BENTSI-ENCHILL
LETSA & ANKOMAH

Ghana's 2023 Legal & Regulatory Outlook

Content

Financial Institutions & Capital Markets

Introduction

According to Ghana's Minister of Finance "...***the year 2022 will go down as one of the most difficult and eventful years in the economic history of our country***." This report highlights what we believe are the relevant issues from 2022 and how responses to these challenges will shape the business and legal outlook for corporates and the financial services industry in the year 2023.

2022 under review – a battered and bruised economy?

Rising inflation (measured at a 22-year record high of 54.1% as at December 2022) and a weakened currency (which at one point, shed as much as 53.8% of its value) conspired to make 2022 a truly challenging year for the national economy, private businesses and households. The weakened macroeconomic environment adversely affected market sentiment regarding Ghana's economic viability, resulting in low investor confidence, downgrades to its credit ratings, massive capital outflows and loss of access to external capital markets.

These developments impacted the country's debt sustainability negatively, reduced credit options and made it impossible or extremely expensive for the Government to finance its operations and refinance maturing debt, while currency depreciation alone is reported to have increased Ghana's debt stock by GHS 93 billion in 2022.

Towards the end of the year, the Government announced a raft of debt restructuring measures aimed at restoring debt sustainability, including

(i) a domestic debt exchange programme (under which the Government intends to replace certain domestic notes and bonds issued by the Government of Ghana and 2 state-owned enterprises (i.e. ESLA Plc and Daakye Plc) with new benchmark Government of Ghana bonds with the same aggregate principal amount (including applicable capitalised accrued and unpaid interest) and with an aggregate lower average coupon and extended average maturity) and

(ii) a suspension of all debt service payments under certain categories of its external debt (including Eurobonds, commercial term loans and most of Ghana's bilateral debt).

Further, the Government has achieved a staff level agreement on a financing programme with the International Monetary Fund (IMF) which is aimed at restoring macroeconomic stability and public debt sustainability. It is expected that this deal will be adopted by the governing board of the IMF as soon as possible in 2023, signalling the turning point for the country's economic misfortunes.

Outlook for 2023 – On the way to recovery?

There has generally been mixed reviews on the outlook for 2023. While some, like the African Development Bank, have expressed a positive outlook for Ghana (with projected GDP growth of 5.1%, inflation falling to 9.1%, and fiscal deficit narrowing down to 10.3%) others, like Fitch, have a grim view (with GDP projected to slow down to 2.9% and inflation projected to only come down gradually).

The following are some of the key interventions the government has taken or intends to take regarding the relevant sectors of the economy.

Tax - Aggressive domestic revenue mobilisation

One of the Government's main plans for reducing the financing gap created by its loss of access to international capital markets and the high cost of its credit options is to mobilise domestic revenue aggressively.

The Government intends to achieve this goal by varying some existing taxes, introducing new tax items and digitising tax administration for more efficient tax compliance. The consequences of this intention are as follows:

VAT increase

The value added tax (VAT) rate has been increased from 12.5% to 15% with effect from 29 December 2022 (except for retailers of goods who will account for VAT at a flat rate of 3% on the value of any taxable supply);

Amendments to the taxation of betting and other games of chance:

The exemption of betting and other games of chance from VAT with effect from 29 December 2022. This exemption paves the way for the Government to introduce a separate tax regime for the betting industry, which is currently experiencing a boom that the Government intends to cash in on;

Focus on e-commerce and the digital economy:

Non-resident providers of telecommunication or electronic commerce services which are used or enjoyed in Ghana (e.g. social networking platforms, online gaming platforms, cloud services, video or audio streaming services, digital marketplace services, online advertisement services, services for the transmission or reception of signals, broadcasts or media of any nature) are now required to register and comply with VAT obligations in Ghana unless their services are provided through a VAT registered agent in Ghana. How the Ghana Revenue Authority intends to enforce these non-resident VAT obligations remains to be seen, given that most of the targeted services are provided from offshore and the Ghanaian residents use or enjoy the services over the internet on a cross-border basis;

Reduction in e-levy:

The 1.5% electronic levy on certain electronic payment transactions has been reduced to 1%. The Government had indicated that the reduction would be accompanied by a removal of the daily threshold of GHS 100 but no legislation has been passed to give effect to the removal as yet. It will be recalled that the Government imposed the 1.5% tax on electronic transactions with an ambitious agenda to raise GHS 6.96 billion for the 2022 budget. However, the tax failed to raise the projected revenue and the initial estimate was subsequently revised to GHS 611 million. It is expected that the reduction will help restore the attractiveness of mobile payments and electronic transactions, leading to increased revenue for the Government;

Electronic VAT invoicing:

The Ghana Revenue Authority launched the first phase of its e-VAT invoicing in October 2022. This move is intended to make e-VAT invoicing the sole medium for issuing VAT invoices. Initially, the law had transitional provisions which allowed taxpayers a moratorium of up to 1 year to comply with the e-VAT invoicing requirements. Taxpayers who failed to comply within the 1-year period had up to 30 days from the expiry of the moratorium to apply for an extension of time (which could not exceed a period of 3 months).

However, the Ghana Revenue Authority administratively enforced the invoicing requirement on the 600 large taxpayers which account for more than 90% of tax revenue, leading to the closure of non-compliant businesses. With effect from 29 December 2022, the Government has amended the transitional provisions, and now requires all taxpayers to comply with the e-VAT invoicing requirement, unless the Commissioner-General of the Ghana Revenue Authority directs otherwise. As a result of this amendment, the ability to apply for an extension of the compliance period no longer applies;

Increased tax related disputes:

The Ghana Revenue Authority intends to continue its nationwide VAT invigilation, audits, inspections and mystery shopping in a bid to increase Ghana's tax-to-GDP ratio from 13% to 18%. As seen last year with the closure of businesses for non-compliance with the e-VAT invoicing requirements, this aggressive enforcement of domestic revenue mobilisation measures will result in increased tax disputes and dispute settlement matters. To ensure that such tax disputes are resolved speedily and effectively, the Minister of Finance has inaugurated Ghana's first ever "Independent Tax Appeals Board" (ITAB). The ITAB was established (through legislation enacted in 2020) as a means to ensure that tax disputes are heard and resolved by tax experts through alternative dispute resolution mechanisms and in a manner which would promote investor confidence and reduce the time spent on litigation for both taxpayers and the revenue administration.

With the inauguration of the 11-member ITAB, the High Court will now cease to hear direct challenges to decisions taken by the Commissioner-General with respect to objections to tax decisions by the Ghana Revenue Authority. Henceforth, the jurisdiction of the High Court may only be invoked to review actions taken by the ITAB or to hear appeals against the decisions of the ITAB;

Tax waivers and exemptions:

The Exemptions Act, 2022 (Act 1083) was enacted towards the end of 2022 to provide a regime for tax exemptions. This legislation defines the scope of tax exemptions, sets eligibility criteria to qualify for tax exemptions and regulates the administration and monitoring of tax exemptions. The law is expected to attract investments into specified sectors of the economy and geographical locations within Ghana, encourage business start-ups and support the development agenda of the Government while ensuring that tax exemptions do not undermine the domestic revenue mobilisation agenda of the Government. In furtherance of its domestic revenue mobilisation drive, the Government has placed a freeze on new tax waivers for foreign companies and intends to review tax exemptions for free zone, mining, and oil & gas companies; and

Tax related items on the legislative agenda:

The Government has placed a number of tax measures on the legislative agenda. These measures will include:

- overhauling the tax regime for the extractives sector;

1. reforming the income tax regime (including a review of the upper limits for vehicle benefits and introducing a minimum chargeable income system and an additional income tax bracket of 35% for individuals);

- reviewing the law regarding withholding tax for gains on the realisation of assets and liabilities (including a review of the optional rate for capital gains for individuals);

- increasing the concessional income tax rate for specified entities (such as companies which meet the venture capital eligibility requirements) from 1% to 5%, unifying the loss carried forward provisions and restricting the treatment of foreign exchange losses to actual losses;

- converting the National Fiscal Stabilisation Levy (NFSL) into a growth and sustainability levy which will apply to all entities instead of the specified entities the NFSL currently applies to. The growth and sustainability levy is expected to apply to the entities which are currently required to pay the NFSL at a rate of 5% of profit-before-tax, apply to all other entities (other than entities in the extractive sector) at a rate of 2.5% of profit-before-tax, and apply to entities in the extractive sector at a rate of 1% of profit-before-tax;

- replacing corporate income tax and VAT on entities in the betting industry with a gross gaming revenue and a withholding tax on winnings; and

- introducing a waiver (as a tax relief) on tax applicable to early withdrawals from Tier 3 pensions (provident funds) and personal pension schemes by persons who lose their jobs permanently or lose capital due to the ongoing economic crisis.

Capital Markets

Changes to the traditional securities framework

The Government intends to review the Securities Industry Act, 2016 (Act 929), draft certain amendments to it and provide for an investor protection fund. Further, the SEC has published draft guidelines for the establishment of an over-the-counter (OTC) market, the registration of unlisted securities issued by specified entities for trade on an OTC basis and for the regulation of OTC trading. The SEC has also published draft guidelines on the registration of securities by public companies, closed-end collective investment schemes, statutory bodies, local government authorities and any other organisation that issues securities to the public. Both the guidelines for registration of securities and the OTC market are expected to be finalised and issued in due course. Finally, the Government is exploring new local content regulations that would require mining businesses with a specified minimum capital expenditure to list on the Ghana Stock Exchange in a bid to increase local investor participation in these mining companies.

Capital markets and private funds – Alternative investments

Ghana's fixed income market (GFIM) has seen consistent growth in recent years, achieving a 5-year compound annual growth rate of 30.73% at the close of 2021.

This growth has been primarily due to the Government's reliance on the domestic market to finance its fiscal deficits. As of close of June 2022, the Government was the largest issuer accounting for 84.92% of the listed fixed income securities, with E.S.L.A. Plc and Daakye Trust Plc accounting for 4.75% and 1.42%, respectively.

84.92%	4.75%	1.42%
The Government of Ghana	E.S.L.A. Plc	Daakye Trust Plc accounting

Percentage of the listed fixed income securities

As of the same period, 83.34% of all outstanding fixed income securities were held by local investors, including the Bank of Ghana, commercial banks, individual investors, investment firms, pension funds and other institutional investors such as rural banks, insurance companies and the Social Security and National Insurance Trust. Considering these statistics, it is no surprise that the announcement of the domestic debt exchange programme has sent shockwaves throughout the entire financial industry and investing public. Most of the institutional investors held these investments due to regulatory prudential requirements or on the basis that government securities were considered risk free investments while most retail investors held these investments primarily for risk aversion reasons, especially due to fallouts from the recent financial sector clean-up exercises which led to the collapse of unlicensed investment schemes and the revocation of the licences of 9 banks, 23 savings & loans companies, 386 microfinance institutions and 53 fund management companies. We anticipate that these events will change the trend of investment patterns in Ghana, with more diversified investments in the real economy and less investments in the financial products which have hitherto been marketed as "safe investments". In that regard, the following alternative investments are worthy of mention:

Environmental, social and governance (ESG) investing:

ESG investing is now a common theme in global investment practice. It refers to the strategy of investing in entities which prioritise making measurable impact in relation to specified ESG factors. With climate change on the forefront of the global political agenda, carbon finance, an aspect of ESG investing, is attracting a lot of investments. Carbon finance generally refers to the revenue streams generated either from projects implemented to reduce greenhouse gas (GHG) emissions, or from trading in carbon credits (i.e. permits for the reduction, removal or emission of limited amount of GHG). In 2022, a lot of background work was done to enable Ghana capitalise on the carbon finance boom. The Government established the Ghana Carbon Registry system as an online database for quantifying and verifying GHG emissions and reductions from projects aimed at reducing GHG emissions, issuing carbon credits related to such projects and tracking carbon credits in Ghana efficiently and transparently. The GFIM also introduced a new class of fixed income products known as sustainable bonds. Sustainable bonds are debt instruments which fall under any of the following labels:

green bonds - used to finance or refinance new or existing projects that generate climate or other environmental benefits that conform to prescribed standards;

social bonds – used to finance or refinance new or existing projects that generate social benefits that conform to prescribed standards;

gender bonds - financing for projects and/or issuers interested in developing projects or activities aligned with gender equality

sustainability bonds - used to finance or refinance new or existing projects that generate both environmental and social benefits that conform to prescribed standards; and

sustainability-linked bonds – the financial and/or structural characteristics of these instruments can vary, depending on whether the issuer achieves predefined ESG objectives.

Further, the Ghana Stock Exchange has published an ESG Disclosures Guidance Manual, to guide interested listed companies with sustainability reporting to attract investment from ESG conscious investors. The National Pensions Regulatory Authority has also amended its guidelines to enable Tier 2 and Tier 3 pension schemes invest their funds in green bonds. With all the foregoing in place and the ongoing energy crisis in Europe, the Ghanaian ESG investment (especially green investments and carbon finance) market is ripe and it is no wonder that the Government has been calling for debt for climate swap initiatives and has included the attraction of climate responsive physical infrastructure and significant green investments as part of its core strategies for funding the 2023 budget;

Crowd Funding

Crowdfunding was introduced in the United States of America through the enactment of the JOBS (Jumpstart Our Business Startups) Act as one of the measures to help American entrepreneurs raise capital following the financial crisis of 2007-2008. Essentially, crowdfunding eases the traditional restrictions around raising capital (through public offers of equity or debt instruments) by enabling entrepreneurs to raise capital online through intermediaries registered with the Securities and Exchanges Commission (SEC). Through these means, businesses are (subject to prescribed limits) able to leverage financial technology to raise much needed growth capital digitally from retail and qualified investors alike without going through the tedious processes associated with a traditional IPO or admission to a stock exchange. The Bank of Ghana has issued a crowdfunding policy under which it has asserted its licensing and supervisory authority over crowdfunding platforms and stated that it shares regulatory authority over equity crowdfunding activities and debt crowdfunding (i.e. peer-to-peer or marketplace lending) activities with the SEC. According to the Bank of Ghana, it will collaborate with the SEC to prevent the risk of regulatory arbitrage in relation to these activities. The SEC has published draft crowdfunding guidelines and is expected to issue final guidelines in due course;

Commercial Papers

GIFM intends to launch a commercial paper market this year to facilitate the issuance, admission and trading of commercial papers. Commercial papers are short-term money-market securities with fixed maturities of between 15 to 270 days.

The formal admission of commercial papers to trading on GIFM will provide corporates with access to working capital, diversify the sources of short-term borrowings in Ghana and provide an additional investment instrument to deepen our financial market;

Private Funds

The funds market in Ghana has traditionally been dominated by collective investment schemes such as mutual funds and unit trusts. The SEC was mandated to regulate private funds such as private equity funds, venture capital funds and hedge funds with the enactment of the Securities Industry Act, 2016 (Act 929) and it has since taken steps towards the creation of a favourable environment for the development of this segment of the capital markets. Interest in this space has piqued in recent times, leading to extensive consultations between the industry players, the SEC and the Government on how to deepen the growth and impact of private funds in Ghana. As a result of these talks, a bill to create a legal framework for limited and general partners is currently being drawn up and it is anticipated that favourable amendments will be made to the SEC's guidelines for private funds. These changes could lead to institutional investors and high net worth individuals or qualified investors diverting capital from traditional financial investment products into private funds, a move which would free up capital for deployment to spur development in the real economy, while generating returns for investors. The Government also intends to get in on the private equity action in 2023, with its development finance institution, Development Bank Ghana (DBG), currently in the process of establishing a private equity fund with an initial capitalisation of about GHS 400 million to support the Government's goal of boosting local productivity;

Foreign investments:

Ghanaian regulators have largely always known of and tolerated the activities of certain foreign entities within the local investment and financial space. With the current state of the Ghanaian macroeconomic indicators and lowered confidence in Ghanaian investment products, we may see an uptick in capital outflow destined for foreign investment schemes. The SEC published draft guidelines regarding the offering, marketing or distribution of foreign funds in Ghana in 2022. Upon the finalisation of the guidelines, foreign funds shall not be offered, marketed, or distributed in Ghana without the approval of the SEC. The final guidelines are expected to be issued in due course;

Focus on SMEs:

The ultimate consequence of the emergence of the alternative investments and capital raising options is increased flow of capital to boost productivity in the real economy. The beneficiaries of this shift in investor attitude, whether through formalised investment pathways or informal investment decisions from retail investors who are wary of the formal financial system, are small and medium scale enterprises, startups and corporates who require funding. This funding may take the form of debt or equity, resulting in increased deal flow in SME loan financing and private M&A activities, and will create new business opportunities such as legal due diligence work for pre-investment decision-making, financial work for auditing and financial reporting, regulatory compliance and other administrative jobs; and

Real estate investment trusts (REITS)

A real estate investment trust is an investment company which invests solely in real estate for the purpose of generating recurrent income (rental and interest) from operating, owning or financing income-producing real estate and real estate-related investments. Considering that (i) REITS are investments backed by landed property, (ii) REITS benefit from tax exemptions under the current income tax legislation, (iii) the SEC is responsible for licensing REITS and has already published guidelines to regulate the activities of REITS and

(iv) the National Pensions Regulatory Authority considers REITS as an permissible investment for pension funds (under the classification of alternative investments) and has increased the investment limit for alternative investments from 15% to 25%, we expect to see increasing deal flow into such assets instead of the traditional investment products.

Finance

New Funding Sources

It is no secret that foreign entities have credit exposures to clients in Ghana, ranging from retail clients, institutional clients and even regulators such as the Bank of Ghana. With the currently prohibitive local bank interest rates due to the macroeconomic situation and resultant increases in the monetary policy rate, we expect to see more cross-border credit and investment transactions in 2023.

Payment systems/Fintech – more disruption and increased penetration

Technology continues to disrupt the world of finance and the Fintech and Innovation Office of the Bank of Ghana has demonstrated a willingness to nurture innovation without compromising on its regulatory and supervisory obligations. To this end, the Bank of Ghana issued a regulatory sandbox framework document towards the last quarter of 2022 to detail how it intends to enable small scale, live testing of innovative financial products and new business models within a supportive regulatory framework. Under the sandbox framework, innovators may test novel ideas without attracting the usual regulatory compliance obligations, while addressing users' and the regulator's respective concerns. Using this sandbox environment, the Bank of Ghana piloted the issuance of its retail central bank digital currency (i.e. eCedi) last year. It is our understanding that in the event that the Bank of Ghana plans to push forward with its plans to issue the eCedi as legal tender, it will procure that an enabling legislative framework is put in place for that purpose. The regulatory sandbox will be open to admit its first cohort of participants from 13 February to 14 March 2023 and the Bank of Ghana is currently inviting interested innovators to apply. The regulator has indicated that special consideration will be given to priority areas such as payments, remittances, crowdfunding and microlending, thus reinforcing our optimistic outlook for fintech.

We expect that increased fuel and transportation costs in the current inflationary environment will, when considered with reduction in the e-levy, reflate affection for digital payments. Further, we expect market players to promote the adoption of the alternative investments outlined above through the use of electronic financial channels. For instance, DBG has partnered with financial institutions to build a digital lending platform to increase its reach and shorten the processing time for lending to SMEs. It expects to engage other financial institutions to expand its loan channels and mitigate its risks. The Ghana Stock Exchange intends to collaborate with market participants to introduce Fintech related products to increase market participation. To protect the public, the Bank of Ghana has published draft disclosure and transparency guidelines for digital financial services provided by payment systems providers and draft disclosure and transparency directives for digital financial services and products provided by banks, specialised deposit-taking institutions and non-bank financial institutions. These guidelines will regulate the delivery of automated advertising and promotional material concerning digital financial products, specify the transparency and disclosure standards, govern the amendment of contractual terms and other related activities. The guidelines are expected to be finalised and issued in due course. To ensure consumer protection, the Government established the Cyber Security Authority in 2022 and the Bank of Ghana requires digital financial products offered by its licensees to comply with its cyber and information security directives. The Cybersecurity Authority issued a deadline of 1 January 2023 for the licensing of all cybersecurity operators and expects to develop a legislative instrument for the main enactment this year.

Company Administration

New beginnings

The repealed Companies Act, 1963 (Act 179) created the office of Registrar of Companies and authorised the President to appoint a Registrar of Companies. The law required the Registrar-General to act as the Registrar of Companies until the appointment of the latter. The Registrar-General played the role of the Registrar of Companies until the enactment of the Companies Act, 2019 (Act 992) (the Companies Act). The Companies Act continued the distinction between the Registrar-General and the Registrar of Companies and went a step further to establish the Office of the Registrar of Companies (ORC). In 2022, the ORC was established, its governing board was constituted and a substantive Registrar of Companies was appointed.

The ORC has taken over business registration and company administration activities from the Registrar-General's Department. A department within the ORC, known as the Insolvency services Division, is now responsible for the regulation of insolvency practice in Ghana. The ORC is developing subsidiary legislation for the Companies Act and the Corporate Insolvency and Restructuring Act, 2020 (Act 1015) and it is expected that these regulations will be enacted this year.

With effect from 1 January 2023, the rate of capital duty payable on the stated capital of a new company or any increase in the stated capital of an existing company has been increased from 0.05% to 1%.

Corporate Commercial

The Ghanaian legislative landscape saw the promulgation of innovative laws in 2022 that will impact business and industry in Ghana in 2023 and beyond.

In this report, we take a glance at some of the recent legislative developments in Ghana and budget proposals.

Industrial Standardisation

In line with international best practices for standardisation, the Ghana Standards Authority Act, 2022 (Act 1078) (GSA Act) was passed in 2022 to amend and consolidate the laws on standardisation, conformity assessment and metrology.

Objectives of the law include the promotion of industrial efficacy and ensuring the production of high-quality goods/services for both local and international consumption. Of significant note under the new GSA Act and for the first time under Ghana's standardisation law, the Minister of Trade and Industry can declare a Ghana Standard as mandatory in respect of any commodity that may affect public safety, health or the environment on the recommendation of the Ghana Standards Authority. By this provision, the law maker allows the exercise of discretionary power in the enforcement of standards for the ultimate purpose of the public welfare.

Tax Exemptions

Business owners in Ghana have decried the quantum of applicable taxes. Tax exemptions help relieve the tax burden on taxpayers thereby providing a more conducive environment for profitability and for businesses to thrive. Parliament has passed the Tax Exemptions Act, 2022 (Act 1083) to provide an exemption regime and the scope of exemptions. The rationale for granting the tax exemptions includes attracting foreign investments, alleviating the tax burden on the vulnerable in society, encouraging business start-ups and attracting investment into specified sectors and locations.

Under the law, exemptions are granted only to persons entitled to them under the law and an exemption is not transferable. Agreements cannot waive or vary indirect tax unless specified by the law. The written approval of the Minister for Finance is required to enter any agreement to grant an exemption. The Minister must seek executive and parliamentary approval for the exemption.

Exemptions from customs duties and taxes include foodstuffs of West African origin such as raw foodstuff and fresh fish caught by Ghanaian owned vessels; and equipment, spare parts and kits for production trials imported by manufacturers or assemblers of plants and machinery including automobiles, registered and recommended by the Minister for Trade and Industry and approved by the Minister for Finance. Among others, diplomats are granted an exemption where a similar exemption is granted to a Ghanaian diplomat in the country of that diplomat.Certain items imported for religious purposes such as alter bread and Zamzam (holy water imported from Mecca) are exempt from customs duties and taxes. Items imported by charitable organisations, non-profit organisations and philanthropists for educational and health purposes are exempt from customs duties and taxes when the approval of the Minister of Finance is obtained.

Shipping

Overweight packed containers pose safety risks to workers in the maritime industry. Therefore, the Ghana Shipping (Carriage Of Containers) Regulations, 2022 (LI 2439) was passed to incorporate into domestic law, the International Convention for the Safety of Life at Sea 1974, Chapter VI (amended) which requires that any container carrying cargo should have its weight verified before being stowed on-board ships. Under LI 2439, containers carrying cargo must always be weighed before being loaded onto a ship for a voyage, and a provision in a contract cannot not override or conflict with this obligation. The law also regulates the operation of weighing facilities which verify the gross mass of containers. It imposes a duty on persons operating weighing facilities to apply to the Director General of the Ghana Maritime Authority (GMA) for registration.

The GMA may revoke the registration of a registered weighing facility if it submits an inaccurate verified gross mass of a packed container.

This law is expected to rectify inaccurate declaration of gross mass of packed containers to ensure port safety.

2023 Budget Statement Proposals

The budget statement presented by the Minister of Finance makes proposals for changes in law in 2023 which include the following:

- a revision to the tax on cigarettes and tobacco products to align with ECOWAS protocols;
- an increase in the excise rate for spirits above the rate for beers;
- an introduction of taxes on electronic smoking devices and liquids;
- a review of tax exemptions for free zone, mining and oil and gas companies; and
- an introduction of self-clearing of goods by importers at the ports of entry without recourse to a customs house agent.

Energy, Extractives & Infrastructure

Introduction

2022 was one of the most challenging years in the economic history of Ghana. The economic challenges significantly affected businesses in Ghana, including those in the energy, extractives and infrastructure sectors.

Significant events in the energy and extractives sectors for 2022 included further discovery of oil by Eni in Aprokuma -1X well offshore Cape Three Points, the commencement of decommissioning works on the Saltpond Oil Field by the Ghana National Petroleum Corporation (GNPC), and the progression of Atlantic Lithuim's Ewoyaa Lithium project from the discovery stage to the delivery of studies and submission of an application for a mining licence. In addition, a National Energy Transition Committee was inaugurated and the Energy Transition Framework for Ghana was developed while government also approved the inclusion of nuclear power technology in Ghana's power generation mix.

On the infrastructure side, there was a myriad of construction projects and programmes relating to sanitation, real estate development, road and bridge constructions, communication and digitalisation, railway development, maritime services, and aviation development and management. Rules on Green and Sustainable Bonds were also launched by the Ghana Stock Exchange and the Securities and Exchange Commission to guide the listing and trading of green and sustainable bonds on the securities market in Ghana. A draft document was developed to facilitate the preparation of a cabinet information paper on the reviewed National Water Policy.

On the legislative front, several new laws relevant to the energy, extractives and infrastructure sectors came into force in 2022. These include:

Exemptions Act, 2022 (Act 1083)
Passed to regulate the administration, monitoring and enforcement of tax (and other) exemptions and repeal specified provisions relating to the grant of exemptions in existing laws;

Value Added Tax (Amendment) Act, 2022 (Act 1082) and Value Added Tax (Amendment) (No. 2) Act, 2022 (Act 1087)
Passed to amend the Value Added Tax Act, 2013 (Act 870) to provide for, amongst other things, an increase in the VAT rate, the taxation of electronic commerce, and the zero-rating of the supply of locally assembled vehicles;

Environmental Protection (Mining in Forest Reserves) Regulations 2022 (LI 2462)
Aimed at providing for the environmental management of mining activities in forest reserves, amongst others purposes;

Renewable Energy (Standards and Labelling [Inverters]) Regulations, 2022 (LI 2452)
Aimed at promoting efficient use of renewable energy batteries in Ghana and mitigating related climate change;

Ghana Hydrological Authority Act, 2022 (Act 1085)
Establishing the Ghana Hydrological Authority responsible for the planning, design, execution, operation and maintenance of flood control mechanisms, coastal engineering works, drainage improvement works, operational and applied hydrology;

Building Regulations, 2022 (LI 2465)
Applicable to individuals and real estate developers and intended to provide safety to life and property, and to ensure public health, the general welfare of people and environmental protection in the construction of buildings;

Ghana Shipping (Carriage of Containers) Regulations, 2022 (LI 2439)
Made to incorporate into domestic legislation, the Chapter VI amendment of the International Convention for the Safety of Life at Sea, 1974 and related International Maritime Organisation conventions and instruments on safe carriage of cargoes by sea.

General trends likely to impact 2023 and beyond

We believe the following trends will shape the legal and commercial outlook for the energy, extractives and infrastructure sectors in 2023:

Micro and macro-economic factors

The general downward trajectory of the Ghanaian economy and global economic pressures could disrupt significant investments in the energy, extractives and infrastructure sectors in 2023.

Energy transition

The global energy sector's gradual shift from fossil-based systems of energy production to renewable energy sources is also likely to have an impact on the focus sectors. Although the shift aims to mitigate the adverse impact of climate change, it poses a challenge for African countries like Ghana with untapped fossil fuel resources that will aid in developing their economies.

Outlook and projections (*Commercial*)

Our outlook and projections for the energy, extractives and infrastructure sectors from a commercial perspective are as follows:

More opportunities for the renewable energy sector

Ghana will continue to increase the share of renewable energy in its energy mix and explore hydrogen energy and other clean energy sources.

New horizon for upstream oil and gas industry

GNPC is likely to commence drilling activities in the Voltaian basin, Ghana's onshore sedimentary basin, between the fourth quarter of 2023 and the first quarter of 2024.
As Ghana's upstream oil and gas industry has so far been entirely located offshore, onshore exploration activities will create a new horizon for the industry.

Promotion of five offshore blocks for direct negotiation

The Ministry of Energy is likely to continue to actively seek investors to invest in Ghana's unexplored blocks which are the Offshore Cape Three Points South, Shallow Water Cape Three Points, South West Saltpond, Deep Water Cape Three Points Block, and the Expanded Shallow Water Tano Block.

It is hoped that, amidst the global energy transition and its associated phenomenon of sustainable investing, investors will not be dissuaded from investing in the five offshore blocks and direct negotiations will commence.

Commencement of Iron ore mining

Following the determination of the total iron deposits in Ghana, the Ghana Integrated Iron and Steel Development Corporation (GIISDEC) has confirmed that Ghana is likely to start iron ore mining by end of the year 2023. GIISDEC is expected to develop a masterplan for the iron and steel industry.

Operationalisation of Petroleum Hub Development Corporation (PHDC)

The PHDC was established by the Petroleum Hub Development Corporation Act, 2020 (Act 1053) with the primary object of promoting and developing a petroleum and petrochemicals hub in Ghana. The PHDC is currently recruiting staff, and is likely to commence operations in 2023. The PHDC is expected to spearhead the development of the integrated petroleum complex in the Western Region of Ghana with the aim of adding value to the upstream and downstream petroleum value chain in Ghana and beyond.

Outlook and Projections (*Legal/Regulatory and Policy*)

Our outlook and projections for the energy, extractives and infrastructure sectors from a legal/regulatory and policy perspective are as follows:

Reform in the income tax regime

There is expected to be some reforms in Ghana's income tax regime including including an introduction of a 35% additional income tax bracket for PAYE.

Programmes and measures in the infrastructure sector

Government is likely to commence works on the 2023 National Flood Control Programme across all 16 regions in Ghana. The Water for All programme is also expected to be implemented and the construction of a number of water supply projects will likely continue.
A re-introduction of road tolls on selected public roads and highways is also expected.

Legislative reforms in the construction industry

After repeated pressure from stakeholders, the Construction Industry Development Authority Bill (CIDA Bill) is likely to be passed into law. The CIDA Bill when passed is expected to bring sanity and professionalism into the construction industry.

It is also hoped that the Condominium Bill and the Ghana Housing Authority Bill will be approved by Cabinet. The Condominium Bill, when passed into law, will regulate shared ownership of common areas which has arisen due to increasing demand for development of high rise and compact properties and the need to maximise limited land space. On the other hand, the Ghana Housing Authority Bill when enacted will establish the Ghana Housing Authority to serve as a regulator in the housing sector and lead the supply side of the housing market.

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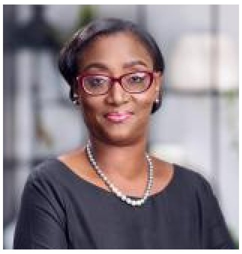

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