

# **Ghana Investment Promotion Centre Bill**

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**BILL**

ENTITLED

**GHANA INVESTMENT PROMOTION CENTRE BILL, 2013**

**AN ACT** to provide for the Ghana Investment Promotion Centre as the agency of Government responsible for the encouragement and promotion of investments in Ghana; and to provide for the creation of an attractive incentive framework and a transparent, predictable and facilitating environment for investments in Ghana and for related matters.

PASSED by Parliament and assented to by the President:

*The Ghana Investment Promotion Centre*

**Application of the Act**

1. (1) This Act applies to enterprises in Ghana.
- (2) Despite subsection (1), this Act shall not be interpreted to restrict compliance with the requirements of any other legislation.

**The Centre**

2. (1) There is established by this Act a body corporate to be known as the Ghana Investment Promotion Centre.

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(2) For the performance of its functions, the Centre may acquire and hold movable and immovable property, dispose of property and enter into a contract or any other transaction.

(3) Where there is a hindrance to the acquisition of property, the property may be acquired for the Centre under the State Lands Act, 1961 (Act 125) and the cost shall be borne by the Centre.

### **Object of the Centre**

3. The object of the Centre is to
- (a) create an enhanced environment for investment and the development of the Ghanaian economy through investment; and
  - (b) encourage, promote and facilitate investment in the country.

### **Functions of the Centre**

4. The Centre shall for the purposes of attaining its object, actively promote investments into and within Ghana, and shall
- (a) formulate investment promotion policies and plans, promotional incentives and marketing strategies to attract foreign and local investments in advanced technology industries and skill-intensive services which enjoy good export market prospects;
  - (b) initiate and support measures that will enhance the investment climate in Ghana for both Ghanaian and non-Ghanaian enterprises;
  - (c) initiate, organise and participate in promotional activities such as exhibitions, conferences and seminars for the stimulation of investments, to present Ghana as an ideal investment destination;
  - (d) collect, collate, analyse and disseminate information about investment opportunities and sources of investment capital, incentives available to investors, the investment climate and advise upon request on the availability, choice or suitability of partners in joint venture projects;
  - (e) register, monitor and keep records of all enterprises in Ghana;

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- (f) register and keep records of all technology transfer agreements;
- (g) identify specific projects and prepare project profiles on investments and joint venture opportunities in Ghana and attract interested investors for participation in those projects;
- (h) bring about harmonisation in investment policy formulation through coordination of the activities of all other institutions and agencies; and
- (i) perform any other functions that are necessary for the attainment of the objects of this Act.

*Governance of the Centre*

**Board of directors of the Centre**

5. (1) The governing body of the Centre is a Board consisting of
- (a) a chairperson;
  - (b) the Deputy Ministers responsible for
    - (i) Finance and Economic Planning;
    - (ii) Trade and Industry;
    - (iii) the Interior; and
    - (iv) Foreign Affairs and Regional Integration;
  - (c) the Chief Executive Officer of the Centre; and
  - (d) five other members, at least three of whom are persons appointed from outside the Public Service and at least two of whom are women.
- (2) The chairperson and other members of the Board shall be appointed by the President in accordance with article 70.
- (3) The President shall, in making the appointments under this section, have regard to the expertise, knowledge and experience of the person in matters relating to investments and private sector development.
- (4) The Board shall provide policy guidance and give advice to ensure the proper and effective performance of the functions of the Centre.
- (5) The Board may, in the implementation of the objects of the Centre
- (a) design, review, formulate and adopt a national strategy for promoting domestic and foreign investment;

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- (b) approve the investment promotion operations and marketing plans which are proposed by the Chief Executive Officer for implementation by the Centre;
- (c) identify obstacles to investment in Ghana and make proposals and suggestions to the President on steps which should be taken to remove the obstacles and foster effective linkages between the appropriate institutions and agencies towards the removal of obstacles to investment; and
- (d) make recommendations to the President on the incentives for the promotion of investment and the eligibility criteria for the incentives and priority areas of investment.

**Tenure of Board members**

6. (1) A member of the Board shall hold office for a term of five years and is eligible for re-appointment for one term only.

(2) Subsection (1) does not apply to the Ministers and the Chief Executive Officer of the Centre.

(3) A member of the Board may at any time resign from office in writing addressed to the President.

(4) A member of the Board who is absent from three consecutive meetings of the Board without sufficient cause ceases to be a member of the Board.

(5) The President may by a letter addressed to a member revoke the appointment of that member.

(6) Where a member of the Board is, for a sufficient reason, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

(7) Where there is a vacancy

(a) under subsection (3), (4), (5) or section 8 (2), or

(b) as a result of a declaration under subsection (6), or

(c) by reason of the death of a member,

the Minister shall notify the President of the vacancy and the President shall appoint a person to fill the vacancy.

**Meetings of the Board**

7. (1) The Board shall meet at least once every three months for the dispatch of business at the times and places determined by the chairperson.

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(2) The chairperson shall at the request of not less than one-third of the membership of the Board, convene an extraordinary meeting of the Board at the place and time determined by the chairperson.

(3) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, a member of the Board elected by the members present from among their number shall preside.

(4) The quorum for a meeting of the Board is six members including the Chief Executive Officer or any person acting as the Chief Executive Officer.

(5) Matters before the Board shall be decided by a majority of the members present and in the event of equality of votes, the person presiding shall have a casting vote.

(6) The Board may co-opt a person to attend a Board meeting but that person shall not vote on any matter before the Board for decision.

(7) Except as otherwise expressly provided by this Act, the Board shall determine the procedures for its meetings.

### **Disclosure of interest**

**8.** (1) A member of the Board who has an interest in a matter for consideration by the Board shall

- (a) disclose the nature of the interest and the disclosure shall form part of the record of the consideration of the matter; and
- (b) not participate in the deliberations of the Board in respect of that matter.

(2) A member ceases to be a member of the Board if that member has an interest in a matter before the Board and

- (a) fails to disclose that interest, or
- (b) participates in the deliberations on the matter.

### **Establishment of committees**

**9.** (1) The Board may establish committees consisting of members of the Board or non-members or both to perform a function determined by the Board.

(2) Without limiting subsection (1), the Board shall have a committee to be known as the Technical Committee.

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**Technical Committee**

10. (1) The Technical Committee comprises
- (a) two representatives of the Centre including the Chief Executive Officer;
  - (b) one representative, not below the rank of Director or analogous grade, of
    - (i) the Ministry of Finance and Economic Planning;
    - (ii) the Ghana Revenue Authority;
    - (iii) the Bank of Ghana;
    - (iv) Environmental Protection Agency;
    - (v) Ghana Ports and Harbours Authority;
    - (vi) National Communications Authority;
    - (vii) Registrar-General's Department;
    - (viii) the Lands Commission;
    - (ix) the Ghana Immigration Service;
  - (c) two representatives of the private sector nominated by private sector institutions and associations; and
  - (d) one representative each of utility service providers, institutions and agencies concerned with investment that the Board may determine.
- (2) The Technical Committee shall
- (a) advise on the process and procedures to facilitate the acquisition of permits and licences and obtaining exemptions and access to utility services;
  - (b) advise on the appropriate tax regimes for the enhancement of an enabling investment environment;
  - (c) provide feedback on practical experiences and assist in the resolution of the operational challenges of investors;
  - (d) provide technical information on the investment opportunities, regulations, and policies for the purpose of attracting and retaining foreign direct investment in Ghana; and
  - (e) perform any other function or activity that the Board may determine.
- (3) A member of the Technical Committee other than the Chief Executive Officer shall hold office for a period of four years and is eligible for re-appointment but shall not be appointed for more than two terms.



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(4) The Technical Committee shall hold its meetings on the dates and at the times and places that the Chief Executive Officer may determine, but shall meet at least once every three months.

(5) The Chief Executive Officer shall preside at meetings of the Technical Committee and in the absence of the Chief Executive Officer, the designated representative of the Chief Executive Officer shall preside.

(6) The Technical Committee may co-opt any person to attend a meeting of the Committee, except that a person who is co-opted shall not have a right to vote on any matter which is before the Committee for decision.

### **Allowances**

11. Members of the Board and members of a committee of the Board shall be paid the allowances approved by the Minister in consultation with the Minister responsible for Finance.

### **Branch offices of the Centre**

12. (1) The Board may establish branch offices of the Centre in places determined by the Board.

(2) A branch office of the Centre shall perform the functions of the Centre that the Board may direct.

### **Executive oversight**

13. (1) The President has oversight responsibility for the Centre but may in writing direct a Minister to perform a function in connection with that responsibility.

(2) The Minister may give directives to the Board on matters of policy and the Board shall comply.

### *Administration, financial and miscellaneous matters*

### **Chief Executive Officer of the Centre**

14. (1) The President shall in accordance with article 195 of the Constitution appoint for the Centre, a Chief Executive Officer.

(2) The Chief Executive Officer shall be a person who has appropriate qualifications, relevant experience and knowledge of the private sector, strong business orientation and proven experience in managing and motivating multidisciplinary teams of professionals.

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(3) The Chief Executive Officer shall hold office on the terms and conditions specified in the letter of appointment.

**Functions of the Chief Executive Officer**

15. The Chief Executive Officer

- (a) is responsible for the day-to-day administration of the Centre and is answerable to the Board in the performance of the functions under this Act;
- (b) shall perform any other functions determined by the Board; and
- (c) may delegate a function to an officer but shall not be relieved from the ultimate responsibility for the performance of the delegated function.

**The Secretary and other staff of the Centre**

16. (1) The Centre shall have an officer to be designated the Secretary who shall perform

- (a) the functions of keeping accurate records of proceedings and decisions of the Board; and
- (b) other functions that the Board or the Chief Executive Officer may direct.

(2) The Centre shall have offices and staff that are necessary for the proper and effective performance of its functions.

(3) The President shall in accordance with article 195 of the Constitution appoint the officers and staff of the Centre.

(4) Other public officers may be transferred or seconded to the Centre or may otherwise give assistance to the Centre.

(5) The Board may for the efficient discharge of the functions of the Centre engage consultants and advisers that it considers necessary on terms and conditions that the Board considers necessary.

**Divisions of the Centre**

17. The Board may, on the recommendations of the Chief Executive Officer, create Divisions of the Centre that the Board considers necessary for the efficient discharge of the functions of the Centre.

**Relationship of the Centre with other public authorities**

18. Government departments, agencies and other public authorities shall co-operate with the Centre in the performance of its functions under this Act.

**Expenses and funds of the Centre**

19. (1) The funds of the Centre include

- (a) moneys approved by Parliament;
- (b) fees and charges that accrue to the Centre in the performance of its functions;
- (c) donations, grants and gifts; and
- (d) any other moneys that are approved by the Minister responsible for Finance.

(2) Moneys received by the Centre shall be paid into a bank account determined by the Board with the approval of the Controller and Accountant-General.

(3) The Board may invest as it considers fit any moneys of the Centre that are not required for immediate use in accordance with the applicable legislation.

**Accounts and audit of the Centre**

20. (1) The Centre shall keep books of account and proper records in relation to them in the form approved by the Auditor-General.

(2) The Board shall submit the accounts of the Centre to the Auditor-General for audit within six months after the end of the financial year.

(3) The Auditor-General shall not later than three months after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.

(4) The financial year of the Centre is the same as the financial year of the Government.

**Annual report**

21. (1) The Board shall submit to the President through the Minister, within two months after the receipt of the auditor's report, a report on the accounts, activities and operations of the Centre during the preceding year.

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- (2) The annual report of the Centre shall include
- (a) a copy of the audited accounts of the Centre together with the Auditor-General's report on the audited accounts and any further information that the Board considers appropriate; and
  - (b) any other information that the President may request.

(3) The President shall, through a Minister designated for the purpose, present to Parliament the report on the activities and operations of the Centre.

**Establishment of enterprises**

22. A person who intends to establish an enterprise for the purposes of this Act shall incorporate or register the enterprise in accordance with the Companies Act, 1963 (Act 179) and other laws that are relevant to the establishment of the enterprise.

**Registration of enterprises with the Centre**

23. (1) An enterprise in which foreign participation is permitted under this Act shall after its incorporation or registration and before commencement of operations be registered with the Centre.

(2) The Centre shall within five working days from the date of receipt of a completed registration form register the enterprise if the Centre is satisfied that

- (a) all the relevant documents for registration are in order;
- (b) the minimum foreign equity capital requirement has been complied with; and
- (c) the fees required for registration has been paid.

(3) An enterprise in which foreign participation is permitted under this Act shall renew its registration with the Centre every two years.

**Registration of wholly owned Ghanaian enterprises with the Centre**

24. (1) An enterprise which is wholly owned by a Ghanaian
- (a) may after being incorporated or registered be registered with the Centre; and
  - (b) shall after being registered with the Centre be entitled to the benefits and incentives set out in this Act.

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**Benefits and incentives**

25. (1) An enterprise registered by the Centre is entitled to the benefits and incentives that are applicable to an enterprise of a similar nature under the Internal Revenue Act, 2000 (Act 592), Value Added Tax Act, 1998, (Act 546) and under, Chapters 82,84,85 and 98 of the Customs Harmonised Commodity and Tariff Code Schedule to the Customs, Excise and Preventive Service Act, 1993 (P.N.D.C.L. 330) and any other relevant law.

(2) An enterprise whose plant, machinery, equipment or parts of the plant, machinery or equipment are not zero-rated under the Customs Harmonised Commodity and Tariff Code Schedule to the Customs, Excise and Preventive Service Act, 1993 (PNDCL 330) may submit an application for exemption from import duties and related charges on the plant, machinery or equipment or the parts of the plant, machinery or equipment to the Centre for onward submission to the Minister responsible for Finance.

(3) The Centre shall before submitting a request for exemption to the Minister responsible for Finance determine whether the request will facilitate changes in technology and promote the specialised use of machinery, equipment or other items necessary for the establishment and operation of the enterprise.

(4) For the purpose of promoting identified strategic or major investments, the Board may with the approval of the President and in consultation with appropriate government agencies that the Board may determine

- (a) specify priority areas of investment and their applicable benefits and incentives; and
- (b) negotiate specific incentive packages for strategic investments in addition to the incentives available to any enterprise under the tax, customs and other laws referred to in subsection (1).

(5) The Board shall publish

- (a) in the *Gazette* and on its website the criteria for determining what constitutes strategic investments and shall designate an investment that satisfies the criteria, as strategic investment; and

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- (b) the details of special incentives awarded through negotiation under this section.

*Entry, admission, and protection of investment*

**Activities reserved for Ghanaians and Ghanaian owned enterprises**

26. (1) A person who is not a citizen or an enterprise which is not wholly owned by citizens shall not invest or participate in

- (a) the sale of goods or provision of services in a market, petty trading or hawking or selling of goods in a stall at any place;
- (b) the operation of taxi or car hire service in an enterprise that has a fleet of not more than twenty-five vehicles;
- (c) the operation of a beauty salon or a barber shop; and
- (d) the printing of recharge scratch cards for the use of subscribers of mobile telecommunication services.

(2) The Minister in consultation with the Board may by legislative instrument amend the list of enterprises reserved for citizens and enterprises wholly owned by citizens.

**Enterprises eligible for foreign participation and minimum foreign capital requirement**

27. (1) A person who is not a citizen may participate in an enterprise other than an enterprise specified in section 26 if that person,

- (a) in the case of a joint enterprise with a partner who is a citizen, invests a foreign capital of not less than fifty thousand United States Dollars in cash or capital goods relevant to the investment or a combination of both by way of equity participation and the partner who is a citizen does not have less than thirty percent equity participation in the joint enterprise; or
- (b) where the enterprise is wholly owned by that person, invests a foreign capital of not less than 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.

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(2) Despite subsection (1), a trading enterprise that is principally engaged in the purchase and sale of goods shall not be wholly owned by a person who is not a citizen but shall operate by way of a joint venture with a partner who is a citizen.

(3) A partner who is a citizen in an enterprise referred to in subsection (2) shall

- (a) have not less than thirty percent equity participation in the joint enterprise; and
- (b) not transfer the equity participation to a person who is not a citizen.

(4) A person who is not a citizen but who engages in an enterprise referred to in subsection (2) shall invest in that enterprise, not less than one million United States Dollars in cash or goods relevant to the investment or a combination of both by way of equity capital.

(5) An enterprise referred to in subsection (2) shall employ at least ten skilled Ghanaians.

(6) For the purposes of this section “trading” includes the purchasing and selling of imported goods and services.

#### **Export trading and other enterprises exempted**

**28.** (1) The minimum capital requirement specified in section 27 does not apply to

- (a) portfolio investments; or
- (b) an enterprise set up solely for export trading and manufacturing.

(2) For the purpose of this section, “export trading” includes export of goods or produce that originate from Ghana.

#### *Investment guarantees*

#### **Prohibition against discrimination**

**29.** Unless specifically provided for under an applicable legislation

- (a) a foreign investor, employer or worker, shall enjoy the same rights and be subject to the same duties and obligations applicable to citizens;

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- (b) the Centre, an official agency, or any other legal representative of the Centre shall not discriminate against an investor from a particular country or give special treatment to a prospective foreign investor based on that investor's country of origin or nationality;
- (c) a foreign investor is subject to the same laws that apply to domestic enterprises, particularly in relation to
  - (i) licences or other permits that are required of enterprises for conducting specific business activities;
  - (ii) maintenance of business books and records in accordance with the recognised accounting standards;
  - (iii) insurance requirements that apply to similar enterprises; and
  - (iv) taxes required to be paid by enterprises which engage in similar activity.

**Guarantee against expropriation**

**30.** (1) Subject to the Constitution, any other relevant law and subsections (2) and (3)

- (a) an enterprise shall not be nationalised or expropriated by Government; and
- (b) a person who owns, whether wholly or in part, the capital of an enterprise shall not be compelled by law to cede that person's capital to another person.

(2) The Republic shall not acquire an enterprise to which this Act applies unless the acquisition is in the national interest 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.

(3) Compensation payable under this section shall be paid without undue delay and authorisation shall be granted for the repatriation of the compensation in convertible currency, where applicable.



**Investment guarantees, transfer of capital, profits and dividends and personal remittances**

31. (1) Subject to this section and the Foreign Exchange Act, 2006 (Act 723) and the Regulations and Notices issued under the Foreign Exchange Act, an enterprise shall, through an authorised dealer bank be guaranteed unconditional transferability in freely convertible currency of

- (a) dividends or net profits attributable to the investment made in the enterprise;
- (b) payments in respect of loan servicing where a foreign loan has been obtained;
- (c) fees and charges in respect of a technology transfer agreement registered under this Act; and
- (d) the remittance of proceeds, net of all taxes and other obligations, in the event of sale or liquidation of the enterprise or any interest attributable to the investment in the enterprise.

(2) An expatriate person employed or engaged in an enterprise may, subject to the fulfilment of all tax obligations make remittances which do not exceed the basic net salary of that person.

**Dispute resolution procedures**

32. (1) Where a dispute arises between a foreign investor and the Government in respect of an enterprise, effort shall be made through mutual discussion to reach an amicable settlement.

(2) A dispute between a foreign investor and the Government in respect of an enterprise to which this Act applies which is not amicably settled through mutual discussions within six months may be submitted at the option of the aggrieved party to arbitration as follows:

- (a) in accordance with the rules of procedure for arbitration of the United Nations Commission of International Trade Law; or
- (b) in the case of a foreign investor, within the framework of any bilateral or multilateral agreement on investment protection to which the Government and the country of

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which the investor is a national are parties; or

- (c) in accordance with any other national or international machinery for the settlement of investment dispute agreed to by the parties.

(3) Where in respect of a dispute, there is disagreement between the investor and the Government as to the method of dispute settlement to be adopted, unless there is any arbitration agreement to the contrary, the method of dispute settlement shall be mediation under the Alternative Dispute Resolution Act, 2010 (Act 798).

*Expatriate labour and employment*

**Labour and employment**

33. (1) An enterprise registered under this Act shall abide by the applicable labour legislation.

(2) Labour relations between an enterprise owned by an investor and the employees of the enterprise may be regulated by agreements made between the enterprise and the employees, but the agreements shall not establish standards lower than the mandatory requirements under the laws of Ghana.

(3) Subject to this Act and any other applicable legislation, an investor may employ

- (a) persons of any nationality to positions of management for the purpose of the conduct of investments and business activities; and
- (b) non-managerial staff of any nationality, but a citizen of similar qualification and experience shall have the first option.

**Automatic expatriate quotas**

34. (1) An enterprise which has a paid up capital of

- (a) not less than
  - (i) fifty thousand United States dollars and not more than two hundred and fifty thousand United States Dollars is entitled to an automatic expatriate quota of one person;

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- (ii) two hundred and fifty thousand United States dollars and not more than five hundred thousand United States Dollars is entitled to an automatic expatriate quota of two persons;
  - (iii) five hundred thousand United States Dollars and not more than seven hundred thousand United States Dollars is entitled to an automatic expatriate quota of three persons; and
- (b) more than seven hundred thousand United States Dollars is entitled to an automatic expatriate quota of four persons.
- (2) An enterprise that intends to employ an expatriate shall apply to the Centre for facilitation of the employment and the application shall specify the number of expatriates to be employed, in accordance with the quotas specified in subsection (1).
- (3) The application shall be decided on by the Centre on the advice of the Ghana Immigration Service in consultation with the regulator of the relevant sector.
- (4) Despite subsection (1), the Immigration Service may refuse to grant a visa to an expatriate to whom a quota relates, if the Immigration Service has sufficient reason to believe that that expatriate is not a desirable person who should be permitted to enter the country.

#### **Assistance to enterprises**

35. The Centre shall provide to an enterprise any assistance and guidance that the enterprise requires and act as a facilitator between the enterprise and relevant government departments, agencies and other public authorities.

#### **Technology Transfer Agreements**

36. (1) An enterprise may enter into a technology transfer agreement that the enterprise considers appropriate for the enterprise.
- (2) A technology transfer agreement entered into under subsection (1) shall be registered with the Centre.
- (3) The Centre shall maintain a record of technology transfer agreements.
- (4) The Centre on the receipt of a technology transfer agreement
- (a) intended for registration shall review the agreement; and
  - (b) shall on registration of the agreement, monitor and ensure compliance with the terms and conditions of the agreement.

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(5) A technology transfer agreement registered under this Act comes into force on the date of the registration.

(6) A technology transfer agreement may be renewed without the approval of the Centre and the regulator of the relevant sector but a renewed agreement is subject to registration by the Centre.

(7) A technology transfer agreement shall, in addition to this Act be governed by Regulations in force relating to that agreement.

*Compliance monitoring and appeals*

**Monitoring**

37. (1) The Centre shall monitor enterprises to which this Act applies to ensure compliance with this Act and Regulations made under this Act.

(2) The Centre in the performance of its monitoring functions may request for relevant information from an enterprise and the enterprise shall comply with the request.

(3) An enterprise shall permit an officer or designated agent of the Centre to enter its premises at a reasonable time in pursuance of the monitoring function of the Centre.

**Appeal against decisions of the Centre**

38. (1) A person dissatisfied with a decision of the Centre may appeal to the Board of the Centre against the decision.

(2) The appeal shall be made within sixty days after the appellant has been informed of the decision.

(3) The Board shall within seven days after the receipt of the appeal set up a three member committee chaired by a member of the Board to determine the appeal.

(4) The committee shall, subject to the rules of natural justice and any procedures that may be prescribed by Regulations determine its own procedure.

(5) The committee shall determine an appeal within twenty-one days after the submission of the appeal and may

- (a) affirm the decision of the Centre;
- (b) vary the decision of the Centre; or
- (c) revoke the decision of the Centre.

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*Offences and penalties*

**Offences**

39. An enterprise commits an offence if that enterprise
- (a) which is required to register with the Centre by this Act, fails to register or renew its registration with the Centre in accordance with this Act;
  - (b) engages in an activity other than that for which that enterprise has been registered under this Act;
  - (c) applies any benefit conferred by or under this Act for purposes other than that for which the benefit was conferred;
  - (d) deliberately or negligently submits false or misleading information to the Centre;
  - (e) refuses without lawful excuse to admit an officer or a designated person into the business premises of that enterprise or otherwise obstructs an officer or a designated agent of the Centre in the performance of that officer's or agent's functions;
  - (f) refuses or neglects to give any information which the Centre reasonably requests for the purposes of this Act; or
  - (g) otherwise contravenes any provision of this Act.

**Penalties**

40. (1) An enterprise which commits an offence under section 39 is liable on summary conviction to a fine of not less than two hundred penalty units and not more than five hundred penalty units and in the case of a continuing offence to an additional fine of not less than twenty five penalty units and more than fifty penalty units in respect of each day that the offence continues.

- (2) The Centre may in addition to the conviction under subsection (1), in consultation with the appropriate agency
- (a) suspend the registration of an enterprise;
  - (b) cancel the registration of an enterprise;
  - (c) order the payment or part-payment to the appropriate agency of fees, taxes, duties and other charges in respect of which benefits were granted to the enterprise;

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- (d) revoke some or all of the incentives granted to the enterprise;
- (e) advise the Bank of Ghana to suspend any remittance including transfer of capital, profits and dividends from or by that enterprise; and
- (f) take any other action that the Board considers appropriate.

**Regulations**

41. (1) The Minister in consultation with the Board may by legislative instrument make Regulations to

- (a) prescribe for matters relating to technology transfer;
- (b) amend the list of enterprises reserved for citizens and enterprises wholly owned by Ghanaians;
- (c) prescribe procedures for the grant of licences and privileges or exemptions;
- (d) prescribe the fees available in respect of registration, licensee privilege and exemptions; and
- (e) prescribe generally for the effective implementation of this Act.

(2) The Board may make rules necessary for the efficient and effective implementation of this Act and the rules may provide for

- (a) the procedure by which applications may be submitted for registration; and
- (b) the supervision, control and reporting of progress of an enterprise to which this Act applies.

(3) The Chief Executive Officer shall

- (a) give public notice of the Regulations, rules and of amendments of the Regulations and rules; and
- (b) maintain at the offices of the Centre, a complete and updated set of the Regulations and rules for inspection by an interested party.

**Interpretation**

42. In this Act, unless the context otherwise requires, “benefits” include facilities, entitlements and exemptions conferred on an enterprise to which this Act applies;

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- “Board” means the board of directors of the Centre appointed under section 5 (2);
- “capital” means cash contributions, plant, machinery, equipment, buildings, spare parts, raw materials and other business assets other than goodwill;
- “capital goods” means goods
- (a) intended for use in the production of other goods and services and not intended for final consumption; or
  - (b) which do not have multiple uses and can only be considered as inputs in the production of goods and services;
- “Centre” means the Ghana Investment Promotion Centre established in section 2 (1) of this Act;
- “Constitution” means the 1992 Constitution of the Republic of Ghana;
- “direct investment” means investment made to acquire a lasting interest in an enterprise operating in the economy of Ghana and intended to give the investor an effective control in the management of the enterprise;
- “enterprise” means an industry, project, undertaking or business or an expansion of that industry, undertaking, project or business or any part of that industry, undertaking project or business other than the exploration and extraction of petroleum and other minerals;
- “expropriation” means the compulsory acquisition of private property by Government for public use upon the payment of the appropriate compensation;
- “foreign capital” means convertible currency, plant, machinery, equipment, spare parts, raw materials and other business assets other than goodwill that enters the country without an initial disbursement of the foreign exchange of this country and that are intended for the production of goods and services related to an enterprise to which this Act applies;
- “foreign investor” means a non-citizen, natural or juridical, who makes an investment in the country pursuant to this Act;

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- “Ghanaian” means a citizen of Ghana or a company, partnership or association or body (whether corporate or unincorporated) the majority capital or financial interest of which is owned by citizens of Ghana and includes the State and a statutory corporation;
- “Government” means the Government of the Republic of Ghana;
- “indirect investment” means an act or contract by which an investor makes a contribution, whether tangible or intangible, to an enterprise in Ghana without obtaining an equity interest in the enterprise but under which the investor is entitled to returns based on profits generated by the enterprise;
- “investment” includes direct and indirect investments and portfolio investments;
- “investment priority plan” means the investment priority plan prepared and published by the Centre;
- “investor” means any person, natural or juridical, who makes an investment in the country including a foreign investor;
- “joint venture” means an investment in an enterprise between a Ghanaian company or individual and a foreign company or individual;
- “market” means a public place whether open or enclosed, established and managed by local custom, or specifically designated by the appropriate local government authority or its agents and which has selling sites in the nature of stores and stalls among others for the purpose of selling and buying;
- “Minister” means the Minister designated in writing by the President of the Republic as the Minister responsible for the Centre under section 13;
- “portfolio investment” means an investment in shares or bonds which are mandatorily convertible into shares or other securities traded on the Ghana Stock Exchange;
- “priority area” means an area of investment determined to be of national priority pursuant to section 4;



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“public service” means public service as defined in article 190 of the Constitution of the Republic of Ghana;

“strategic investment” means an investment in a priority area determined by the Board;

“technology transfer agreement” means an agreement which has a duration of not less than eighteen months and which relates to an enterprise to which this Act applies and involves

- (a) the assignment, sale or use of foreign patents, trademarks or other intellectual property rights;
- (b) the supply of foreign technical know-how or technological knowledge;
- (c) foreign technical assistance, design and engineering, consultancy or other technical services in whatever form they may be supplied; and
- (d) foreign managerial, marketing or other similar service;

“trading enterprise” means an enterprise which has its principal activity being the purchase and sale of goods, whether imported or not, and provision of services, whether the purchase and sale of goods and services are carried out in a market or any other place; and

“United States Dollars” or “US\$” means the lawful currency of the United States of America.

**Repeals and savings**

43. (1) The Ghana Investment Promotion Centre Act, 1994 (Act 478) is repealed.

(2) Despite the repeal under subsection (1), an enterprise registered under that Act shall subject to subsection (5) and section 40 (2) continue in force as if registered under this Act.

(3) An application pending before the Ghana Investment Promotion Centre established under the Ghana Investment Promotion Centre Act 1994 (Act 478) is deemed to be pending before the Centre established in section 2.

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(4) Where registration is continued in force by virtue of subsection (2), the registration shall in addition to other benefits that are applicable to the enterprise under this Act continue to enjoy the benefits applicable to that registration before the commencement of this Act.

(5) A joint venture or an enterprise which on the date of coming into force of this Act has been registered under the Ghana Investment Promotion Centre Act, 1994 (Act 478) and which intends to continue to operate shall within three years after the commencement of this Act comply with the participation by citizens and minimum capital requirements under this Act or cease operations after the expiry of the three years.

(6) An immigrant quota in existence immediately before the commencement of this Act in respect of an enterprise to which this Act applies shall continue in force until the immigrant quota expires or is renewed under this Act.

(7) A technology transfer agreement registered with the Ghana Investment Promotion Centre before the commencement of this Act is deemed to be registered with the Centre established by this Act.

**Transitional provisions**

44. (1) The assets, rights, obligations and liabilities of the Ghana Investment Promotion Centre established under the Ghana Investment Promotion Centre Act 1994 (Act 478) and in force immediately before the commencement of this Act, are transferred to the Centre.

(2) A person in the employment of the Ghana Investment Promotion Centre immediately before the commencement of this Act shall, on the coming into force of this Act be deemed to have been duly employed by the Centre established by this Act on terms and conditions which are not less in aggregate to terms and conditions attached to the post held by that person before the commencement of this Act.

Date of *Gazette* notification: 13th March, 2013.

# **Ghana Investment Promotion Centre Bill**

## MEMORANDUM

The object of the Bill is to revise the law relating to investment promotion and to establish the Ghana Investment Promotion Centre (GIPC) as the government agency responsible for the encouragement and promotion of investments and for creating a congenial environment for investments in Ghana.

The current Centre which is responsible for investment promotion is the Ghana Investment Promotion Centre, established under the Ghana Investment Promotion Centre Act, 1994 (Act 478), to among other functions, initiate and support measures that will enhance the investment climate for both Ghanaian and non-Ghanaian companies and to promote investment in and outside the Republic through effective incentives and marketing and other strategies.

Act 478 reserved certain enterprises for Ghanaians. These include the operation of beauty salons and barber shops, all aspects of pool betting business and lotteries except football pools, petty trading, hawking or selling from a kiosk and operation of taxi service or car hire service unless the operator had a fleet of a minimum of ten new cars. These provisions are a carry-over from the Investment Code, 1985 (PNDCL 116) as amended. This was based on a need to empower domestic small scale businesses and entrepreneurs to enable them contribute to poverty alleviation. This justification is still relevant today.

To encourage joint ventures between foreign investors and small and medium scale domestic entrepreneurs who may require useful but expensive technologies which they may not be in a position to afford, the minimum foreign capital requirement for joint ventures was reduced from \$60,000 in PNDCL 116 to \$10,000. For commercial or trading activities involving purchasing and selling of goods, the minimum requirement was pegged at \$300,000 and the minimum capital requirement for wholly foreign owned enterprises reduced from \$200,000 to \$50,000. The rationale for the reduction at the time was to encourage medium scale foreign enterprises as well to invest in the economy. Subsequent developments have overtaken this rationale.

## **Ghana Investment Promotion Centre Bill**

Under Act 478, enterprises set up solely for export trading are exempted from the minimum capital requirement. The reason for this exemption was to encourage the setting up of enterprises which have marketing outlets and expertise in the marketing of products originating from the country. This provision is therefore retained in the new Bill.

Incentives and benefits provided under the Internal Revenue Act, 2000 (Act 592), Value Added Tax Act, 1998 (Act 546) and under chapters 82, 84, 85 and 98 of the Customs Harmonised Commodity And Tariff Code Schedule to the Customs Excise and Preventive Services Act, 1993 (PNDCCL 330) and other relevant laws were extended to enterprises with foreign participation which were registered under the Act.

Other benefits under Act 478 were guarantees against expropriation, dispute settlement procedures, immigrant quotas, incentives for special investments and transferability of earnings.

After being in operation for one and half decades, Act 478 has been overtaken by events. The economic and investment climate which existed when it was enacted has undergone major changes leaving the Act behind. The recent developments have also highlighted shortcomings in the Act as well as provided a new policy focus. There is now an urgent need to provide specialised incentives to attract and retain strategic investors to make Ghana a competitive investment destination and to provide Ghanaians with opportunities to take advantage of the improved economic situation prevailing in the country.

Manufacturing have been recognised as requiring special incentives and so the Bill has taken care of this areas. Act 478 was not explicit on the registration of Ghanaian enterprises although in practice, such enterprises seeking to enjoy applicable benefits and incentives under the Act sought to be registered by the Centre.

The Bill also introduces a provision which requires Ghanaian partners to have not less than 30% equity participation in a joint enterprise and prohibits the transfer of that equity to a non-Ghanaian. This is to avoid the circumvention of the higher foreign capital requirements.

## **Ghana Investment Promotion Centre Bill**

The list of enterprises reserved for Ghanaians has been expanded and the minimum number of cars required by a foreigner wanting to engage in the operation of taxi or car hire service is now twenty-five.

In line with the policy of empowering Ghanaian-owned enterprises, the Bill expressly provides for wholly Ghanaian owned enterprises to register with the Centre after their incorporation or registration.

Significantly, the Bill embraces all enterprises including mining and petroleum enterprises which were hitherto not covered by Act 478. This move will ensure increased efficiency in the co-ordination of investments, improved investment promotion strategies and the comprehensive dissemination of information on investment in Ghana.

*Clause 1* provides for the scope of application of the Bill. *Clause 2* establishes the Centre as a body corporate with all the incidents of incorporation and provides for the acquisition of property by the State under the State Lands Act, 1961 (Act 125), for the benefit of the Centre.

*Clause 3* provides for the object of the Centre which is to create an enhanced environment for investment and the development of the Ghanaian economy through investment, encourage, promote and facilitate investment in the country. The functions of the Centre are enumerated in *clause 4*.

*Clause 5* to 13 deals with the governance of the Centre. The Board of Directors and their tenure of office, meetings of the Board and disclosure of interest are dealt with under *clauses 5, 6, 7* and 8. The Board under the Bill does not provide for the position of vice-chairman but introduces four slots for the Deputy Ministers responsible for Finance and Economic Planning, Trade and Industry, Interior and Foreign Affairs and Regional Integration. Also, there is a requirement for gender balance in the composition of the board. The Bill sets out the functions of the Board which include the provision of policy guidelines and advice to ensure the proper and effective performance of the functions of the Centre.

*Clause 9* grants the Board power to establish committees to perform functions determined by the Board. A technical committee is established under *clause 10* with stated functions. The standard provision on allowances is *clause 11*.

## **Ghana Investment Promotion Centre Bill**

The Centre is enjoined by *clause 12* to establish branch offices in places determined by the Board to perform functions that the Board may direct.

Under *clause 13*, the President has oversight responsibility for the Centre but may delegate that power to a designated Minister in writing.

Administration, financial and miscellaneous matters are dealt with in *clause 14* to *25*. The appointment and responsibilities of the Chief Executive Officer, Secretary and other staff are provided for in *clauses 14*, *15* and *16*. The Board is empowered under *clause 17* to create divisions of the Centre as the Board considers necessary for the efficient discharge of the functions of the Centre. Government departments, agencies and other public authorities are enjoined under *clause 18* to cooperate with the Centre in the performance of its functions.

*Clause 19* outlines the sources of funds of the Centre. The Board may also invest as it considers fit, moneys that are not required for immediate use in accordance with the applicable legislation. The standard provisions on account and audit and annual and other reports have been provided for in *clause 20*. *Clause 21* enjoins the Centre to submit to the President through the Minister, a report on the accounts, activities and operations of the Centre within two months after receipt of the auditor's report.

*Clause 22* provides for the incorporation or registration of enterprises for the purposes of the Bill while *clause 23* mandates enterprises with foreign participation to register with the Centre before commencement of operations. Enterprises which are wholly owned by Ghanaians can now register with the Centre and enjoy the benefits and incentives set out in the Bill under *clause 24*.

*Clause 25* provides for the application of the benefits and incentives available to enterprises of a similar nature under the Internal Revenue Act, 2000 (Act 592), Value Added Tax Act, 1998 (Act 546) and under chapters 82, 84, 85 and 98 of the Customs Harmonised Commodity And Tariff Code Schedule to the Customs Excise and Preventive Services Act, 1993 (PNDCL 330) and any other relevant law to enterprises registered by the Centre.

*Clause 26* reserves certain activities for Ghanaians. The list in Act 478 has been augmented by the addition of the printing of recharge cards for the use of subscribers of mobile telecommunication services.

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*Clause 27* spells out the minimum foreign capital requirement for foreigners wanting to operate a business in Ghana as well as for joint enterprises with Ghanaians. Export trading and portfolio investments are exempted from the minimum capital requirement under *clause 28*.

*Clause 29* to *32* relate to investment guarantees. *Clause 29* prohibits discrimination between a foreign investor and a Ghanaian in the operation of a business unless specifically provided for by legislation and *clause 30* protects the assets of a foreign investor against expropriation except where the acquisition is done in the national interest and in accordance with law. Other guarantees such as transfer of capital, profits and dividends and personal remittances are dealt with under *clause 31*. The standard provision on dispute resolution can be found in *clause 32*.

Labour legislation is made applicable to enterprises registered under the Bill by virtue of *clause 33* and *clause 34* fixes automatic expatriate quotas for enterprises registered under the Bill. The Centre is required to provide assistance and guidance to enterprises and act as a facilitator between the enterprises and relevant government departments, agencies and other public authorities under *clause 35*.

*Clause 36* deals with technology transfer agreements and *clause 37* mandates the Centre to monitor enterprises to which the Bill applies to ensure compliance with the Bill.

The provisions on appeals, offences and penalties are provided for under *clause 38* to *40*. The power to make Regulations by legislative instrument is dealt with in *clause 41*. *Clause 42* is on interpretation and *clauses 43* and *44* deal with repeals and savings and transitional provisions respectively.

HARUNA IDDRISU (MP)  
*Minister responsible for Trade and Industry*

Date: 12th March, 2013.