DOING BUSINESS IN Ghana

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**Business Structures:**

What types of business structures are permitted?

a) **Company Limited by Shares** - This is a business entity with specified objectives and which is usually for the generation of profit. It comprises at least two individuals acting as directors of the company and at least one person (company or individual) acting as a shareholder in the entity. The liability of the members of this entity is limited by the value of their shares.

b) **Company Limited by Guarantee** - This is an incorporated company without share capital. This company structure is best suited for Not-For-Profit Organizations because the objects of a company limited by guarantee cannot legally include an object for the generation of profit. As such these companies are exempt from corporate tax (although the organisation will have to pay income tax on behalf of any of its salaried employees).

Both the Company Limited by Shares and Company Limited by Guarantee are jointly referred to as "Limited Liability Companies" because the personal assets of persons who form such entities are protected from liability. In other words, the liability of members of such a company is limited by the value of their shares or guarantee.

c) **Company Unlimited by Shares** - This is a business entity with a structure similar to that of a Company Limited by Shares, the difference being that the liability of the members of this entity are not limited by the value of their shares. Members can be held personally liable for the debts of the company. There are not that many of such companies in Ghana. The few that exist are mostly law firms and other professional establishments who may be prevented from operating as limited liability companies by professional ethics.

d) **Sole Proprietorship** - This is an entity exclusively owned by an individual who is entitled to all the profits of the business and is held personally liable for any and all liabilities of the business. If the owner of this entity would like to operate under a business name it is required to register such business name at the RGD.

e) **Incorporated Partnership** - Where two or more people (up to a maximum of 20) decide to go into business for the generation of profit together, they may decide to do so through an incorporated partnership registered at the RGD rather than a company. There is however no protection of a partner’s personal assets in an incorporated partnership. Furthermore, the acts of one partner binds the whole partnership.

f) **External company** - a body corporate formed outside the Republic, which has an established place of business (such as a branch, management, share, transfer, registration office, factory, mine or an agent authorized to conduct contract negotiations and enter into contracts on behalf of the body corporate) in Ghana. Following registration in Ghana, Ghanaians may buy and sell shares in an external company as if the company had been incorporated in Ghana.

**Taxation:**

Briefly explain the country’s tax regime including rates and how rates differ based on business structures.

Ghana is not a federation so there are no state taxes and the national taxes and levies apply in all ten regions of the country.


Major taxes consist of income taxes and sales and service taxes (Value Added Tax).
Immigration: Summarize immigration laws, including visas available for foreign employees.

Generally, every visitor to Ghana requires a visa/entry permit irrespective of the length of stay. However, certain countries and nationals are exempt from obtaining a visa when travelling to Ghana. These are Economic Community of West African States (ECOWAS) citizens and nationals from Zimbabwe, Malawi, Swaziland, Tanzania, Zambia, Lesotho, Uganda, Kenya, Singapore, Mauritius and Trinidad and Tobago.

Also exempt are holders of diplomatic or service passports of Brazil, Cuba, Germany, Hong Kong and Iran (for a period not exceeding three months).

For foreign employees, a work and resident permit is required to legally work and live in Ghana. Work permits can be obtained from either the Ghana Investment Promotion Centre (GIPC) in the form of an Automatic Immigration Quota (AIQ) or the Ghana Immigration Service (GIS) or Ministry of Interior (MoI), depending on what type of industry the proposed applicant will be working in.

For instance, Mining and Petroleum enterprises and NGO’S have to apply for work permits from the GIS for foreign employees. Mining and petroleum projects are required to be licensed by the Minerals Commission and Petroleum Commission, respectively prior to applying for a work and residence permit from the GIS.

The Automatic Immigration Quota (AIQ) from the GIPC may be applied for after registering a business enterprise with the GIPC. The AIQ acts as both a work and resident permit for the expatriate. The number granted is statutorily based on the level of foreign equity paid-up capital invested in Ghana. According to the relevant statute (i.e., the GIPC Act), the range of foreign equity capital investments as regards the grant of AIQ are:

<table>
<thead>
<tr>
<th>Paid-up capital</th>
<th>Quota</th>
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<tbody>
<tr>
<td>US$50,000 - US$250,000</td>
<td>1</td>
</tr>
<tr>
<td>US$250,000 - US$500,000</td>
<td>2</td>
</tr>
<tr>
<td>US$500,000 - US$700,000</td>
<td>3</td>
</tr>
<tr>
<td>Above US$700,00</td>
<td>4</td>
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</tbody>
</table>
Applicable laws and regulations that may affect foreign investments include the Foreign Exchange Act, 2006 (Act 723) and the Ghana Investment Promotion Centre (GIPC) Act, 2013 (Act 865).

The Foreign Exchange Act requires that any foreign currency or financing to be used for the acquisition must be effected through any of the authorised banks in Ghana.

The GIPC Act requires all foreign investors to register their enterprises with the Centre. Some benefits that come with registration of businesses with the GIPC include the free expatriation of profits, obtaining automatic work permits and provision of assistance by the Centre between the enterprise and relevant Ministries, Departments, Agencies and other public institutions.

Generally, work and residence permits are granted for one year, subject to annual renewal.

Under the GIPC Act, where the business it is a joint enterprise with a Ghanaian, the foreign investor must invest a minimum capital of two hundred thousand United States Dollars in cash or capital goods relevant to the investment or a combination of both by way of equity capital in the enterprise.

Where however, the enterprise is wholly foreign-owned, the minimum capital requirement under the GIPC Act rises to five hundred thousand United States Dollars in cash or capital goods relevant to the investment or a combination of both by way of equity capital in the enterprise.

Additionally, Government is prohibited from expropriating or nationalising an enterprise except where the acquisition is in the national interest and/or national security or for a public purpose, and the acquisition is done under a law which makes provision for (a) payment of fair and adequate compensation; and (b) a right of access to the High Court for the determination of the investor’s interest or right and the amount of compensation to which the investor is entitled.

Visas and entry permits may be obtained from the Ghana missions or consulate abroad. Visitors from countries that do not have Ghana missions may obtain an emergency entry visa upon application to the Director of Immigration. Such applicants must receive copies of their visas before embarking on their journey.

An emergency visitor’s permit or visa may also be granted upon arrival where there is no consulate abroad and this allows a traveller to stay in Ghana for a period not exceeding 90 days for ECOWAS nationals, and up to 60 days in the case of other nationals. However, a visitor’s permit does not permit a foreigner to work during the period of stay in Ghana.

Visitors travelling on a business visa are also generally not allowed to work. However, they are allowed to attend meetings, training and also to perform some forms of activities (ie, assembling of machines, maintenance, etc).

**Foreign Investment Review and Issues:** Does the government review and approve foreign investments? What factors are considered?

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**Dealing with the Government:** Identify major issues when dealing with local and federal governments.

The regulator that will be dealt with is industry specific. Companies within the petroleum industry for instance deal with the Petroleum Commission and the Environmental Protection Agency (EPA).

In addition, certain local fees are collected by the District, Municipal and Metropolitan Assemblies (local authorities) from persons doing business within their localities. For instance, a business operating in Accra requires a business operating permit from the Accra Metropolitan Assembly (AMA) and this must be renewed every calendar year.

**Dispute Resolution and Court Systems:** Summarize the court system, including the use of juries and arbitration.

There are two categories of courts in Ghana, namely: a) the Superior Courts made up of the Supreme Court, the Court of Appeal, the High Court and the Regional Tribunal; and b) The Lower Courts consisting of the Circuit Court and the District Court or such other lower courts that Parliament may by law establish.

Litigation has regularly been used to resolve large commercial disputes in Ghana. Litigation is adversarial, based on the common law system, and the standard of proof in commercial claims is on a preponderance of probabilities. Alternative dispute resolution (ADR), particularly negotiation, mediation and arbitration, is gaining prominence as a preferable alternative to litigation due to the lower cost and faster resolution of matters associated with ADR. The courts, pursuant to the Courts Act of 1993 (Act 459) and the ADR Act 2010 (Act 798), can propose amicable settlement of disputes among litigants and this has been widely received particularly for parties with large commercial disputes. Arbitration is mostly preferred for resolving large commercial disputes. It is mainly inquisitorial and the parties at the arbitration management conference can agree on the laws, rules of evidence and the burden of proof that will apply to the proceedings where no provision is made for this in the Arbitration agreement.

**Foreign Corrupt Practices:** What are the anti-corruption, anti-bribery and economic sanction laws which impact doing business in the country?

In Ghana, there are a number of laws that tackle anti-corruption and its related effects:

The penalty and offence of corruption is regulated by the Criminal Offences Act, 1960 (Act 29) which makes it an offence to engage in corrupt practices both on the supply and demand end. The conviction for corruption under the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) is a prison term not exceeding 25 years.

In addition, the Companies (Amendment) Act, 2016 (Act 920) seeks to promote transparency in the operation of companies by requiring the inclusion of names and particulars of beneficial owners of companies in the company’s register of members. Companies are thus required to collect and disclose both the legal and beneficial owners of shares. Particularly, the Act requires the Registrar of Companies to collaborate with public authorities that have the function of investigating or prosecuting money laundering and associated offences for the purpose of maintaining the company register.

The Anti-Money Laundering Act, 2014 (Act 874) also establishes a Financial Intelligence Centre which deals specifically with money laundering and suspected anti-money laundering activities.
| Types of transaction: How may businesses combine? | In Ghana business acquisition may take various forms including:  
- Share acquisition  
- Creation of joint ventures  
- Acquisition of business assets  
- Merger of two or more companies into one of the existing companies  
- Amalgamations (Amalgamations will require the approval of the court where the whole or a part of the undertaking or assets of a transferor company is to be transferred to a transferee company and a member of the relevant company or creditor or liquidator as the case may be, applies to the Court for approval of the amalgamation.)  
- Acquisition of state-owned business entities or assets from the Ghana divestiture programme in accordance with PNDC Law 326. |
| Competition Law: How do laws impact competition? | There is currently no specific Competition law in place in Ghana. However, there is in place a Protection Against Unfair Competition Act, 2000 (Act 589) which essentially seeks to protect company goodwill. The Act therefore does not fully deal with all the aspects of competition law. For example, the Act does not regulate anti-competitive behaviour that generates a significant social cost, including loss of efficiency and innovation in the economy as well as higher prices passed onto the consumer.  
For this reason, measures are in place to pass an Anti-Competition Bill which has been placed before Parliament and is indicated to be passed by the middle of 2018 |
| Employment Relations: Briefly summarize major laws impacting employment and employee relations. | The principal law on labour in Ghana is the Labour Act, 2003 (Act 651) and the Labour Regulations, 2007 LI 1833. The Act is applicable to all workers and employers except the Armed Forces, Police Service, Prison Service and all security agencies established under the Security and Intelligence Agencies Act, 1995 (Act 526).  
Under the law, every employer is required by law to register with the Social Security and National Insurance Trust (SSNIT) and make social security contributions in respect of its employees.  
Moreover, according to the law, if an employee loses their job as a result of a business combination or suffer any diminution in their terms and conditions of employment, the company would have to make redundancy payments to the workers. In determining whether a worker has suffered a diminution in the terms and conditions of employment, account is taken of the past service and accumulated benefits of the worker with the target company before the acquisition or merger.  
The amount of redundancy pay and the terms and conditions of payment are matters which are subject to negotiation between the employer or a representative of the employer on the one hand and the worker or the trade union concerned on the other.  
Termination of an employee must be in accordance with the terms of the contract. In the absence a contract the length of notice required will be dependent on the number of years of employment. |
The Companies Act 1963 (Act 179) (the Companies Act) is the primary legislation governing business combinations in Ghana. The Companies Act provides for the manner in which business combinations should be effected. It provides for schemes of arrangement and amalgamation as the modes of achieving business combinations for companies incorporated in Ghana. These schemes found in sections 230 and 231 of the Companies Act are usually initiated on the basis of a shareholders’ special resolution and consummated with or without court approval;

The Securities Industry Act 2016 (Act 929) (the Securities Industry Law), the Securities and Exchange Commission Regulations 2003 (LI 1728), the Securities and Exchange Commission Takeovers and Mergers Code (the Takeovers Code), the Central Securities Depository Act 2007 (Act 733), and the Securities and Exchange Commission (SEC) Compliance Manual all serve to govern and regulate trading in securities in publicly listed companies. The Takeovers Code, also provides for the obligations and procedures to be complied with during M&A activity. The Takeover Code applies to:

- All takeovers and mergers where the target company is a public company; and
- All takeovers and mergers between or among public companies, whether listed or unlisted on the Ghana Stock Exchange (GSE)

Certain industry-specific legislation also regulate business combinations. These include:

- The Banks and Specialised Deposit-Taking Institutions Act 2016 (Act 930) (the Banking Act), which regulates the banking industry;
- The National Communications Authority Act 2008 (Act 769), the Regulations 2003 (LI 1719) and the Electronic Communications Act 2008 (Act 775), which regulate the telecommunications industry;
- The Insurance Act 2006 (Act 724), which regulates the insurance industry;
- The Minerals and Mining Act 2006 (Act 703), as amended by the Minerals and Mining (Amendment) Act 2015 (Act 900), which regulates the minerals and mining industry;
- The Petroleum (Exploration and Production) Act 2016 (Act 919);
- The Fisheries Act 2002 (Act 625);
- Petroleum (Local Content and Local Participation) Regulations, 2013 (LI 2204); and
- The Ghana Investment Promotion Centre Act 2013 (Act 865).

It is pertinent to note that in addition to the above industry-specific laws, all companies are also required to comply with the general applicable provisions in the Companies Act.

<table>
<thead>
<tr>
<th>No of years</th>
<th>Notice Required</th>
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<tr>
<td>3 years or more</td>
<td>One month notice or month’s salary in lieu thereof</td>
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<tr>
<td>Less than 3 years of notice</td>
<td>Two weeks’ notice or two weeks’ pay in lieu</td>
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<tr>
<td>Weekly basis employment</td>
<td>Seven days’ notice</td>
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There is a prohibition on employment of minors in dangerous work and the minimum age for light work is thirteen years.
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<tr>
<th><strong>Governing Law:</strong> What law typically governs the transaction agreements?</th>
<th>Transaction agreements are typically governed by Ghanaian law or any other law that the parties to the agreement voluntarily choose.</th>
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<tbody>
<tr>
<td><strong>Filings &amp; Fees:</strong> Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees payable in connection with a business combination?</td>
<td>Generally, the filings and fees in connection with business combinations largely depend on the nature of the transaction. Where the transaction involves the merger or acquisition of shares, documents related to the transactions must be filed with the registrar of companies. For publicly listed companies, companies are required to pay prescribed fees to the SEC for any filings to be made with the SEC or any statement required under the Takeover Code, for any takeover, consolidation or merger offer. Under the Companies Act, Ghanaian companies must file returns with the registrar of companies to record changes in directors and officers, changes in the authorised and issued share capital and other statutory matters, including an annual return of particulars of the company. The Companies Act places an obligation on all companies in Ghana to file shareholders’ resolutions that make changes to their Regulations (the equivalent of the memorandum and articles of association in other jurisdictions) as a result of any business combination. All the above-mentioned filings require payment of relatively nominal filing fees to the registrar of companies. Mergers or takeovers involving banks and financial institutions must be notified to the Bank of Ghana for approval under the Banking Act. No filing fees are payable. Where the stated capital increases as a result of any business combination, a stamp duty is paid on the increases in the stated capital of the combined business. The transfer of shares in a company as a result of a business combination is exempt from all stamp duties. However, under section 66(2) of the Companies Act, every company that increases its stated capital must send particulars of the increase within 28 days to the registrar of companies for registration.</td>
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<tr>
<td><strong>Information to be Disclosed:</strong> What information must be made public in a business combination? Does this depend on the structure used?</td>
<td>In all business combinations, the companies involved are required to disclose certain information to their shareholders, the registrar of companies and the SEC if they are publicly listed companies. This information largely determines whether approval of a merger, acquisition or takeover would be granted by the SEC. The SEC is authorised by section 3 of the Securities Industry Law to ‘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’. Under the Companies Act, the registrar of companies is empowered under section 279 to accept for registration every prospectus relating to an invitation to the public to acquire or dispose of shares in a public company. Section 275 of the Companies Act provides, inter alia, that within six months prior to the making of an invitation there should have been delivered to the registrar and registered by him, a prospectus relating to the shares complying, in all respects, with all relevant provisions of the Companies Act.</td>
</tr>
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</table>
Section 276 of the Companies Act requires that a prospectus making an invitation to the public shall contain the details of the offer, a brief corporate history of the offeror, the offeror’s shareholding structure and various professional reports relating to the offeror.

In addition, the Companies (Amendment) Act, 2016 requires the disclosure of beneficial owners of shares in the Register of shareholders particularly where such persons are Politically Exposed Persons (PEP). This register may be inspected by non-members during business hours upon payment of a reasonable fee prescribed by the company.

The SEC Regulations also provide that a prospectus or offer document issued in connection with or in respect of an offer or invitation to the public to acquire corporate securities shall be submitted to the SEC for examination and approval.

Issuers of prospectuses will have to ensure that the prospectus complies with the provisions of the Companies Act and the SEC Regulations.

According to the law, a person may not acquire more than 25 per cent of the voting rights of a company unless he or she notifies the Ghana Stock Exchange (GSE) and fulfils the conditions of a takeover offer.

The board of directors of the offeree company upon receiving the offeror company's statement shall inform the SEC and the GSE. In addition, an announcement by press notice of the proposed takeover offer should be made within 24 hours of receipt of the offeror company's statement.

A press notice shall be made in at least two English-language daily newspapers of national circulation and shall include all material information contained in the offeror company's statement.

The takeover offer document is required to state the following:
- Whether the offer is conditional upon acceptance of the offer for a minimum number of issued voting shares of the offeree and, if so, the percentage;
- Where the shares are to be acquired in whole or in part for cash, the period within which payment will be made and the method of such payment;
- Where the shares are to be acquired through a share swap, the proportion of the share swap and the period within which the offeree's shareholders shall receive the new shares;
- Whether the offeror is engaged in the same line of business as the offeree;
- Whether the offer is conditional upon receiving approval under any law in Ghana or other regulatory approval outside Ghana where the transaction involves companies incorporated outside Ghana;
- Whether the offer is conditional upon maintenance of a minimum percentage of shareholding by the general public to satisfy the continuing eligibility requirements for listing; and
- The circumstances that shall apply in the event that the conditions listed above are not fulfilled.

If during the takeover period a director of the offeree company is offered a job or position with the acquiring company, then that director is obliged to disclose and excuse him or herself from decision-making of the offeree company's board of directors. Listed companies on the GSE must reveal to the exchange any information or transactions whose impact on the company's assets, financial position and business generally will cause substantial share price movements.
### Disclosure of substantial shareholdings

What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

According to the law the purchase of a substantial amount of shares or the securing of control of a company by acquiring the securities of those who control the company shall give rise to a takeover bid. Thus, a person may not acquire more than 25 per cent of the voting rights of a listed company unless he notifies the GSE and fulfils the conditions of a takeover offer.

Pursuant to the Takeover Code, where a person (or persons) acting in concert acquires or intends to acquire more than 30 per cent but less than 50 per cent of voting shares of a public company in any 12-month period; or acquires or intends to acquire 50 per cent or more of the voting shares of the public company; or acquires a company that holds effective control in the public company or, together with shares already held, will result in acquiring effective control of the public company, then that person shall be obliged to make a mandatory takeover offer of such public company and shall be required to comply with the takeover procedures set out in the Takeover Code. Exemptions may, however, be granted by the SEC with respect to these rules where deemed applicable.

No person shall make an offer to acquire shares or voting rights of a public company which may entitle such person to exercise effective control in the target company without complying with the takeover procedures provided for in the Takeover Code.

The Takeover Code also provides that no person shall acquire effective control over a target company unless such person makes the same offer to all shareholders of the same class of such company in accordance with the Takeover Code.

The mandatory takeover offer requirement may not apply to the following situations:
- Any purchase of shares from unissued shares provided that the acquisition will not result in a 50 per cent or more ownership of shares by the purchaser;
- Any purchase of shares from an increase in authorised share capital;
- Acquiring of shares through inheritance;
- Purchase in connection with foreclosure proceedings involving a duly constituted pledge or security arrangement where the acquisition is made by the debtor or creditor;
- Purchases in connection with privatisation undertaken by the government of Ghana; and
- Purchases in connection with liquidation or insolvency under court supervision.

The above disclosure requirements are required in respect of publicly listed companies. These requirements are not applicable in respect of Private Companies.

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<tr>
<th>Duties of directors and controlling shareholders</th>
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What duties do the directors or managers of a company owe to the company’s shareholders, creditors and other stakeholders in

Under the Companies Act, directors stand in a fiduciary relationship towards the company and the directors are obliged to observe the utmost good faith towards the company in any transaction with it or on its behalf. Directors owe a duty to the company to act at all times in the best interests of the company as a whole so as to preserve its assets, further its business and promote the purposes for which it was formed.

The Companies Act provides, in the relevant part, that in considering whether a particular course of action or transaction is in the best interests of the company,
connection with a business combination? Do controlling shareholders have similar duties?

A director may have regard to the interest of the employees and shareholders of the company. In addition, when the director is appointed as a representative of a class of shareholders, employees or creditors, the director may give special, but not exclusive, consideration to the interests of that class. The directors shall not exceed the powers conferred on them by the Companies Act or Regulations, except with the approval of an ordinary resolution of the company.

Where a takeover offer document has been sent to the board of directors of the offeree company, the board shall within 15 days after the receipt of the takeover document issue a statement to the holders of voting shares in the offeree company to which the takeover offer relates.

This statement shall indicate whether or not the board recommends to holders of the voting shares the acceptance of the takeover offers made by the offeror company. The offeree company’s statement to the shareholders must contain all that is required or specified in the Takeover Code.

It is the law that no director shall place himself in a conflict of interest where his fiduciary duty to the company conflicts with personal interests or duties to other persons.

Controlling shareholders do not have similar duties.

Approval and appraisal rights: What approval rights do shareholders have over business combinations? Do shareholders have appraisal or similar rights in business combinations?

Generally, acquisition transactions must be consented to by shareholders pursuant to the Companies Act.

For example, if the transaction involves a company issuing new shares beyond what it is authorised and beyond what may already have been approved by the company in a general meeting, the issue must be approved at an extraordinary general meeting.

Private companies that are not subject to specific statutory control may have the requirement for shareholders’ approval prescribed in the regulations of the company.

The Companies Act allows dissenting shareholders during a merger or acquisition to receive a fair value of their shares in cash.

In a business combination where one company is liquidated, a liquidator can purchase the shares of dissenting shareholders. However, the price payable for the shares shall be determined by agreement or, in default of agreement, by a single arbitrator appointed by the president for the time being from the Institute of Chartered Accountants in Ghana and the purchase money shall be paid before the company is dissolved.

Dissenting or minority shareholders during a merger or acquisition can also apply to the court in order to receive a fair value for their shares.

The court may make an order and set what it thinks fit as a fair value for their shares. Before making an order, the court may refer the matter to the registrar of companies who shall appoint one or more competent reporters to investigate the fairness or otherwise of the offer and to report its findings to the court.
**Hostile transactions:** What are the special considerations for unsolicited transactions?

Hostile takeovers are not common in Ghana and the law does not prevent one from occurring. Takeover and mergers of public companies are regulated by the Securities and Exchange Commission (SEC).

The SEC Code on Takeovers and Mergers (2008) (the Code) is the law that regulates the procedures and obligations to be complied with during such transactions involving public companies.

The Code provides circumstances where persons acting in concert shall be obliged to make a takeover offer of the target company. These include where the acquiring company:

- Acquires or intends to acquire more than 30% but less than 50% of the voting shares of a target public company in any 12-month period (rule 4.2(a))
- Acquires or intends to acquire more than 50% or more of the voting rights of the target public company. Rule 4.2(b)
- Acquires a company that hold effective control in the target public company, or together with the shares already held, will result in acquiring effective control of the target public company. Rule 4.2(c)

The special considerations therefore to consider would be the amount of shareholding the acquiring company intends to acquire, the period within which it intends to do so and the control effect of such acquisition.

**Break-up fees – frustration of additional bidders:** Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company’s ability to protect deals from third-party bidders?

Break-up fees

There is no specific provision in the Code or in legislation which provides for payment if the target company backs out of the deal to the acquirer. Therefore, technically parties to a takeover transaction may or may not provide for break-up fees in the takeover agreements.

Additional bidders

The Code allows for a competing takeover offers. Pursuant to rule 15, a competing takeover shall be served on the selling company 10 days prior to the closure of the offer period. It goes on further to state that, all the procedures laid out in the rules shall apply to a competing takeover. The selling company must furnish the competing offeror with any information including particulars of sharehold-

**Government influence:** Other than through relevant competition regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations, including for reasons of national security?

Other than regulations within specific industries such as local content requirements in the petroleum and mining sectors, there is no direct governmental agency influence in M&A activities.

**Petroleum industry**

In the petroleum industry, local content requirements include sourcing local participation, expertise goods, services and financing at a specified percentage. The aim of this is to protect, maximize and enhance indigenous people and businesses.

Examples of the local content participation include:

- At least 5% participation of an indigenous Ghanaian company other than GNPC in all petroleum licenses
- Non-indigenous companies to enter into joint venture agreements (at least 10% equity participation) with an indigenous Ghanaian company in the provi-
According to the Takeover Code, there are number of conditions that must be stated on the takeover offer. These include:

- Whether the offer is conditional upon acceptance of the offer being received in respect of a minimum number of issued voting shares of the Offeree and if so the percentage (rule 8.3(a)). If the offer is conditional upon this, the offer shall specify a date not being more than 30 days from to the date of service of the takeover offer or such later date as the SEC may allow as the latest date on which the Offeror can declare the offer to have become free from that condition (rule 17.1).

- Whether the offer is conditional upon receiving approval under any law in Ghana where the transactions involves companies incorporated outside Ghana, such as in the petroleum industry.

- Whether the offer conditional upon maintenance of a minimum percentage of shareholding by the general public to satisfy the continuing eligibility requirements for listing.

Furthermore, Rule 8.2 states that the takeover offer shall not be conditional upon the offeree company approving and consenting to payment to any director in the offeree company as compensation for loss of office or retirement of office as a result of the takeover.

The Code provides that the offeror should be able to implement the takeover which includes the financial ability to do so by the appointment of an independent advisor. Thus, one could deduce that the ability to finance is conditional to completing the offer.
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<th><strong>Financing:</strong> If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer’s financing?</th>
<th>The Code does not specify how the buyer deals with financing if there is a need for it. However, it does specify that the offer documents should list all the relevant financing provisions that would apply to the transaction and this is achieved by way a confirmation by a financial adviser of the offeror that the offeror has the financial capability to accept and carry out the takeover offer. Apart from these regulations on financial disclosure, there are no specific regulations that provide obligations of a seller to assist in the buyer’s financing.</th>
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<td><strong>Minority squeeze-out:</strong> May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?</td>
<td>The Companies Code (s. 234) provides that a transferee company (buyer) may compulsorily acquire the shares of the transferor (seller) company in so far as at least 9/10th or more of the whole of the shareholders have accepted the offer within four months of the making the offer. If this condition is fulfilled, the buyer may within two months thereafter, give notice to any shareholder who has not accepted the offer in respect of all his shares that it desires to acquire his shares. (s. 3) The minority shareholders who are opposed to the acquisition must then after such notice, apply to the court within two months, stating that the buyer shall not be entitled to acquire the share of that holder. (section 4) The Court on receiving the application may if it thinks fit, refer the matter to the registrar who shall appoint one or more competent reporters to investigate the fairness of the offer and to report thereon to the Court. (s.5). Where the court then makes an order that the buyer is bound to acquire the shares, the buyer shall give notice to all other shareholders of the same class and all the former holders of shares of the same class who accepted the original offer. (s. 7). Within two months of giving such notice, any shareholder shall be entitled to require the transferor company to acquire his shares and pay any former holder or transfer to him any additional consideration. Where the court disposes of the application of the minority shareholder the buyer on the expiration of two months after the notice has been given to the shareholders or after the application has been disposed of transmit a copy of the notice to the selling company together with an instrument of transfer executed on behalf of the shareholder.</td>
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<td><strong>Cross-border transactions:</strong> How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?</td>
<td>There are no specific laws regarding cross-border transactions. However, due to the foreign element of the transaction, the regulations of the GIPC must be adhered to specifically relating to local content and participation within specified industries as well as minimum capital requirements. Currently most cross-border transactions are structured as joint ventures. Where the company is registered in Ghana the applicable company law will be Ghanaian law. The parties however can specify any other law to govern their joint venture relationship. Within the West African region, however, with the imminent creation of the continental free trade area (CFTA) in Africa, there will be the creation of laws and regulations that govern cross-border transactions due to the establishment of the single market.</td>
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**Waiting or notification periods:** Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?

- There is no competition law in Ghana now, thus the SEC Code provides for these waiting periods.
- The takeover offer document must be approved by the SEC within 30 days of submitting the offer to the SEC. Through this the SEC confirms if the offer follows the rules.
- The takeover offer shall be dated and will remain open for acceptance by the Offeree for 30 days form the date of submission of the offer by the offeror to the offeree rule 8.1 and rule 16.1.
- The offer period shall be deemed to have lapsed: (16.2)
  - In the event of non-fulfilment of any obligation by the offeror under the rules
  - Where all conditions to which the offer is subject are not fulfilled within 21 days of the first closing date of the offer or on the date the offer becomes or is declared unconditional as to acceptances
  - Upon non-acceptance of the offer after the expiry of the offer period.

Where the offer lapses, the offeror is prohibited from making any offer for the acquisition of shares of any listed company for a 12-month period from the date of failure to fulfil the obligation.

An offer period may be extended; however, SEC approval must be sought and where the extension is given, the offeror must inform the shareholders of the target company of the next closing date by press announcement on the floor of the exchange if the company is listed, in the electronic media and in at least two daily newspapers of national circulation.

**Sector-specific rules:** Are companies in specific industries subject to additional regulations and statutes?

- Yes, find below examples in specific industries.

  **Petroleum Industry**
  Where a change in ownership which in effect will give a third-party control of the company, written approval of the sector minister is required.

  **Banking Industry**
  Non-banking financial institutions require approval of the Bank of Ghana before amalgamation or otherwise of its business. Similarly, with banks and financial institutions, Act 730 states that Bank of Ghana approval is required before the sale, disposal or transfer of the whole or a part of the business of the bank, specialized deposit-taking institution or financial holding company as well as amalgamation or merger of a bank, specialized deposit-taking institution or financial holding company with any other bank, specialized deposit-taking institution or financial holding company or any other institution.

  **Mining Sector**
  Per section 14 of the Mining Act, the sector Minister’s approval is required for the transfer, assignment, mortgaged or otherwise of a mineral right. The approval shall not be unreasonably be withheld or given subject to unreasonable conditions.

  **Telecommunication industry**
  The National Communications authority (LI 1719) states that the National Communications Authority must approve the transfer of shares of a licensee company as the license is not transferable.
**Tax issues:** What basic tax issues are involved in business combinations?

The principal tax law is the Income Tax Act, 2015 (Act 896). Corporate tax is tax paid by companies. The percentage of tax payable to some extent is industry specific.

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<thead>
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<th>Industry</th>
<th>Income Tax Rate</th>
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<tr>
<td>Petroleum</td>
<td>35%</td>
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<tr>
<td>Mineral Operations</td>
<td>35%</td>
</tr>
<tr>
<td>Trust</td>
<td>25%</td>
</tr>
<tr>
<td>Companies that run hotels</td>
<td>22%</td>
</tr>
<tr>
<td>Free zone enterprises</td>
<td>15%</td>
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<tr>
<td>Non-traditional goods export</td>
<td>8%</td>
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Capital gains tax is paid where a gain is made from the realization of an asset or a liability. A realization of an asset could occur in a number of instances as stated out in Act 896, some of which include parting with ownership of an asset, where an asset ceases, in the sale of asset other than trading stock or a depreciable asset where the sale of the asset exceeds the costs. However, the law provides that no capital gains is to be paid on assets accrued or realized by a company in the event of a merger, amalgamation or reorganization if there is a continuity of underlying ownership of at least 25%.

**Labor and employee benefits:** What is the basic regulatory framework governing labour and employee benefits in a business combination?

Pursuant to section 65(1) of Act 654, an employer who contemplates the introduction of major changes in production, programme, organisation, structure or technology of an undertaking that are likely to entail terminations of employment of workers in the undertaking is required to:

(a) Give notice in writing to the Chief Labour Officer not later than three months before the contemplated changes or close-down setting out all relevant information including the reasons for the termination, the number and categories of employees to be affected and the period within which the termination is to be carried out; and

(b) Consult the trade union concerned on measures to be taken to avert or minimize the termination as well as measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

Additionally, section 65(2) outlines the condition precedent for the payment of compensation or redundancy pay. Where an employment is closed-down or undergoes an amalgamation and that arrangement is likely to sever relationships between a worker and an employer immediately before the close-down and this is likely to result in the worker being unemployed or suffering a diminution in the terms and conditions of employment, that worker is entitled to be paid compensation which is known as the redundancy pay.

Not all employees are entitled to this redundancy pay; that is, workers engaged under a contract of employment for specified period or specified work; workers serving a period of probation or qualifying period of employment of reasonable duration determined in advance; and workers engaged on a casual basis (s. 66).
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<th>Restructuring, bankruptcy or receivership: What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?</th>
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<td>The laws that govern insolvency, liquidation, bankruptcy is the Companies Act (Act 179), Bodies Corporate Official Liquidations Act (Act 180), Insolvency Act 1962 (Act 153). The approval of the industry regulators is paramount. Therefore, as mentioned above, any form of amalgamation, restructuring, change in shareholding will require the approval of sector ministries such as in the Petroleum industry and mining; the Bank of Ghana will regulate such restructurings within the banks, financial institutions and non-financial institutions. Where the target company in question is solvent, private liquidation will allow the company to be wound up with surplus assets rather than liabilities. In such a situation, the surplus assets can then be absorbed or acquired by another company. There are no laws on bankruptcy as at yet. There is however a draft bill for consideration in parliament.</td>
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<th>Anti-corruption and sanctions: What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations?</th>
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<td>In Ghana, the penalty and offence of corruption is regulated by the Criminal Code which makes it an offence to engage in corrupt practices both on the supply and demand end. The National Anti-Corruption Action plan has been adopted to tackle the issues of corruption in Ghana. The strategy of the NACA is to “be directly integrated into national development planning, making the plan an integral part of regular annual activities of public institutions including Ministries, Department and Agencies.” The policy is to bring together policies and integrate strategies from stakeholders, policy makers, private sector to aid in the reduction of corruption in Ghana. Some of the anti-corruption policies that have been embarked on over the years include:</td>
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<tr>
<td>-Strengthening the legislative framework</td>
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<td>-Embarking on public sector and fiscal management reforms</td>
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<td>-Education of the public</td>
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<td>-Strengthening institutions setup to tackle corruption activities within the country such as the Police, Serious Fraud Office, Commission on Human Rights and Administrative Justice.</td>
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