

SETTING UP BUSINESS IN GHANA

Business Laws

An entrepreneur, irrespective of nationality, can set up a business enterprise in Ghana in accordance with the provisions of any of the following legal instruments:

- The Companies Code, 1963 (Act 179)
- The Partnership Act, 1962 (Act 152)
- The Business Name Act, 1962 (Act 151).

A foreign investor may team up with a Ghanaian entrepreneur or company for a joint venture, usually in the form of a partnership or a limited company. However, under the Ghana Investment Promotion Centre Act, 1994 (Act 478), a minimum equity capital of US\$10,000 is required from any foreign investor who intends to enter into a joint venture partnership with a Ghanaian in any area of economic activity, except trading. In trading, the minimum equity capital requirement is US\$300,000.

The foreign shareholder is required to satisfy this minimum equity capital either in cash transferred through Ghana's banking system or its equivalent in the form of goods, plant and machinery, vehicles or other tangible assets imported specially and exclusively to establish the enterprise. The imported items must be covered by a Destination Inspection Report issued by an accredited inspection company, stating the value and condition of the goods. Consideration for goodwill of a business or services rendered by partners cannot be used to satisfy the minimum foreign equity capital.

Foreigners are permitted 100-per-cent ownership of an enterprise provided the investor satisfies section 19 (2b) of the GIPC Act, 1994 (Act 478). Wholly foreign-owned enterprises must have a minimum paid up capital, the equivalent of US\$50,000 in all areas of economic activity except import trading, where the minimum equity capital requirement is US\$300,000. In the cases of export trading and liaison (external) offices, there is no minimum foreign equity requirement.

Application for registration of a company is made directly, or through agents or solicitors, to the Registrar-General. A company is duly registered after the company's regulations have been submitted to the registrar of companies and a certificate of incorporation issued. A specified fee is paid on presentation of the regulations. The information required includes:

- the name of the company with the word "Limited" as the last word in the name
- the nature of the company's business
- a statement that the company possesses all the powers of a natural person of full capacity
- the names of the first directors of the company

- a statement that the liability of the company is limited
- the share capital and its division into shares of no par value
- limitation on the powers of the Board of Directors in accordance with section 202 of the Companies Code
- any other lawful provisions relating to the constitution and administration of the company

The requirements for a public company limited by shares are similar to those stated above, except that the public can buy shares.

Commencement of Business: Before commencing business, further information on the company must be provided. This includes the particulars of the company and a declaration of compliance.

The particulars of the company are given on Form No. 3 and signed by the directors and the company secretary. The information provided must include:

- name of company
- authorized business
- particulars of directors (at least two) and a secretary
- name and address of auditors
- addresses of the company's registered office and principal place of business
- address at which register of members is maintained
- amount of stated capital; number of authorized and issued shares, amount paid (other than cash), and amount due for each class.

The declaration of compliance is made on Form No. 4. This states that the conditions of section 28 of the Companies Code pertaining to a minimum capital issue of 25,000 cedis (C) has been paid and signed by all directors and the secretary of the company. There is a stamp duty of 0.2 per cent of capital issue payable. Upon due completion and presentation of the forms, the registrar issues the company with a certificate of commencement of business

Annual Returns: Limited Liability Companies must file annual returns with the Registrar of Companies showing its audited balance sheet and profit-and-loss statement after 18 months of incorporation.

EXTERNAL COMPANY

An external company is a body corporate formed outside Ghana but which has an established place of business in Ghana. This can take the form of a branch, management, share, transfer, registration office, factory, mine or other fixed place of business, but does not include an agency unless the agent is authorized to negotiate and conclude contracts on behalf of the outside company.

Within one month of the establishment of the place of business, the external

company should deliver to the registrar of companies the following:

- an English language translation of a certified copy of the charter, statutes, regulations, memorandum and articles or other instrument constituting or defining the constitution of the company,
- statement of the following in duplicate:
 - name
 - nature of business or main objects
 - name, address and business occupation of the local manager authorized to manage the business in Ghana
 - number of authorized shares, amount paid and what is remaining payable in cash or otherwise
 - address of its registered or principal office in the country of its incorporation.
 - address including post office box number of its principal place of business in Ghana
 - name and address in Ghana of a person authorized by the company to accept service of process and other documents on its behalf
 - particulars and copies of any charges on the property of the company or if no such charges, then statement to that effect.

On receipt of the documents, they are registered in the Registrar of External Companies and the particulars gazetted.

An external company may invite the Ghanaian public to subscribe to its shares, subject to its complying with requirements of the Companies Code concerning invitations and the prospectus as if it were a Ghanaian company. The registrar, however, has the discretion to waive or modify parts of these requirements.

Annually, or at intervals not exceeding 15 months, the external company must submit for registration, a profit-and-loss account and balance sheet (as in the limited liability return of accounts).

- Alterations made in the charter, statutes, regulations, articles or other instruments used in registration should be delivered to the registrar within two months of the effective date of the alteration.

The various forms required for registration of companies are obtainable from the Registrar-General. Prospective investors should obtain competent professional advice on the type of company which may best meet their needs. Such advice is obtainable from:

**The Registrar-General
Registrar-General's Department
P.O. Box 118**

Accra, Ghana
Tel: (233-21) 662043/664691

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