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BUSINESS ORGANIZATION IN GHANA



In Brief

The organization of business activity in Ghana takes several forms, including unincorporated businesses, incorporated businesses, non-Ghanaian companies registered in Ghana as external companies and state-owned enterprises created by statutes. The relevant laws that govern the formation of entities that carry on business in the country are the Companies Code, 1963 (Act 179) ("Companies Code"), with regard to companies, the Incorporated Private Partnerships Act, 1962 (Act 152) ("IPPA"), with regard to partnerships, the Statutory Corporations Act, 1964 (Act 232), with regard to statutory corporations, the Registration of Business Names Act, 1962 (Act 151), with regard to unincorporated business and the Co-operative Societies Degree, NLCD 252 of 1968 with regards to Co-operative Societies. The Registrar General's Department is the government agency responsible for registration and regulation of business entities, except for statutory corporations and co-operative societies.



Cross Reference: See Section Four for details on the Registrar General's Department.



Businesses Organization in Ghana

1. Registration of Business Names Act, 1962 (Act 151)

The registration procedure for a sole proprietor business is less complicated and less costly than for a limited liability company. The sole proprietor must fill 5 copies of the Registration of Business Names (Form A), indicating:

- Business name
- General nature of business
- Principal place of business
- Full address
- All other place at which business is carried out
- Nationality; civil status
- Date of commencement of the business

The business must have commenced before registration is effected. Each proprietor is required under the Registration of Business Names Act to renew the registration of the business once every year.

If the name consists merely of the sole proprietor's surname without any additions apart from all his/her true personal name or names or his initials, registration is not required.

You would also be required to complete a Tax Identification Number for Individuals, Sole Proprietor Registration Form to get the Tax Identification Number (TIN). This asks for Name, Birth information (date, town, region, sex); Nationality; Full address; Occupation; Business name; Business location and full address; Business activities; Registrar General's Number.

2. Incorporation under the Incorporated Private Partnerships Act 1962 (Act 1521)

Applicant needs to complete Form 'A' for Incorporation of Partnership and attached a stamped Partnership Agreement. Pay prescribed fee. The authentication of the Partnership Agreement is done at the Lands Commission.

3. Co-operative Society under Co-operative Societies Degree, NLCD 252 of 1968.

A Co-operative society is defined as a business voluntarily organized, operating at a cost, which is owned, capitalized and controlled by member-patrons, sharing risks and benefits proportional to their participation.

The Registrar of Co-operatives is responsible for registration, liquidation and general development of Co-operative societies in accordance with the Co-operative Societies Degree, NLCD 252 of 1968.

Subject to the provisions of the Co-operative society's degree 252, any society which has as its object the promotion of the economic interests of its members in accordance with Co-operative principles may be registered with or without limited liabilities.

4. Incorporation of Companies under the Companies Code 1963 (Act 179)

The various kinds of companies are as follows:

Company Limited by Shares

In a company limited by shares, the shareholder need not pay the whole amount of his shares to the company at once when acquiring the shares. The usual practice is that shareholders make payments when the directors make "calls" upon them to pay. The shareholder's liabilities are therefore limited to any amounts unpaid on the shares, and once a shareholder has fully paid for his shares, he is not to incur any further liabilities in respect of the company. Thus no contribution is required from any member, exceeding any amount unpaid on his shares, where the company is being wound up. However, the company may

decide, by special resolution, to reserve any unpaid liability on shares until the company is being wound up.

The Regulations of a company limited by shares must expressly state the fact of the limited liability of members. The last word of the name of a company limited by shares shall be "limited", or its abbreviation "ltd."

Company Limited by Guarantee

This is a company having the liability of its members limited to amounts that they respectively undertake or guarantee to contribute to the assets of the company in case of liquidation. Unlike companies limited by shares where the liability of the member may have to be implemented at any time during the existence of the company, that is, during the active life as well as during winding up, in the guarantee company, that liability need only be implemented after the commencement of the winding up of the company. The Companies Code provides for the total liability of members, and no further contribution shall be required from any member.

A guarantee company is not registered with shares and is not permitted to create any shares. This type of company is therefore only suitable if no initial funds are required or those funds are obtained from other sources, e.g., endowments and donations. The company is also not permitted to engage in trading. The company is not permitted to pay dividends or distribute/return any assets to members.

Whilst other companies may operate on a "one share, one vote" principle, the operating principle in respect of guarantee companies is "one member, one vote."

The regulations of a guarantee company must contain the following mandatory provisions:

- That the liabilities of the members are limited.
- That the income and property of the company shall be applied solely towards the promotion of its objects.
- That no portion of the income and property shall be paid or transferred in any manner to the members, except payments is permitted by the regulations, such as the payment of reasonable and proper remuneration to officers in return for services actually rendered, out-of-pocket expenses, interest not exceeding 6% on money lent to the company, and reasonable and proper rent for premises let to the company. Further, no director is to be appointed to any salaried office. These may be modified only with the approval of the Registrar.
- That each member will contribute to the assets of the company in the event of its being wound up, to cater for the payment of the company's debts and obligations, costs of liquidation and other amounts required, up to whatever limit is prescribed by the Regulations. In respect of members, this liability extinguishes only where a person has ceased to be a member for more than a year. Note that membership of a

guarantee company may end only by death, valid retirement or any other manner prescribed in the Regulations.

- That upon winding up, the residue of the property shall not be distributed to members, but shall be either given to some other guarantee company with similar objects or applied to some charitable purpose. Members before the dissolution of the company shall determine the beneficiary.

Unlimited Company

This company is also registered with shares, and, there is no limit on the liability of the members. There are not too 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.

Public and Private Companies

Each of the above types of companies may be "private" or "public." A company is a private company if by its Regulations, it fulfils the following conditions:

- Where it is a company registered with shares, there is a restriction of the right to transfer shares.
- The total number of members and debenture holders do not exceed 50. This number excludes genuine employees and ex-employees of the company who became members or debenture holders during their employment, and continued to be so after their employment. The exclusion of employees is designed to enable companies to institute co-partnerships schemes without forfeiting their private status.
- The company is prohibited from making of any public invitations for the acquisition of its shares and debentures.
- The company is prohibited from making an invitation to the public to deposit money for fixed periods or payable at call, whether interest-bearing or not.

Any other company is a public company.

Procedure for Incorporation of a Company

Applicant may purchase and complete a set of Limited Liability Forms and lodge the following documents at the Registrar General's Department:

- Company regulations (four copies)
The company regulations may be drawn up by the party proposing to incorporate the company, or the standard format that comes with the incorporation forms may be adopted. The forms require the following information:
 - Name of company
 - Nature of the business that subscribers intend to engage in

- Full names of subscribers and shareholders, their addresses, percentage shareholdings, occupation, and any directorships in any other company
 - Full names of the first directors of the company. Note that directors must be residents of Ghana, of sound mind, and of legal age (not younger than 21)
 - Full name and address of company secretary and auditors (a letter of consent to act as auditor is attached)
 - The number of shares that the company is to be registered with and the stated capital
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- Form 3 - Statement of shareholding structure (five copies)
 - Form 4 - Stated capital (two copies)
 - Tax identification number form (one copy)
 - Declaration/Consent Letter from qualified auditors

Minimum Capital Requirement

A company 100% Ghanaian-owned have minimum nominal capital of at least GH¢500. 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 liability 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 the case of 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.

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

Corporate bodies formed outside Ghana that seek to operate in Ghana need not automatically incorporate subsidiaries in Ghana. Such a corporate body is allowed to establish a place of business in Ghana after it has registered with the Companies Registry as an "external company". "Established place of business" means a fixed place of business such as a branch, registration office, factory or mine. The following are not considered as established place of business:

- An agency through which the external company makes purchases, except where the agency does more than mere purchases, for instance, exercising general authority to negotiate and conclude contracts on behalf of the body corporate outside Ghana
- Bona fide brokers
- General commission agents
- The established place of business of a subsidiary

An external company must appoint a local manager as its representative in Ghana. The local manager must have the qualifications required of a director of a Ghanaian company, i.e., he must not be an infant, lunatic, corporation, undischarged bankrupt or a fraudulent person. Persons dealing with a local manager are entitled to assume that he has authority to carry on the business in Ghana. This protection does not cover persons who know or ought to have known that the local manager is acting in excess of his authority. The names of local managers must be published in all trade circulars and letterheads of the external company. There must also be adequate publication, in English, the external company's name, country of incorporation and, if it exists, limited liability status at the place of business and on letterheads.

External companies are required to file yearly accounts with the Companies Registry. Where the external company is wound up, is dissolved or has ceased to exist in accordance with the law of its home country, the local manager must within 28 days, cause a notice to that effect to be delivered to the Companies Registry for registration and publication in the Gazette.

Registering an external company in Ghana

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 needed documents for it to be registered as an External Company and the particulars gazetted.

Applicant may purchase and complete Forms 20 & 21 for the registration of an External Company. Submit duly completed Forms 20 & 21 at the External

Companies Registry of the registrar General's department together with the following:

- Either: Certified true copy of the Memorandum and the Articles of Association of the Company registered outside Ghana in English.
- A certified true copy of the Certificate of Incorporation.
- Power of Attorney to the local Manager. Or all the constitution of the External Company.

All these duly endorsed by the Ghana Mission in the Country if any or the nearest country where there is a Ghana Mission.

Special kinds of companies

The Companies Code permits the formation of special purpose companies that are regulated by special legislation. Some of these are:

Banks

Banks in Ghana operate under the supervision of the Bank of Ghana. No person is allowed to carry on the business of banking in Ghana unless that person:

- is a body corporate.
- has obtained a license from the Bank of Ghana.
- maintains the minimum paid-up capital prescribed by the law, the quantum of which differs, depending on whether it is a Ghanaian banking business, foreign banking business, development banking business or a rural bank.

The Banking Law provides that no person other than a bank shall use or assume the word "bank" or any of its derivatives of the word in whatever language, indicating the carrying on of the business of banking. Refer to the story on Databank (in Section two) to learn of the opposition they faced by choosing a name which has 'bank' in it.



CD Link: Licensed banks, representative offices & their registered offices in Ghana

Insurance Companies

Insurance companies in Ghana operate under the supervision of the National Insurance Commission, established under the Insurance Law, 1989 (PNDC 227). No person is allowed to carry on insurance business in Ghana unless:

- that person is a body corporate.
- the Government of Ghana has an automatic 20% interest in the capital in that business, and at least another 40% of the capital is owned by a Ghanaian.

- that person maintains a prescribed minimum paid-up share capital, part of which should be in Government securities and deposited as security deposit with the Bank of Ghana. The amount of minimum paid up capital varies, depending on whether the company is involved in life insurance, non-life insurance, composite (that is both life and non-life insurance), or re-insurance.



CD Link: List of Insurance companies

Non-Banking Financial Institutions (NBFIs)

NBFIs operate in Ghana under the Financial Institution (Non-Banking) Law, 1993 (PNDCL 328). The businesses affected by the provisions of this law are the taking of deposits, financing by way of loans or advances, dealing in securities without being licensed under the Securities Industry Law, leasing, letting or hire-purchase, or where an insurance company carries on any business other than insurance. The following are however specifically classified as NBFIs under the schedule to the Financial Institution (Non-Banking) Law: Discount companies, finance houses, acceptance houses, building societies, leasing and hire-purchase companies, venture capital funding companies, mortgage financing companies, savings and loan companies and credit unions.

NBFIs operate under the supervision of the Bank of Ghana, and no person is allowed to carry on the activities of a non-banking financial institution unless it:

- is incorporated in Ghana.
- has obtained a licence from the Bank of Ghana.
- maintains a prescribed minimum paid-up capital.



CD Link: List of Non-bank financial institutions licence by the Bank of Ghana as of April 2008

Finance Lease Companies

A finance lease is defined by the Finance Lease Law, 1993 (PNDCL 331) as an arrangement by which a Lessor leases to a Lessee, either the lessor's own already acquired assets or an asset that the lessor agrees to acquire from a third party, for the Lessee's use only and against payment of mutually agreed lease rentals over a specified non-cancellable period and under which the Lessee may exercise an option to purchase the asset outright after the period of the lease at an agreed price, subject to the agreement of the Lessor. Under the Finance Lease Law, a person is not allowed to become a lessor under a finance lease agreement unless that person

- is incorporated as a company.
- is specifically licensed to engage in finance leasing.

- complies with guidelines prescribed by the Bank of Ghana, including any prescriptions relating to minimum paid-up capital requirements.

Dealing in Securities

Under the Securities Industry Law, 1993 (PNDCL 333) the entity must be a body corporate, is required to obtain a Dealer's Licence from the Securities Regulatory Commission and from the Ghana Stock of Exchange and must maintain certain minimum capital requirements.

Dealing in Mutual Funds

The entity must be a body corporate incorporated or registered in Ghana and is required to be registered with the Securities Regulatory Commission. The Securities Industry Law contains several limitations on the activities that a dealer of mutual funds may be engaged in and transactions that it may enter into.



Cross Reference: See Section Four for details on Bank of Ghana.