

Doing business in Ghana

Introduction

This is the first in the series of articles we will be presenting to you regarding the business environment in Ghana. The government over the past few years has made very deliberate efforts to attract and encourage foreign investments in Ghana. This is in furtherance of other business friendly measures put in place by earlier governments to facilitate the operation of foreign companies in Ghana. The Ghana Investment Promotion Centre (GIPC), together with the Ministry of Trade (MoT) have led the drive towards attracting foreign investments.

Fundamental to the operation of the foreign investments is the setting up or incorporation of a company or an entity through which the investments would work. There are several requirements for the different types of entities that could be set up to realize the kind of business activity that would be intended. What this writeup seeks to achieve is to explain the various types or forms of companies which the law admits and under which circumstances they may be appropriate.

Types of business formation admitted and differences

The Companies Act, which regulates the operations of companies in Ghana, admits four (4) types of companies; a company limited by shares, limited by guarantee, an unlimited company and an external company.¹

A company limited by shares is one where the liability of the shareholder is limited to the amount left unpaid on the shares held. In other words, the extent of the shareholder's liability is the value of the shares at the time he/she signed up to be a shareholder. This is the Ghanaian equivalent of the French SAS.

A company limited guarantee is a type of company where the liability of its shareholders are limited to the amount that the shareholders have undertaken/ guaranteed to contribute to the assets of the company in the event the company is being wound up.

It is instructive to appreciate the differences between these two types of companies. Whereas with a company limited by shares the shareholder may have to pay the value of the shares upfront or whenever it is called upon by the Company to do so, the shareholder under a company limited by guarantee would only be called upon to pay their share of the liability they have undertaken or guaranteed to pay when there is an actual liability. As such you

¹ Section 7(1) Companies Act, 2019

would find that companies limited by guarantee are normally used by not-for-profit organizations, trust arrangement and other social enterprises. Like the French *associations*, Companies limited by guarantee are not allowed to make or declare any profits; whatever form of profit they may make is supposed to be ploughed back into the venture for which it exists.

The two other types of companies are an unlimited company and then external company. *An unlimited company* is one which does not have a limit on the liability of its shareholders. As such the risk or liability that the shareholders are exposed to are not limited to any amount. *An external company* on the other hand is a company incorporated outside Ghana which has an established place of business in the country. This can also be referred to as a branch or a liaison office.

Apart from the four (4) types of companies explained, the law, through the Registration of Business Names Act, 1962 (Act 151), allows individuals to also register business names and operate as Sole Proprietors. Note must be taken that sole proprietorship does not offer the protection that a company incorporated offers; there is no separate legal entity at play.

Directors, Shareholders and Company Secretary

To be incorporated, a company needs a minimum of two (2) Directors, one of whom to be ordinarily resident in Ghana. Note that Directors are individuals and not corporate entities. Companies registering in specialized or regulated industries may however have to meet the requirements for directors as some industries like banking require a minimum above two directors and have provisions for their tenure as well.

A company can have just one shareholder or several shareholders. Shareholders can be either corporate entities or individual persons. It is important to note also that a shareholder can also be a Director of the company.

The position of Company Secretary is limited to persons in good standing as lawyers, chartered accountants, chartered Secretaries, persons trained as company secretaries by persons qualified to be one, as well as persons who have received professional qualification or tertiary training which provides them with the requisite knowledge to be company secretaries.²

An auditor must also be appointed by the shareholders of the companies. The person must be qualified and licensed in accordance with the Chartered Accountants Act and must have consented to be so appointed.

Accounts and other filings

A company incorporated under the act is required to keep proper accounting records with respect to the financial position and changes in the accounting records and also in respect to

² Section 211, Companies Act 2019

the control of and accounting for assets acquired whether for resale or for use in the business of the company.³

The directors of the Companies have within eighteen (18) months after the incorporation of the company and subsequently at least once in every calendar year at intervals of not more than fifteen (15) months, to prepare and circulate to every shareholder of the company a copy of the signed financial reports, report by directors, as well as reports by the auditors⁴.

Registration with Ghana Revenue Authority (GRA) and Ghana Investment Promotion Council (GIPC)

Upon incorporation of a company with the Registrar General's Department, it is imperative for the company to register with the tax authorities as well. Depending on the type of business being run, it will have to register for Value Added Tax (VAT) in addition. The rules and monitoring concerning taxes are tightening by the day and as such it is crucial for any company incorporated to properly comply with the rules and regulations.

It is also very important for a company which has a foreign shareholder or in a joint venture with a Ghanaian to register with the GIPC. The requirement to register with the GIPC is not because of the minimum capital requirement but first because the investor is a foreigner. The GIPC further makes provisions for minimum equity requirements and this can be in cash or goods or a combination of the two. You will need to show evidence of how it is met.

Accordingly, said requirements would be:

- twenty (20) skilled Ghanaians employed and \$1,000,000 minimum equity for companies wholly owned by foreigners carrying on trading activities,
- \$500,000 minimum equity for companies wholly owned by foreigners carrying on any other business than trading activities,
- \$200,000 minimum equity for company jointly owned by foreigners and Ghanaian providing that the latter holds a minimum of 10% of the share capital.

There however are not minimum equity requirements for foreigners involved in export trading, manufacturing and portfolio management, however, those companies still need to register with the GIPC as foreign companies.

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³ Section 127, Companies Act 2019

⁴ Section 128 Companies Act 2019