies incorporated in Ghana?

Mechanics

In Ghana, a company cannot be created except under the authority of Companies Code. The only document required for incorporation of a company under the Companies Code is the Regulations. To incorporate a company, the promoters must deliver to the Registrar for registration a copy of the proposed Regulations. The Regulations must contain the following mandatory provisions:

(a) The name of the company. If the company is limited by shares, the last word must "Limited" or its abbreviation "Ltd."

(b) The authorised businesses or objects of the company

(c) A statement that in furtherance of the authorised businesses and objects, the company has all the powers of a natural person of full capacity

(d) The names of the first directors

(e) A provision that the powers of the directors are limited in accordance with section 202 of the Companies Code

(f) Where the company is a limited company, a declaration that the liability is limited

(g) Where the company is registered with shares, a statement of the number of shares with which the company is registered

(h) Where it is a guarantee company, the following provisions:

- The income and property will be applied strictly towards the promotion of its objects
- That there will be no distribution of income and property
- That the members will contribute to assets of the company in the event of liquidation
- That upon liquidation, the residue of the property not to be distributed, but either given to some other guarantee company with similar objects or applied to some charitable purpose

(i) Where the company is a private company, the following provisions:

- restriction on transfer of shares, if the company is registered with shares
- limit on number of members
- prohibition from invitations the public to acquire securities
- prohibition from invitations to the public to deposit money

(j) Any other lawful provisions relating to the constitution and administration of the company.

The Regulations must be printed, type written or in some other legible form which the Registrar accepts. This can be in the standard forms prescribed under the Companies Code or can be tailor-made.

The completed Regulations should be signed by at least one subscriber in the presence of, and attested by at least one witness.

Where the company is registered with shares, every subscriber must have at least one share, which, together with the cash price paid for it, should be written against his name, to show that he is a member of the company.

Certificate of Incorporation

Upon the registration of the Regulations, the Registrar will issue a certificate of incorporation authenticated under his official seal, certifying that the company is duly incorporated and, in the case of a limited company, that it is limited. The company then becomes a body corporate by the name in the Regulations, and is capable of exercising all the functions of an incorporated body, from the date of the certificate of incorporation, a status which it continues to enjoy until it is dissolved.

Certificate to Commence Business

As noted above, the only document required for incorporation is the Regulations. However, a company registered with shares is not entitled to transact business, exercise borrowing powers or incur indebtedness unless it has submitted the following forms to the Registrar for registration:

(a) Form 3: this is a standard form obtainable from Companies Registry. It contains the company's particulars such as details of the objects, officers (i.e. directors, secretary and auditor of the company), its registered office and capital information (i.e. number of authorized and issued shares and the stated capital - being the actual value of the shares issued). Also, capital duty of 0.2% of the stated capital will be payable, in addition to other filing fees.

(b) Form 4: this is also a standard form. It is a declaration by the directors and secretary that the company has received for the issue of its shares, consideration of certain amounts. A private company should have received a minimum capital of at least five million cedis (¢5,000,000) (¢7,300 = US\$1), at least one million cedis (¢1,000,000) of which should be in cash.

Upon receiving these forms, the Registrar will issue the company with a Certificate to Commence Business. It is the usual practice for the Regulations and Forms 3 and 4 to be submitted to the Registrar at the same time.

Incorporation is however not automatic simply because the promoters have submitted the proposed Regulations and the relevant forms. The Registrar may refuse to register a company where:

- the Regulations are not in order (e.g. where there are breaches of the Companies Code)
- the objects are unlawful
- the subscriber(s) is/are incompetent (on grounds of infancy or unsound mind)
- the director(s) is/are incompetent (on grounds of infancy, lunacy, corporate status, undischarged bankruptcy or disqualification by the High Court).

How are partnerships incorporated in Ghana?

To register a partnership a copy of the partnership agreement and a statement signed by all the partners must be submitted to the Register General's department stating particulars of the name of the partnership, nature of business, address of the principal place of business and all other places in Ghana at which the business is carried on, names and addresses and occupations of the partners, date of commencement, and particulars of any charges requiring registration.

Upon registration the Registrar issues a certificate of incorporation which states the names of the partners and the fact that their liability is unlimited. A notice of registration is issued in the Gazette. Registration of a partnership must be renewed annually and it is

an offence to carry on business without registration. Rights arising out of a contract during a period of unauthorised operation are enforceable against the partnership but not by the partnership against the other party.

What rules apply to the establishment of agencies, branches and subsidiaries in Ghana?

Agency

Ghana does not have any special legislation that regulates agency relationships. This form of business is however common in the country. Principles of English common law are relied on in determining the contractual rights and obligations of a principal and agent.

Branch

Both local and external companies registered in Ghana are free to conduct their business through branch offices. The Code however does not have special provisions for the operation of branches apart from branches of external companies that constitute established place of business.

References to "every office or place in which [a company's] business is carried on", which presumably includes branches, are contained in the Companies Code, for example, in respect of the requirement to exhibit the name and country of incorporation of an external company.

Subsidiary

Under the Companies Code, a company is the subsidiary of another and that other is its holding company if that other by the exercise of some power directly or indirectly vested in it (otherwise than by virtue of shares held by way of security only for the purpose of a transaction entered into in the ordinary course of business), can appoint or remove, or procure or prevent the appointment or removal, of all or not less than half of its directors.

Where, at the end of a company's financial year, a company has subsidiaries, the Companies Code requires that group accounts must be prepared and circulated among the members and debenture holders of the company with the company's own profit and loss account. However group accounts are not required where, the company becomes a wholly owned subsidiary of another company at the end of the financial year.

Subject to the approval of the Registrar, group accounts need not be filed where the amount involved is insignificant, or where the company will incur undue expense or where preparation of the accounts would involve delay out of proportion to its relevance to members. Group accounts need also not be filed where the result would be misleading or harmful to the business of the company or any of the subsidiaries or where the business of the holding company and that of the subsidiaries are so different that it would be unreasonable to treat them as one undertaking.

Apart from this requirement relating to group accounts, the Code does not make any other references to the relationship between holding companies and their subsidiaries. That relationship does however have important implications in other areas, notably tax law and securities, especially in relation to takeovers and mergers on the stock exchange.