

# GHANA

## BENTSI-ENCHILL, LETSA & ANKOMAH



### FIRM INFORMATION

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### POLITICAL SYSTEM

Ghana has a constitutional government under a multiparty democracy.

### ECONOMIC INDICATORS

Gross domestic product (GDP): USD 66.98 bn (2019). GDP per capita is USD2 212 (2019).

### INFLATION RATE

The inflation Rate as at April 2020 was 10.6%

### FORMS OF BUSINESS

- Unincorporated businesses and sole proprietorships
- Incorporated partnerships
- Statutory corporations
- Company limited by shares (the liability of shareholders for the debts of the company is limited to any amounts unpaid on their shares)
- Company limited by guarantee (the liability of shareholders for the debts of the company is limited to amounts that they respectively undertake or guarantee to contribute to the assets of the company in case of liquidation)
- Unlimited companies (there is no limit on the liability of the members. The few unlimited companies that exist are mostly law firms and other professional organisations that may be prevented from operating as limited liability companies by professional rules)
- External company (incorporated bodies formed outside Ghana that seek to operate in Ghana register as external companies if they establish a place of business in Ghana).

Companies may be either public or private.

### INVESTMENT CLIMATE

The Constitution protects private property and prohibits compulsory acquisition except under due process of law. Parliamentary approval of international economic and business transactions to which the Government is a party is required. Natural resource grants also require parliamentary approval.

Under the Ghana Investment Promotion Centre Act, 2013 (Act 865) (the GIPC Act) non-Ghanaians may invest and participate in the operation of enterprises in Ghana.

In the case of a joint venture with a Ghanaian, the non-Ghanaian must invest at least foreign capital of USD200 000 in cash or its equivalent in capital goods relevant to the investment, or a combination of both, by way of equity participation. The GIPC Act does not prescribe a maximum percentage of Ghanaian ownership in a joint venture enterprise, but the GIPC Act requires a minimum of a 10% Ghanaian shareholding in a joint venture.

Where the enterprise is to be wholly owned by a foreigner, there must be an investment of foreign capital of at least USD500 000 in cash or its equivalent in capital goods relevant to the investment, or a combination of both, by way of equity participation.

In the case of a trading enterprise involved only in purchasing and selling goods owned either wholly or partly by a non-Ghanaian, there must be investment of foreign capital of at least USD1 000 000 in cash or goods and services relevant to the investment by way of equity participation and the enterprise must additionally employ at least 20 Ghanaians.

The above minimum capital requirements do not apply to portfolio investments or enterprises established exclusively for export trading.

### INCENTIVES GRANTED UNDER THE GIPC ACT INCLUDE:

- an immigration quota limited to the amount of the paid-up capital of the company
- personal remittances of wages through authorised dealer banks
- free transferability of dividends and profits
- other special incentives that may be negotiated with the Ghana Investment Promotion Centre to promote certain identified industries.

### TOURISM

The Ghana Tourism Authority (GTA) oversees the tourism industry. A tourism enterprise is defined to include hotels or any company engaged in the hotel industry. The object of the GTA is to promote the sustainable development of the tourism industry internationally and within the country.



The Tourism Act, 2011 (Act 817) (the Tourism Act) requires that any person who exercises overall control over the daily operations of a tourism enterprise as the manager be registered with the GTA. The GTA is however yet to prescribe the procedure for registration of a hotel manager. The current GTA requirement is that the manager of the hotel must be a natural person experienced in hotel management or must hold an appropriate qualification. Where the manager is a corporate entity it must in addition employ a natural person who is experienced in hotel management or a related qualification.

A person will not be registered by the GTA as manager of a hotel if the person has been declared bankrupt or has been convicted of a serious offence.

The GTA grants licences and regulates tourism enterprises. It also monitors the activities of licensees. Under the Tourism Act, a person may not operate a tourism enterprise unless he/she holds a valid licence issued by the GTA in respect of that tourism enterprise. A person who fails to obtain a license commits an offence and is liable on summary conviction to a fine of not more than GH¢1200 and/or a term of imprisonment of not more than 6 months. A licence issued in respect of a tourism enterprise is valid for 12 months and is subject to renewal on expiry.

A holder of a tourist accommodation licence is required to keep a register on the premises and to enter in the register the name and address of each guest who stays there and other particulars that the GTA may prescribe. The register must be retained by the holder of the tourist accommodation licence for at least 5 years. Each guest must be provided with a registration card which must be completed by the guest and submitted by the licensee to the GTA as demanded in writing.

A Tourism Development Fund has been established by the Tourism Act. The sources of the Fund include among others, a 1% levy payable by a patron of a tourism enterprise.

### IMPORT/EXPORT

Companies which are licensed under the Free Zones Act, 1995 (Act 504) (the Free Zone Act) may enjoy certain benefits under the Free Zone Act including:

- exemption from duties and taxes on imports or exports of goods
- a 10-year tax holiday
- post-holiday tax rate of 15%
- foreign employees are totally exempt from payment of income tax in Ghana on income earned in the free zone subject to the existence of a double taxation agreement between Ghana and the home country of that foreign employee and if the employee is liable to pay income tax in his home country
- shareholders are exempt from withholding tax on dividends arising out of free zone investment
- unconditional transfer through authorised dealer banks in freely convertible currency of:
  - a. dividends or net profits attributable to the investment
  - b. payments in respect of loan servicing where a foreign loan has been obtained
  - c. fees and charges in respect of any technology transfer

- d. 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.

Sales of goods and services by a domestic enterprise from the national customs territory to enterprises in the free zone and single-factory zone are considered as exports. Again, a domestic enterprise is eligible to benefit from the prevailing export incentives available to a national exporter and does not require an export license for sale of any goods and services to enterprises in the free zone or single factory zone.

A free zone enterprise in Ghana may be 100% foreign owned, 100% Ghanaian owned or investors from different countries may form a company or a joint venture. The minimum capital requirement for foreign investment under the GIPC Act does not apply to free zone enterprises. Free zone enterprises must however, fulfil the minimum 70% export requirement.

### CUSTOMS DUTIES AND EXCISE DUTIES

Ghana has adopted the rates of customs duty under the ECOWAS Common External Tariff System (the ECOWAS CET). The ECOWAS CET is a 5-band tariff system which was adopted by the Authority of Heads of State and Government, 29th session, Decision A/DEC.17/01/06, the ECOWAS CET for ECOWAS Member States.

The 5-band tariff structure of the ECOWAS CET is as follows:

Category	Description	Rate
0	Essential commodities	0%
1	Essential commodities, raw materials, capital goods	5%
2	Intermediate products	10%
3	Consumer goods	20%
4	Specific goods for economic development	35%

Under the Excise Duty Act, 2014 (Act 878) as amended by the Excise Duty (Amendment) (No.2) Act, 2015 (the Amendment No.2), a manufacturer of excisable goods must register with the Ghana Revenue Authority. Goods liable for excise duty include malt drinks, bottled or sachet water, beer, wines, spirits, tobacco and plastics. The applicable rates of excise duty for the production of malt drinks are as follows:

- where the quantity of local material that is used in the production is less than 50% of the total raw materials, an excise duty of 17.5% of the ex-factory price will be paid
- Where the quantum of local raw materials used is between 50% and 70%, an excise duty of 10% of the ex-factory price will be paid
- Where the quantum of local raw materials is above 70% of the local materials used, an excise duty of 7.5% of the ex-factory price will be paid.

Under the Amendment No.2, cider beer has been included as an excisable product and the rate of excise duty payable is 17.5% of the ex-factory price.





The Excise Stamp Act, 2013 (Act 873) (the Excise Stamp Act) requires manufacturers and importers of specified excisable goods to obtain excise tax stamps from the Ghana Revenue Authority to be affixed on each product unit. Imported excisable goods must have the excise tax stamp affixed by the manufacturer before shipment or by the importer at the point of entry in an approved facility. A manufacturer in Ghana must affix the excise tax stamp before the product unit is delivered out of the factory. Goods to which excise tax stamps must be affixed include cigarettes and other tobacco products, alcoholic beverages, non-alcoholic carbonated beverages and bottled water. An authorised officer may, at a reasonable time, enter the premises of any manufacturer, importer, wholesaler, distributor or retailer of excisable goods for the purposes of verifying the application of the excise tax stamp on the designated products, the genuineness of the affixed excise tax stamps and to ensure compliance with the provisions of the Excise Stamp Act. The Income Tax (Amendment) (No.2) Act, 2017 (Act 956), provides for an accelerated depreciation over a period of 2 years on affixing machinery and equipment imported for the implementation of the excise tax stamp at a rate of 50% of the initial value for the first and second years.

#### THE FOLLOWING ARE PROHIBITED EXPORTS IN GHANA:

- Illegal drugs
- Weapons, Explosives and Ammunition – unless permission has been obtained
- Knives and deadly weapons
- Counterfeit money
- Pornographic material
- Diseased animals and animal carcasses
- Plants and seeds – unless permission has been obtained.

#### MINERALS AND MINING

Mining in Ghana is regulated by the Minerals Commission and the Ministry of Lands and Natural Resources. The industry is governed by the Minerals and Mining Act, 2006 (Act 703) and its regulations.

The Minerals and Mining Act provides for a 10% carried interest for the Government in mineral rights (reconnaissance, prospecting or mining). The Government is not precluded from further participation in mining operations, provided this is agreed between the parties.

The holder of a mineral right which includes a reconnaissance licence, a prospecting licence, a mining lease, a restricted reconnaissance licence, a restricted prospecting licence or a restricted mining lease may be granted the following:

- exemption from payment of customs import duty in respect of plant, machinery, equipment and accessories imported specifically and exclusively for the mining operations
- exemption for staff from the payment of income tax on furnished accommodation at the mine site
- immigration quota in respect of the approved number of expatriate personnel
- personal remittance quota for expatriate personnel free from tax imposed by an enactment regulating the transfer of money out of the country.

Small scale mining is reserved solely for Ghanaian citizens. The mining of industrial minerals is also reserved for Ghanaian citizens. However a non-Ghanaian citizen may be permitted to mine industrial minerals if the proposed investment is USD10 million and above.

#### INVESTORS IN THE MINING SECTOR OF THE COUNTRY ARE REQUIRED BY LAW TO:

- Incorporate a company in Ghana – the company may be wholly foreign owned
- Apply for licenses or approvals from the Ministry of Lands and Natural Resources
- Register with the Minerals Commission of Ghana.

There are local content regulations which, among other things, limit the employment of expatriates to given quotas. The regulations also require the procurement of locally available mining supplies.

The mining sector continues to face the challenge of illegal mining operations ("galamsey"). The ban previously imposed by Government on small scale mining operations generally has been lifted following the Government's development of a policy document to help curb the menace of galamsey. The policy document is named the Multi-Sectoral Mining Integrated Project (MMIP) Appraisal and Implementation Document (the Policy Document). The Policy Document, among other things, provides background information on small-scale mining activities in Ghana, outlines the policy and legal framework, issues on budgeting, social interventions and training priorities for the small scale mining industry.

#### PETROLEUM

The upstream petroleum industry is regulated by the Minister of Energy and the Petroleum Commission. The industry is governed by the Petroleum (Exploration and Production) Act, 2016 (Act 919) (the Petroleum E&P Act) and its regulations.

Under the Petroleum E&P Act, petroleum operations may only be carried out pursuant to a petroleum agreement or a licence. Petroleum exploration, development and production are carried out under petroleum agreements while reconnaissance, transportation, storage and treatment of petroleum are carried out under licences.

A contractor seeking to conduct petroleum operations in Ghana must incorporate a local company for such purpose. Similarly, a foreign company seeking to provide services to the petroleum industry in Ghana must form a joint venture with an indigenous Ghanaian company (IGC) and afford the IGC at least 10% equity participation in the joint venture.

The Ghana National Petroleum Corporation (GNPC) is the national oil company of Ghana. In every petroleum agreement, the Petroleum E&P Act grants the GNPC an initial 15% participating carried interest in respect of exploration and development. The GNPC may acquire an additional interest



within a stipulated time after a commercial discovery is made. The additional interest is a paid interest in respect of development and production costs. Apart from the GNPC's interest, at least 5% of the equity interest under the petroleum agreement must be held by an IGC.

In addition to the State's share of production (flowing from the GNPC's interest), the State is entitled to royalties, taxes, bonuses, acreage fees and additional oil entitlement. Additional oil entitlement is akin to a windfall profit tax and is earned by the State where a contractor achieves a certain return from production as specified in the petroleum agreement. Contractors are typically exempt from the payment of VAT and import duty on the supply and import of goods and services that are used in petroleum operations.

Petroleum revenue derived by the State is managed under the Petroleum Revenue Management Act, 2011 (Act 815) (PRMA). Among other things, the PRMA provides for the allocation, distribution and use of petroleum revenue. The PRMA prohibits the encumbering of petroleum resources and the assets of the established funds.

Ghana conducted its maiden petroleum licensing round for the competitive bidding for petroleum contracts in 2018/2019. Government has recently invited contractors for direct negotiations leading to the award of some 11 blocks on offer in the Eastern Basin, offshore Ghana. The Government's invitation is targeted at companies with cutting-edge technology that will be able to optimally exploit and develop petroleum resources in the deep and ultra-deep waters of the Eastern Basin.

In the downstream sector, the National Petroleum Authority (NPA) regulates the range of activities including the importation, refining, distribution, marketing and sale of crude oil and crude oil products. A person may only engage in a downstream petroleum business under a licence granted by the NPA. A licence may be granted to a citizen, registered Ghanaian company/partnership or a foreign individual/company in a registered joint venture with a citizen or registered Ghanaian company. Foreigners are required to provide evidence of at least 50% equity participation by Ghanaian citizens to qualify for a licence to operate in most of the permitted downstream petroleum activities.

## LEGAL SYSTEM

Ghana operates a common law legal system based on judicial precedent. Customary law remains an important source of law in relation to land and succession. Legislation is the source of most new law.

The Ghanaian court structure comprises of the:

- Supreme Court
- Appeal Court
- High Court (fast track, commercial, human rights, labour, land, and financial crimes divisions)
- Circuit Court
- District Courts.

A judgment obtained from a foreign country can be enforced in Ghana against a Ghanaian resident only where there is an agreement for the reciprocal enforcement of judgments between Ghana and the country in which the judgment was obtained. In every other case foreign judgments are enforced by way of a re-trial/re-hearing and the judgment may only serve as evidence of the liability of the other party.

Arbitral awards are enforceable under the Alternative Dispute Resolution Act if the award is made in a country which is party to the New York Convention or if there is a reciprocal arrangement between Ghana and the country where the award was made.

## WORK PERMITS

A work permit and residence permit are required for a foreign national to engage in gainful employment. Permits are obtainable from the Ghana Immigration Service. Assistance is provided by the regulatory bodies relevant to a particular investment.

## TAXATION

The main law that regulates income tax in Ghana is the Income Tax Act, 2015 (Act 896) as amended. The Ghana Revenue Authority is the umbrella tax regulatory authority. It has the following divisions:

- Domestic Tax Revenue Division
- Customs Division
- Support Services Division.

Income Tax in Ghana is payable on income accruing in or deriving from Ghana. For non-residents, tax is levied on income which has a source in Ghana. For non-residents with permanent establishments, tax is levied on income that is connected with the permanent establishment. Non-residents who have been in Ghana for at least 183 days in a year are deemed to be resident persons and are assessable to tax in the same manner as resident individuals. The applicable rate is from 5% to 30%.

Companies registered to operate as free-zone developers/enterprises do not pay corporate tax for the first 10 years of operation. After the 10 year corporate tax holiday has expired, the corporate tax rate will be 15%.

The chargeable income of a company (other than a company principally engaged in the hotel industry and income from goods and services provided to the domestic market by a free zone enterprise after its concessionary period) for a year of assessment is taxed at 25%. The chargeable income of mining and petroleum companies is taxed at the rate of 35%.

Value Added Tax (VAT) of 17.5% (which includes a National Health Insurance Levy of 2.5% and Ghana Education Trust Fund Levy of 2.5%) is levied on the supply of goods and services in Ghana, the importation of goods and the supply of any imported service other than certain exempt goods and services.





In relation to the following, withholding tax is charged on payments made to non-residents and which have a source in Ghana:

• Dividends	8%
• Interest paid to individuals	8%
• In case of any other interest	8%
• Rent (residential property)	8%
• Rent (non-residential property)	15%
• Natural resource payments and royalties	15%
• Goods, works and services	20%

### STAMP DUTY

Under the Stamp Duty Act, 2005 (Act 689) as amended (the Stamp Duty Act), no instrument that is subject to stamp duty is enforceable or admissible in court as evidence if the document is not stamped. The Stamp Duty Act sets out various rates applicable to specific matters or instruments. A person dissatisfied with an assessment made under the Stamp Duty Act may lodge an objection with the Commissioner-General of the Ghana Revenue Authority within 30 days after receipt of the assessment. A determination on the objection shall be made within 21 days from the date of receipt and the Commissioner General may allow the objection in whole or in part with an amendment or disallow the objection.

### EXCHANGE CONTROLS

Ghana operates a floating exchange rate system. The Foreign Exchange Act, 2006 (Act 723) has abolished exchange controls at the transactional level. Banks have to report foreign currency transactions to the central bank. The liberalised law and the well developed banking system and privately owned forex bureaux as well as money transfer organisations allow easy conversion and transfer of foreign currency in and out of Ghana.

An individual may operate a foreign currency account with banks in Ghana. Investments to which the GIPC Act applies are assured of unconditional transferability of personal remittances of wages through authorised dealer banks and the free transferability of dividends and profits.

### SECURITIES

The Securities and Exchange Commission (SEC) is the statutory regulator of the securities industry in Ghana. The SEC was set up under the Securities Industry Act, 2016 (Act 929) (the SIA). Under the SIA the SEC is mandated to:

- advise the Government on all matters relating to the securities industry
- maintain surveillance over activities in securities to ensure orderly, fair and equitable dealings in securities
- register, license, authorise or regulate in accordance with the SIA or any regulations made under it, stock exchanges, investment advisers, unit trust schemes, mutual funds, securities dealers, central securities depositories, and their agents, and to control and supervise their activities with a view to maintaining proper standards of conduct and acceptable practices in the securities business
- formulate principles for the guidance of the industry
- monitor the solvency of licence holders and take measures to protect the interest of customers where the solvency of any such licence holder is in doubt

- protect the integrity of the securities market against any abuses arising from the practice of insider trading
- adopt measures to minimise and supervise any conflict of interest that may arise for dealers.
- review, approve and regulate takeovers, mergers, acquisitions and all forms of business combinations in accordance with any law or code of practice requiring it to do so
- create the necessary atmosphere for the orderly growth and development of the capital market
- perform the functions referred to in the Companies Act, 2019 (Act 992)
- review and approve all invitations to the public to acquire or dispose of securities
- perform other functions specified under the SIA.

As part of its regulatory mandate the SEC licenses and regulates all brokers, investment advisers, custodians, trustees, stock exchanges and other players in the Securities Industry. The SEC's regulations also set out disclosure requirements for listed companies and unlisted public companies which undertake invitations to the public covering among others the publication of annual and quarterly financial statements.

A key player in the capital markets is the Ghana Stock Exchange (GSE). The GSE was incorporated as a company limited by guarantee in July 1989. Trading commenced a year later on 12 November 1990. A 9-member Council governs the GSE. Criteria for listing on the GSE include capital adequacy, profitability, spread of shares, years of existence and management efficiency.

Ghana's current exchange control regime allows non-residents to invest freely in the capital markets without restriction. Non-residents are also guaranteed free transferability of their capital and income. However non-residents are only allowed to invest in Government of Ghana Notes with a tenure of 3 years and above.

### BANKING

The Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) consolidates the laws relating to, and regulates, deposit-taking business in Ghana. It applies to banks and specialised deposit-taking institutions (and their financial holding companies and affiliates). The law however does not apply to credit unions, non-deposit taking and other non-bank financial institutions which are subject to licensing and supervision under the Non-Bank Financial Institutions Act, 2008 (Act 774).

### INTELLECTUAL PROPERTY

Ghana is a party to the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty (PCT), the World Trade Organisation (WTO) TRIPS agreement, the Locarno Agreement establishing an International Classification for Industrial Designs and the Harare Protocol. Ghana is a member of the World Intellectual Property Organisation (WIPO). Ghana has signed but has not ratified the



WIPO Performances and Phonograms Treaty and the WIPO Copyright Treaty.

Ghana has within the last ten years passed six intellectual property statutes namely the Trademarks Act, 2004 (Act 664) as amended, the Patents Act, 2003 (Act 657), the Industrial Designs Act, 2003 (Act 660), the Layouts - Designs (Topographies) of Integrated Circuits Act, 2004 (Act 667), the Geographical Indications Act, 2003 (Act 659) and the Copyright Act, 2005 (Act 690).

The registration of a trademark is valid for 10 years from the date of filing the application and is renewable for a further term. A patent has a term of 20 years from the date of filing of the application. Annual fees are paid in advance. Where an annual fee is not paid the application will be deemed to have been withdrawn or the patent will lapse.

The Copyright Act expressly provides for protection of copyright without the requirement of registration. The term of protection of copyright has been increased from fifty years to seventy years. The rights of the author if he is an individual are protected during the author's lifetime and 70 years after his death. Public corporations and other corporate entities also have their registered works protected for seventy years. Copyright protection extends to computer programs.

Ghana follows the International Classification for the registration of Industrial Designs according to the Locarno Agreement establishing an international classification for Industrial Designs. The registration of an industrial design is valid for a period of 5 years from the filing date of the application and may be renewed for two further consecutive periods of 5 years. There is no further protection for industrial designs after the lapse of the 10 years.

Protection for layout-designs is granted if the layout-design is original and if it is the creator's own intellectual effort (and is not common-place among creators of layout designs and manufacturers of integrated circuits at the time of its creation). A layout design consisting of a combination of elements and interconnections that are commonplace is protected only if the combination taken as a whole is original. Protection of a layout-design is valid for a period of 10 years from the date of commencement of protection.

Geographical indications are governed in Ghana by the Geographical Indications Act which affords protection for homonymous geographic indications for wines or other products. It also allows a person or group of persons carrying on an activity as a producer in a geographical area and a competent authority to file an application. Protection for a geographical indication is available regardless of whether it is registered.

Ghana has also introduced the National Intellectual Property Policy and Strategy 2016 aimed to strengthen the management

of the intellectual property system in Ghana, encourage innovation and creativity within the system, identify the various aspects of intellectual property and provide strategies for the implementation of a functional and effective intellectual property protection system. This is expected to ensure the exploitation of intellectual property rights for the accelerated development and growth of industry, science, technology and the creative arts in Ghana.

The policy aims to bring Ghana's intellectual property rights in line with its international commitments under the WTO on TRIPS and international best practices. The policy identifies strategic policy objectives to be pursued in the next 5 years which include strengthening the institutional and legal framework for protection of intellectual property rights.

### LABOUR RELATIONS

Employer-employee relationships are regulated by the 1992 Constitution and the Labour Act, 2003 (Act 651). The engagement of an employee beyond six months requires a contract of employment. A contract of employment may be terminated on any of the following grounds:

- by mutual agreement between employer and employee
- on grounds of ill health or sexual harassment
- where the employee is found to be unfit on medical grounds
- inability to work on grounds of proven misconduct, incompetence of worker, and sickness or accident.

Remuneration is based on the principle of equal work for equal pay. The statutory deductions are social security as required by the National Pensions Act, 2008 (Act 766) and income tax under the Income Tax Act.

Workers are obliged to work 40 hours each week and are entitled to rest periods. Nursing mothers are entitled to one hour each day for nursing a child under one-year old. Any form of child labour or forced labour is prohibited. Employees have a right to join unions. Employers and employees may enter into collective bargaining agreements. In the event of disputes the first steps should be mediation and arbitration, and then lockouts and picketing. Every strike action organised outside the Act is illegal.

Any arrangement or amalgamation that results in the severance of the relationship between the worker and the employer or a diminution in the worker's status, prior to the arrangement or amalgamation, entitles the worker to compensation known as redundancy pay.

### LAND OWNERSHIP AND LAWS IN GHANA

There are basically two types of land ownership in Ghana: public or state lands and private lands. Public or state lands are lands compulsorily acquired by the Government through appropriate legislation, vested in the President and held in trust by the state for the entire people of Ghana. In contrast, private lands are held in trust for a community or group by a stool or skin as symbol of traditional authority, or by a family, individuals or corporate entities.





Land administration in Ghana is governed by both customary law and practice and enacted legislation. There is therefore a parallel system of land tenure in Ghana, namely, customary and statutory.

The customary land sector holds 80 to 90% percent of all the undeveloped land in Ghana with varying tenure and management systems. Customary law is not of general application throughout the country, it varies from community to community.

#### RESTRICTIONS ON THE ALIENATION OF LAND

There are constitutional restrictions on the ownership of land for a non-citizen of Ghana. A non-citizen of Ghana cannot hold a freehold interest in land and may only hold a leasehold interest for a term of not more than 50 years at any one time.

There are also constitutional restrictions on the alienation of stool land. No interest equivalent to a freehold interest can be created in stool land. A written consent or concurrence from the Regional Lands Commission of the region in which the land is located is required for any valid disposition of a stool land in order to certify that the disposition or development of the land is consistent with the development plan drawn up or approved by the planning authority for the area concerned. Additionally, there is the requirement for the consent of the Traditional Council within which the stool land falls and principal elders usually signify their consent to any disposition.

With respect to family land, consent to the disposal of the land is required by the principal members of the family. With respect to land held by individuals or corporate entities, consent to the disposal of land is usually required from persons holding a superior interest and a written consent from the Regional Lands Commission of the region in which the land is located is required for any valid disposition of state land.

The Land Act, 2020 (Act 1036) (the Land Act) has been passed by Parliament to consolidate and harmonise the existing laws on land into a comprehensive document with a view to ensuring sustainable land administration and management, effective land tenure and to provide for related matters. To this end, it repeals certain existing laws including the Conveyancing Act, 1973 (NRCD 175), Land Registry Act, 1962 (Act 122), the Land Title Registration Act, 1986 (PNDCL 152), Administration of Lands Act, 1962 (Act 123), and the State Lands Act, 1962 (Act 125).

Some of the new provisions introduced include the creation of a Customary Land Secretariat, which imposes an obligation on stools, skins, clans or families to establish a Customary Land Secretariat for the management of their respective lands, electronic conveyancing that can only be implemented by qualified legal practitioners who have been granted access to the information system by the Lands Commission, a restriction on a person acquiring an interest in public land by prescription or adverse possession, the presumption of co-ownership between spouses, the criminalisation of the use of land guards and requiring parties to exhaust all procedures

under the Alternative Dispute Resolution Act, 2010 (Act 798) before any action involving land in a registration district can be commenced in Court.

#### REAL ESTATE AND CONSTRUCTION

A booming residential and commercial real estate business is attracting a great deal of investment from both local and foreign sources. Commercial real estate spans office buildings, shopping malls, hotel and recreational facilities, while residential real estate includes high and low rise apartment style buildings as well as country house styles and compound homes. Funding is sourced from banks – local and foreign and for residential estate prospective purchasers have mortgage finance support from the commercial banks. The Real Estate Agency Act, 2020 (Act 1047) regulates real estate practice and commercial transactions in real estate including the sale, purchase, rental and leasing of real estate and related fixed assets. The Real Estate Agency Council is also established under the Real Estate Agency Act to facilitate and regulate real estate practice and the provision of real estate agency services in Ghana. The council is also mandated to register real estate brokers and agents and set the performance standards for real estate practice in Ghana.

#### INFRASTRUCTURE

Government continues to be the major provider of infrastructure—roads, air and sea ports, railways, schools, hospitals. The Public Private Partnership Act, 2020 (Act 1039) (PPP Act) regulates public private arrangements between Government contracting authorities and private parties for the provision of public infrastructure or public services traditionally provided by the public sector. Under the PPP Act, the private party is intended to perform part or all of the infrastructure or service delivery functions of Government and assume the defined risks over a significant period.

The Ghana Infrastructure Investment fund has been established and funded to mobilise, manage, coordinate and provide financial resources for investment in a diversified portfolio of infrastructure projects in Ghana for national development.

#### GOVERNMENT PROCUREMENT

The Public Procurement Act, 2003 (Act 663) as amended by the Public Procurement (Amendment) Act, 2016 (Act 914) (the PPA) applies to the procurement of goods, works and services, financed in whole or in part from public funds. Furthermore, the PPA applies generally to Government ministries, departments and agencies. Any Government ministry, department or agency procuring goods, works or services financed in whole or in part from public funds must apply the procedures set out under the PPA.

