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Volume 7 | Number 2

Article 1

3-1-1984

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Recommended Citation

Michael Robert Tyler, *Legal Aspects of Investing in Ghana*, 7 Loy. L.A. Int'l & Comp. L. Rev. 165 (1984).
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LOYOLA OF LOS ANGELES
INTERNATIONAL AND COMPARATIVE
LAW JOURNAL

VOLUME 7

1984

NUMBER 2

Legal Aspects of Investing in Ghana

MICHAEL ROBERT TYLER*

I. INTRODUCTION

Multinational corporations occasionally consider using Ghana as a base for their West African operations. Ghana certainly warrants such consideration. It is blessed with a wealth of natural resources, a comparatively skilled work force, and a location adjacent to major markets in Africa and Europe. Yet, Ghana is also cursed with extreme economic and political instability. From the standpoint of the foreign investor, this instability may well outweigh the positive characteristics of the country.

This Article sets forth a broad overview of the legal aspects of investing in Ghana. It begins by alerting the reader to the political and economic risks associated with the making of such an investment. It then goes on to discuss, inter alia, the permissible forms of business enterprise in Ghana, and those Ghanaian domestic laws which more directly affect foreign investors.

II. GHANA'S TURBULENT ECONOMIC AND POLITICAL HISTORY

A. *Recent Economic History*

1. Economic trends — independence to 1981

Ghana, formerly known as the Gold Coast, was under British

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control from 1821 to 1957.¹ In 1957, when the British granted the country independence,² Ghana's economic position looked hopeful: the country had a wealth of natural resources and large foreign exchange reserves.³ Since independence, however, Ghana has experienced economic decline.

Ghana's first administration, the Nkrumah Government, spent most of Ghana's reserves on "poorly conceived and badly executed agricultural and industrial schemes."⁴ At the same time, the world price of cocoa, Ghana's major source of export revenues, fell. Consequently, Ghana's total export revenues declined dramatically.⁵

Succeeding administrations have continued the errors of the first. Heavy government borrowing has led to extreme long-term inflation;⁶ corruption exists at the highest levels of government;⁷ and the Ghanaian standard of living has been on the decline. These problems have obviously contributed to Ghana's political instability.⁸

The United States Department of State has summarized the economic situation in Ghana since the mid-1970's as follows:

Ghana's economy has deteriorated seriously since the mid-1970's. There is declining production of Ghana's major foreign exchange earners, e.g. cocoa, gold, diamonds and timber; factories are operating at an average of 10-15 percent of capacity; a 1981 inflation rate of over 100% has dropped slightly to a high double-digit inflation; a large government budget deficit of over \$3 billion (including parastatals) exists despite efforts to control expenditures; there are deteriorating roads, railroads and communications; a large oil im-

1. BUREAU OF PUBLIC AFFAIRS, U.S. DEP'T OF STATE, Pub. no. 8089, Background Notes-Ghana 3 (Sept. 1981) [hereinafter cited as Background Notes].

2. Kludze, *Ghana*, in 6 CONSTITUTIONS OF COUNTRIES OF THE WORLD 6 (A. Blaustein & G. Flanz eds. 1984).

3. Background Notes, *supra* note 1, at 6.

4. *Id.*

5. *Id.*

6. *Id.* See also *Ghana-Debt arrears increase*, AFR. ECON. DIG. Jan. 14, 1983, at 10; *Ghana-Cedi devalued again*, AFR. ECON. DIG., Sept. 14, 1984, at 14.

7. Background Notes, *supra* note 1, at 7.

8. See Rothchild & Gyimah-Boadi, *Ghana's Return to Civilian Rule*, 28 AFR. TODAY 4 (1981). Regarding instability, one commentator has noted that "[w]hat makes Ghana's case most acute is partly that the boom years [the late 1950's] laid down a pattern of structural expenditure, national needs and a rigid mode of consumption that have become less flexible to absorb . . . [economic] shocks . . ." THE WEEKLY REV. Jan. 8, 1982, at 13, 14. See also U.S. DEP'T OF COMMERCE, FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE UNITED STATES (Ghana) 4 (1982) [hereinafter cited as ECONOMIC TRENDS-GHANA] ("What is more certain is the continuing deterioration in the standard of living of the average Ghanaian").

port bill eats up much of the foreign exchange earnings, while a grossly overvalued currency and a severe shortage of foreign exchange pose formidable difficulties for the Government. Some measures have been taken to rationalize or control Ghana's use of its scarce foreign exchange reserves; however, no overall economic policy has been announced or implemented.⁹

In addition, the Department of Commerce has stated:

[Ghana's] industrial sector is grinding to a halt because practically no import licenses have been issued during the first six months of this [1982] year. Goods in urban markets are in very short supply because of government attempts to enforce price controls and the consequent reluctance of farmers and traders to sell foodstuffs at a loss. The grossly overvalued cedi still results in illegal economic activities.¹⁰

That approximately one million Ghanaians emigrated to Nigeria to obtain jobs in the 1970's is yet another indication of recent poor economic conditions in Ghana. Today, those emigrants are no longer welcome in Nigeria,¹¹ and the already strained Ghanaian economy must somehow absorb these citizens.¹²

2. Some hopes for the future

Three factors might lead to better economic success for Ghana in the future. First, world oil prices have steadily declined in recent years. In 1981, Ghana's oil import bill amounted to nearly \$350 million,¹³ and contributed to a foreign exchange crisis which adversely affected Ghanaian industry. Today's lower oil prices can only help ease this crisis.¹⁴ Second, world prices for cocoa, Ghana's major ex-

9. Letter from T. Smith, American Embassy, Accra, Ghana, to U.S. Dep't of State, Washington, D.C. (Oct. 14, 1982) at 1 (available from U.S. Dep't of Commerce, Office of Country Marketing (Africa), Washington, D.C.) [hereinafter cited as The Smith Letter-I].

10. ECONOMIC TRENDS-GHANA, *supra* note 8, at 3. Regarding the "grossly overvalued cedi," see *The Burden of the Cedi*, WEST AFR., Feb. 14, 1983, at 395. See also *Ghana-Cedi devalued again*, *supra* note 6.

11. For a discussion of the expulsion of Ghanaian refugees from Nigeria, see Bentsi-Enchill, *Exodus from Nigeria: The return to Ghana*, WEST AFR., Feb. 7, 1983, at 380; and Acheampong, *A Birds Eye View*, WEST AFR., Jan. 24, 1983, at 213.

12. See Bentsi-Enchill, *Exodus from Nigeria: Ghana absorbs its own*, WEST AFR., Feb. 14, 1983, at 382, 383; *Ghana*, AFR. ECON. DIG., Aug. 17, 1984, at 12 (noting that the Ghanaian population has grown 45.6% since 1970).

13. ECONOMIC TRENDS-GHANA, *supra* note 8, at 3.

14. See *supra* text accompanying note 10. Beyond this, Ghana may be able to develop its own oil reserves in the future. See Rotabi, *Oil Plans Arose Companies' Interest*, AFR. ECON. DIG., June 29, 1984, at 10.

port, have been on the rise.¹⁵ This will help ease Ghana's trade deficit. Finally, in 1983, the Ghanaian government reached an agreement with the World Bank and the International Monetary Fund (IMF) to set up a four-year economic recovery program.¹⁶ The program features a \$300 million standby facility and a new multiple exchange rate for the cedi.¹⁷

B. Recent Political History

1. Independence to 1981

In addition to its economic problems, Ghana has been politically unstable in the post-independence period. Ghana's first regime, the Nkrumah government, was both inept and tyrannical. The volatile regime is best remembered for its Preventative Detention Act, a law which allowed political prisoners to be detained without trial for up to five years.¹⁸ The regime was overthrown by military coup in 1966.¹⁹

From 1966 to 1969, the government was run by the military.²⁰ Then, in 1969, a short-lived civilian government came to power. Mounting economic pressures led to another military coup in 1972.²¹ From 1972 to 1979, a succession of military leaders ruled the country.²² This period was characterized by continued economic problems and extreme corruption.²³

In 1979, yet another military coup overthrew the military government then in power. This coup was led by junior officers, most notably Flight Lt. Jerry Rawlings.²⁴ Three months later, a new civilian government was elected under the leadership of President Hilla Limmann.²⁵ This regime lasted only another two years when, on New Year's Day, 1981, another coup took place. This one was also led by Jerry Rawlings.²⁶ The Rawlings government continues in power to this day.

15. See *Cocoa keeps climbing*, WEST AFR., Feb. 7, 1983, at 358; *Cocoa's five-year peak*, WEST AFR., May 28, 1984, at 1132.

16. *Ghana-Agreement reached with IMF*, AFR. ECON. DIG., Feb. 25, 1983, at 13.

17. *Id.*

18. Background Notes, *supra* note 1, at 3.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* See also Rothchild & Gyimah-Boadi, *supra* note 8, at 4-6.

24. Background Notes, *supra* note 1, at 4.

25. *Id.*

26. THE WEEKLY REV., *supra* note 8. According to one commentator, "[w]ith the coup,

2. The Rawlings Government

a. radical populism

The Rawlings government is highly ideological, and its appeal is populist.²⁷ It is anti-foreign and anti-business.²⁸ Rawlings considers himself a revolutionary:

[N]otre objectif est la restructuration totale, la transformation radicale des relations sociales, économiques et politiques dans la société ghanéenne. J'insiste sur le fait que cet objectif embrasse tous les aspects de la vie de la nation Notre objectif, c'est la restauration de la dignité humaine, du respect de l'homme africain.²⁹

b. price controls

One way in which Rawlings' "populist ideology" has manifested itself is in the imposition of price controls. According to the government, it has controlled prices in a "relentless battle against exploitation."³⁰ The Commerce Department has described the price control situation:

[a]s part of [the Rawlings] philosophy of bringing more economic benefits to the "common man," the Rawlings Government has attempted to force down the prices of goods, transport fares, and rents. Price controls have been more vigorously enforced. Market women, a powerful force in Ghanaian society, have been punished for selling at "kalabule" (black market) prices, and several markets have been burned down by angry soldiers and workers. Nevertheless, prices of essential goods remain high because the "law" of supply and demand cannot be repealed.³¹

a disquieting pattern, a sort of junta-civilian-junta syndrome, appears to have become a feature of Ghana's political process." *Id.*

27. See *Review of 1982: Ghana, Shaping a Revolution*, WEST AFR., Jan. 3, 1982, at 6.

28. Jerry Rawlings: "Le sort des masses africaines se joue ici comme dans d'autres Etats du continent." AFRIQUE-ASIE, July 5, 1982, at 27 [hereinafter cited as AFRIQUE-ASIE] (*Translation*: "Our goal is to completely and radically change social, economic and political relations in Ghanaian society. I insist on the fact that this goal includes all aspects of national life; our goal is to restore human dignity, and respect for the African people.").

29. *Id.* at 26-27 (statement of Jerry Rawlings). Recently, however, it appears that Rawlings has been softening his revolutionary rhetoric in order to obtain a more pragmatic image. *Ghana-Back on the Road?*, WEST AFR., June 11, 1984, at 1213, 1214. The United States Ambassador to Ghana has taken note of this, and has praised Rawlings for his pragmatism. *Ghana-June 4 observed*, WEST AFR., June 11, 1984, at 1212.

30. 'Relentless Battle Against Exploitation,' WEST AFR., Feb. 7, 1983, at 372.

31. ECONOMIC TRENDS-GHANA, *supra* note 8, at 7. See also *Market Measures*, WEST

c. *movement for state control of the economy*

Another manifestation of the Rawlings populist ideology is in the movement for state control of the economy. Rawlings believes that the populace must be protected from economic exploitation by means of government controls.³² In this regard, the Rawlings government has proposed, inter alia, that "all imports and exports . . . be placed under the control of a state monopoly," and "a national network of co-operative retail outlets be established."³³

C. *Instability*

Another characteristic of the current regime is its instability. Rawlings' cabinet is continually being reshuffled.³⁴ In addition, several coups have been attempted, the most notable one of which was in November of 1982.³⁵ It was the culmination of a furor over the government's alleged connection to the murder of three high court judges. Those judges had released some citizens whom the government had arrested and detained.³⁶

D. *Current Attitudes About Foreign Investment*

At heart, Rawlings' government appears to be fundamentally hostile toward foreign investors. There have been numerous "attacks by government officials and the Ghanaian media on multinational corporations including those operating in Ghana."³⁷

For example, the Rawlings government's attitude towards foreign investment was exemplified in its dispute with Valco Aluminum Company (Valco) over the price Valco was to be charged for electricity for its Ghanaian aluminum plant. In 1967, the Ghanaian govern-

AFR., Jan. 24, 1983, at 235. Wages have also been controlled. *Ghana-Wage Guidelines*, WEST AFR., June 25, 1984, at 1333.

32. AFRIQUE-ASIE, *supra* note 28, at 28.

33. *Ghana-Economic controls will help recovery program*, AFR. ECON. DIG., Jan. 7, 1983, at 11.

34. *Review-Ghana*, Q. ECON. REV. OF GHANA, SIERRA LEONE, GAMIA, LIBERIA, 4th Quarter 1982, at 8.

35. *Ghana-State of confusion*, NEW AFR., Jan. 1983, at 41. *See also Review-Ghana*, *supra* note 34.

36. *See Ghana-Murder Most Foul*, THE ECONOMIST, July 10, 1982, at 36. *See also Ghana-Kwei and four others to stand trial*, WEST AFR., Jan. 3, 1983, at 54; *Ghana-"I obeyed Kwei's Orders"-Amedeka*, WEST AFR., Jan. 31, 1983, at 294.

37. ECONOMIC TRENDS-GHANA, *supra* note 8, at 3. *But see The Smith Letter-I*, *supra* note 9, at 2; *Ghana-Back on the Road?*, *supra* note 29, at 1213; *Ghana-June 4 observed*, *supra* note 29, at 1213 (concluding the government has mixed emotions regarding foreign investment).

ment offered Valco, an American company, a thirty-year contract for low cost power as an incentive to bring the plant to Ghana.³⁸ The Rawlings government, however, demanded a renegotiation of the contract; the government demanded that Valco pay Ghana rates comparable to those charged for electricity in Europe, the United States, and Japan,³⁹ which were higher than the cost under the original contract. This demand was only made of Valco. Other users of Ghanaian electricity, such as the countries of Togo and Benin, could continue paying the same rates—rates which are considerably lower than even those charged Valco under the thirty-year agreement.⁴⁰

E. The Threat of Expropriation

Considering the present government's attitude about foreign investment, expropriation cannot be ruled out. The Investment Code, 1981, however, gives assurances to the contrary.⁴¹ It allegedly "guarantees": (1) against expropriation;⁴² (2) against the forced disposal of assets;⁴³ and (3) the remittability of capital from sales or liquidations of businesses.⁴⁴ The promises, however, appear to be empty; remittability has been uncertain, despite the presence of the Code.⁴⁵

"Creeping expropriation" is also a threat. The Ghanaian investment decree of 1975, for example, forced many foreign-owned firms "to sell some of their shares and become joint ventures. In most cases, foreign exchange to remit the proceeds of these sales has not yet [as of 1982] been made available by the Bank of Ghana."⁴⁶ There is no guarantee that this will not happen again.

1. Compensation

In its Investment Code, 1981, the Ghanaian government promised

38. See *Ghana-Valco contract-renegotiation demanded*, AFR. ECON. DIG., Jan. 14, 1983, at 10.

39. See *Bentsi-Enchill, Valco's Role in Ghana*, WEST AFR., Jan. 24, 1983, at 197 (stating the government's position that Valco is exploiting Ghana). For the company's view, see *The Valco View*, WEST AFR., Jan. 24, 1983, at 194.

40. *Ghana-Valco contract-renegotiation demanded*, *supra* note 38, at 10.

41. Investment Code, 1981 (Act 437), Part IV, § 14(1)(a), (b) (available from U.S. Dep't of Commerce).

42. *Id.* § 14(1)(a).

43. *Id.* § 14(1)(b).

44. *Id.* § 16(i)-(iii).

45. *Ghana-Efforts to Right Economy Meet With Limited Success*, BUS. AM., July 31, 1981, at 24-25.

46. The Smith Letter-I, *supra* note 9, at 2.

to pay "adequate, fair and prompt compensation or ensure that adequate, fair and prompt compensation is paid, as the case may be, for the take-over or cession."⁴⁷ Considering the radical nature of the Rawlings regime, it may unilaterally decide what is "fair" under the so-called "Mexican" standard.⁴⁸ In light of the current economic situation, it is not clear that the government could pay for a take-over even if it so desired.

2. The Overseas Private Investment Corporation

The Overseas Private Investment Corporation (OPIC) will insure investments in Ghana against losses due to expropriations, war, insurrection, and revolution.⁴⁹ It may also offer loan guarantees.⁵⁰ *OPIC, however, no longer offers inconvertibility insurance.*⁵¹ Because inconvertibility has been a major problem in Ghana, an investor cannot be adequately insured against risks.

III. ENTERING THE MARKET: THE INVESTMENT CODE, 1981

The basic law governing foreign investment in Ghana is the Investment Code, 1981.⁵² The Code was promulgated by the Limmann government. It represented "a genuine attempt to attract investment, particularly into priority areas such as mining and agriculture."⁵³ The law, however, "has never been fully implemented and is still under review."⁵⁴ In fact, the law soon may be either amended or repealed⁵⁵ because the Rawlings government has been willing to discard many laws promulgated under previous administrations.⁵⁶ A foreign

47. Investment Code, 1981, Part IV, § 14(2).

48. Mexico's position on taking is that a foreign investor will not be given any more rights or privileges than any citizen of the taking state; that the taking state, if required, decides whether there is a sufficient public purpose to justify the taking; and that "compensation . . . to an investor must be determined in light of all the circumstances surrounding the investment, including the economic and political priorities present in the taking state." D. WILSON, *INTERNATIONAL BUSINESS TRANSACTIONS IN A NUTSHELL* 300-01 (2d ed. 1984).

49. *Id.* at 269. See also The Smith Letter-I, *supra* note 9, at 3.

50. The Smith Letter-I, *supra* note 9, at 3.

51. *Id.*

52. Investment Code, 1981 (Act 437).

53. Letter from T. Smith, American Embassy, Accra, Ghana, to U.S. Dep't of State, Washington, D.C. (Oct. 5, 1981) (available from U.S. Dep't of Commerce, Office of Country Marketing, Washington, D.C.) [hereinafter cited as The Smith Letter-II].

54. The Smith Letter-I, *supra* note 9, at 2.

55. *Ghana-Investment Code "Not Balanced,"* WEST AFR., May 21, 1984, at 1091; *Investment Seminar*, WEST AFR., May 21, 1984, at 1091.

56. See *New Law on State Policy Principles*, WEST AFR., Feb. 14, 1983, at 446.

investor should not, therefore, rely upon the Investment Code, 1981, remaining in force, at least in its current state.

A. The Ghana Investment Centre

The Code created the Ghana Investment Centre which functions "as a 'one-stop shopping center' for the potential investor." The Centre's responsibilities include:

1. Promoting investments;
2. Determining and approving expatriate quotas for enterprises that will qualify investments or investors for benefits;
3. Registering invested foreign capital and technology transfer contracts;
4. Serving as a liaison between investors and Ghanaian government ministers and departments.⁵⁷

The investor must have an investment approved by the Centre before beginning operations.⁵⁸ The criteria for approval are contributions toward:

- (a) the development of the productive sectors of the national economy through the efficient utilisation of its resources and economic potential;
- (b) the full and efficient utilisation and expansion of the productive capacity of existing enterprises;
- (c) the efficient saving on imports, the increase of exports and the creation and improvement of services which will assist in strengthening the balance of payments of position of Ghana;
- (d) the encouragement of a fair country-wide distribution of investments bearing in mind the need to develop the rural areas, and to avoid undue concentration of investments in the urban areas;
- (e) a high level of employment;
- (f) the importation at reasonable cost, and transfer of technology and technical skills and absorption thereof by persons who are citizens of Ghana.⁵⁹

B. Approval Procedures

Part five of the Code details the Centre's approval procedures. In order to obtain approval, the following information must be furnished to the Centre:

57. U.S. DEP'T OF COMMERCE, *MARKETING IN GHANA* 6 (1981) [hereinafter cited as *MARKETING IN GHANA*].

58. Investment Code, 1981, Part II, § 10(3) & (4), Part V, § 23(1).

59. *Id.* Part II, § 11(1)(a)-(f).

- (a) the industry to be established and the product to be produced;
- (b) the investment and financial plan showing the amount of investment in external and Ghana currencies;
- (c) a production scheme indicating the annual volume and value of production;
- (d) the day on or before which it is expected to make the services available or to commence production in commercial quantities of the product specified;
- (e) the locality in which it is proposed to carry on the industry;
- (f) the effects which the activities to be carried on by or in relation to the enterprise are likely to have on the environment (including natural resources) and the measures which the investor proposes to undertake for combating any adverse effects;
- (g) a services scheme, indicating the services intended to be created or to be rendered;
- (h) an import and export scheme indicating the anticipated volume of imports and exports;
- (i) inputs originating in Ghana indicating the anticipated volume of raw materials to be used;
- (j) an employment scheme showing a programme of training for Ghanaians to acquire the requisite skills in the particular enterprise;
- (k) the nature of investment activity for which the applicant claims to qualify for benefit;
- (l) such other information as the Centre may from time to time determine or as may be prescribed by regulations made under section 41 of this Code.⁶⁰

The Code also provides that the Centre must approve or disapprove the investment within three months of being furnished with the above information.⁶¹

C. *Enterprises Reserved for Ghanaians*

Part three of the Code delineates the areas of the economy where foreign investment is precluded. These areas include: (1) service industries such as advertising, travel, real estate, and public relations agencies; and (2) industries manufacturing foam materials, cement blocks, garments, and carrying accessories (suitcases, briefcases, etc.).⁶²

60. *Id.* Part V, § 23(2)(a)-(1).

61. *Id.* § 23(5).

62. *Id.* § 12(1). *See id.* at First Schedule, Parts A & B.

D. Enterprises Part of Whose Capital is Required to be Owned by Ghanaians

The Code requires some enterprises to be at least partly owned by Ghanaians. These enterprises are listed in the "Second Schedule" to the Code. An example of such an enterprise is one which "manufacture[s] metal products."⁶³

The percentage ownership by Ghanaians in enterprises listed under the Second Schedule is negotiable. Although a foreign investor, therefore, may be able to keep equity control, all percentages must be approved by the Investment Centre.⁶⁴

E. Transfer of Technology

While the Code requires all contracts involving the transfer of technology to be approved by the Investment Centre,⁶⁵ it fails to set out any specific criteria for approval of such contracts. One can only hope that the criteria for approval are the same as for foreign investments in general.⁶⁶

F. Incentives

If a foreign investment is approved by the Centre, the investor will be entitled to the following benefits:

1. Complete exemption from the payment of customs duties on machinery, equipment and accessories imported specially and exclusively for the establishment of the approved enterprise for the first five years;
2. Complete exemption from the payment of customs duties on spare parts and other imports other than raw materials, imported specially and exclusively for the approved enterprise for the first three years after the establishment of the enterprise;
3. Guaranteed manufacturing or establishment license;
4. Guaranteed immigration quota for necessary expatriate personnel;
5. Exemption from selective alien employment tax . . . ; and
6. Guaranteed personal remittance quota for expatriate personnel and exemption of such expatriate personnel in respect of any external currency transferred in pursuance of such quota from any tax imposed by any enactment in respect of the transfer of external

63. *Id.* at Second Schedule, Part B, 3 Industrial Enterprises (xix).

64. *Id.* § 3.

65. *Id.* Part VI, § 29(2)(a).

66. *See supra* text accompanying note 60.

currency out of Ghana.⁶⁷

Such a company may even be entitled to other "special" benefits:⁶⁸ (1) a complete exemption from company income taxes for up to five years (provided that no dividends are declared);⁶⁹ and (2) reductions in income taxes and customs duties for even longer than the above-mentioned five-year period.⁷⁰

IV. FORMS OF BUSINESS ORGANIZATION

Under Ghanaian law, a foreign operation "may take the form of an unincorporated business, such as a sole proprietorship or partnership, or an incorporated partnership or company (corporation)."⁷¹ A licensing option is also available in Ghana.

A. Characteristics/Formation: Unincorporated Businesses

1. Sole proprietorship

The sole proprietorship form of organization is available in Ghana for foreign investors.⁷² The only formality to the establishment of such an operation, other than those formalities which are imposed upon all investors under the Investment Code, 1981,⁷³ is registration of the business name.⁷⁴

2. Partnerships

In Ghana, foreign investors may also operate as partnerships,⁷⁵ which can be either incorporated⁷⁶ or unincorporated.⁷⁷ There are few procedural formalities essential to the establishment of a foreign unincorporated partnership, other than those embodied in the Invest-

67. Investment Code, Third Schedule, Part II, Subpart A.

68. "Special" benefits are granted to certain manufacturing enterprises, export-oriented companies, and companies which locate outside of the Accra area. *Id.* Part I, §§ 3, 4, 7.

69. *Id.* Third Schedule, Part II, Subpart B, § 3(a).

70. *Id.* § 3(b).

71. MARKETING IN GHANA, *supra* note 57, at 8.

72. *Id.*

73. See *supra* text accompanying notes 52-61.

74. See Registration of Business Names Act § 125 (1961). The Act requires registration only if the business name is different from the true name of the proprietor.

75. See *Levandowsky v. Attorney General*, [1971] 1 G.L.R. 38, 40. See also MARKETING IN GHANA, *supra* note 57.

76. See Incorporated Private Partnerships Act of 1962 (Act 152), § 4; *Levandowsky*, [1971] 1 G.L.R. at 40.

77. MARKETING IN GHANA, *supra* note 57, at 8.

ment Code, 1981, and the Registration of Business Names Act.⁷⁸

B. Characteristics/Formation: Incorporated Businesses

1. Partnerships

When a partnership is incorporated, incorporation "confers upon the partnership a limited corporate status but not limited liability."⁷⁹ The main benefit associated with incorporation is that the death or retirement of a partner does not dissolve the partnership.⁸⁰ Rather, the surviving partner has "the option of selecting a replacement partner or making such other disposition as provided by law."⁸¹

Incorporated partnerships can have a maximum of twenty partners.⁸² They *must* be registered with the government before beginning operations.⁸³ Failure to register may subject the parties to a fine of approximately twenty-five dollars per day,⁸⁴ and may deprive them of their capacity to sue.⁸⁵ Foreign participation in partnerships is also subject to review under the Investment Code, 1981.⁸⁶

2. Corporations

Three types of corporations are recognized under Ghanaian law:

- (1) a company whose members' liability is limited to the amount, if any, unpaid on the shares respectively held by them;
- (2) a company whose members' liability is limited to the guarantees assumed by the members in the event of dissolution;
- (3) a company which has no limit to the liability of its members.⁸⁷

Most foreign investors choose to operate in the first form listed above, the limited liability form.⁸⁸ The requirements of such a company are:

78. See *supra* text accompanying notes 52-61, 74.

79. MARKETING IN GHANA, *supra* note 57, at 8. See also Incorporated Private Partnership Act, § 1.

80. MARKETING IN GHANA, *supra* note 57, at 8.

81. *Id.*

82. *Id.*

83. See *In re Sasu-Twum*, [1975] 1 G.L.R. 28, 30 (citing Partnerships Act of 1962, § 4(1)). Corporations are registered with the "Registrar of Corporations." See TRADING CONDITIONS ABROAD-GHANA ¶ 3.10, at 7 (1978) [hereinafter cited as IL&T].

84. *Sasu-Twum*, [1975] 1 G.L.R. at 30.

85. *Id.*

86. See *supra* text accompanying notes 52-61.

87. MARKETING IN GHANA, *supra* note 57, at 9. See also Companies Code, 1963 (Act 179).

88. IL&T, *supra* note 83, at 7.

Capital. Minimum C1,000. Machinery may constitute part of the capital. Patents may not be supplied as capital.

Founders, shareholder. No specified minimum; no limitation on nationality or residence.

Directors. Minimum two; one must be resident at all times (but may be of any nationality).

Management. Expatriate management is allowed on a quota basis, reviewed annually.

Labor. Workers need not be represented in management or on the board.

Disclosure. Publicly owned companies and branches and subsidiaries of foreign companies must publish original incorporation and notification of winding up and must file annual company financial statements (balance sheet and P&L statement) with Registrar of Companies, who may open them to inspection by anyone paying a small fee.

Taxes and fees on incorporation. The registration fee for a company or branch is C10. There is, in addition, a capital registration fee of C10 for each C2,000 of capital for local companies and various stamp duties.

Types of shares. No limitations that cause investors problems. (Share provisions are determined in the company's regulations.)

Control. Shareholders' rights are similar to those available under the UK Company Act: a majority of those present at the annual meeting can approve ordinary changes, but approval of 75% of those present is necessary to change the articles of association of the company.⁸⁹

Under Ghanaian law, "[a]ny group of more than 20 individuals operating a business for gain in Ghana must be registered as a com-

89. *Id.* For a discussion of shareholder remedies against "oppressive conduct," see *Vambaris v. Altuna*, [1973] 2 G.L.R. 41; *Okudjeto v. Irani Bros. (No. 2)*, [1974] 1 G.L.R. 389; *Mahama v. Soli*, [1977] 1 G.L.R. 215. As in the United States, directors and officers are in a fiduciary relationship to the company. See *Commodore v. Fruit Supply (Ghana), Ltd.*, [1977] 1 G.L.R. 241. The company can be held liable, even criminally, for the acts of its officers. See *Maxwell, Ltd. v. The Republic*, [1977] 2 G.L.R. 336.

pany under the Companies Act.”⁹⁰ Companies may be organized as public or private.⁹¹ “Private companies cannot solicit the public to buy shares and are restricted in authority to transfer shares. A public company has no such limitations on the number of its shareholders, its freedom to sell shares, or its ability to borrow money from the public.”⁹²

Ghanaian companies are easily formed. “A Ghanaian company may be formed by submitting to the Registrar of Companies a copy of its proposed regulations,^[93] as well as its name, address, auditors, share structure, etc. Approval normally takes only a few days.”⁹⁴

C. Branch Offices

Ghanaian law also allows for the establishment of branch offices for foreign corporations. In order to establish a branch, the foreign company must submit “within a month of setting up locally, a certified copy of the foreign parent’s charter, regulations, etc., as well as such information as the branch’s name, nature of business, capital structure and name and address of local agent or directors.”⁹⁵

According to one author, “[t]he alternative of a branch has no particular advantages under Ghanaian law, and it does not limit liability. Tax authorities could theoretically levy taxes on the profits of the whole group rather than just the local branch.”⁹⁶

D. Licensing

Investors might also consider the option of licensing the manufacture of their products. Ghanaian law does afford patent and trademark protection.⁹⁷ The characteristics of Ghanaian patents and trademarks are:

Basic Laws. Patents Registration Ordinances 1924-33, Patents Re-

90. *MARKETING IN GHANA*, *supra* note 57, at 8.

91. *Id.*

92. *Id.* The courts scrutinize the activities of public companies more closely than those of private companies. See *Okudjeto v. Irani Bros.* (No. 1), [1974] 1 G.L.R. 374, 382.

93. It is important to make full disclosures in these regulations. See *In re T.F. Nicholson*, [1971] 1 G.L.R. 67. The articles of incorporation, for example, must specifically set forth the powers of the company. See *Bank of West Africa, Ltd. v. Appenteng*, [1972] 1 G.L.R. 153.

94. *IL&T*, *supra* note 83, at 7. All foreign investments, however, must be approved by the Ghanaian Investment Centre. See *supra* text accompanying notes 57-59.

95. *IL&T*, *supra* note 83, ¶ 3.11, at 7.

96. *Id.*

97. *MARKETING IN GHANA*, *supra* note 57, at 7.

gistration (Amendment) Decree 972, Trademarks Act 1965, Trademark Regulations 1970 and Legislative Instrument No. 667.

Patents:

Type and Duration. Only patents registered in the UK may be registered in Ghana, and this must be done within three years of issue in the UK; protection lasts until UK patent expires.

Unpatentable. Drugs, medicines and pharmaceuticals and processes for their manufacture; patents may be barred from registration if deemed contrary to public interest.

Application Procedure. UK owner or assignee may apply; two certified copies of UK patent specification and drawing must be supplied; no examination as to novelty and no opposition procedure.

Fees. C55 filing fee; no annual fees.

Compulsory Licensing. There are no working requirements and no provisions for compulsory licensing.

Trademarks:

Duration. Seven years from date of application, renewable for 14-year periods.

Legal Effect. First user has the right to register and to exclusive use of mark; the effect of registration is prima facie evidence of ownership. Application for cancellation of the mark may be made if not used for five years, unless the nonuse is due to special circumstances.

Registrable. Generally, trademarks registered in the UK will not be refused in Ghana.

Procedure. Registration with Register General of Ghana. Examination for distinctiveness and prior registration after acceptance registration is published in the official gazette. Opposition may be filed within 60 days of publication. A separate application is necessary for each class of goods.

Fees. C17 on filing; C10 on renewal.⁹⁸

Ghanaian courts actively enforce the investor's patent and trademark rights.⁹⁹ All licensing agreements must be deposited with the Registrar of Companies.¹⁰⁰ Each license involving the transfer of technology must be approved by the Ghana Investment Centre as required by the Investment Code, 1981.¹⁰¹ "Companies are required to

98. IL&T, *supra* note 83, at 8.

99. *See, e.g.,* Rhone-Poulenc S.A. v. Ghana Nat'l Trading Corp., [1972] 2 G.L.R. 109 (patent infringement action); Appenteng Mensch & Co. v. Alpro Indus. Prod., Ltd., [1971] 2 G.L.R. 79 (trademark infringement action).

100. IL&T, *supra* note 83, at 8.

101. Investment Code, 1981 (Act 437), Part VI, § 29(1)-(2). *See supra* text accompanying notes 57-61.

advise the Bank of Ghana and obtain its prior agreement on the royalties and fees payable, for effective guarantee of future remittability.”¹⁰²

V. CAPITAL SOURCES

A. *Capital Sources Within Ghana*

1. Medium and long-term credit

Medium and long-term credit is available for industry from the National Investment Bank (NIB):

The NIB provides loans of three to 15 years in amounts of C10,000-200,000 at 9%, if the sum is less than 90% of the total project cost. The assets purchased with the loan funds could be collateralized. The NIB provides guarantees, invests in equity and underwrites the issue of equity; when the agency takes an equity position, its intention is generally to sell such equity to the public later.¹⁰³

Foreign-owned commercial banks in Ghana may also be willing to provide medium and long-term credit. The government has recently been pressuring these banks (most notably Barclay and the Standard Bank) to move out of the commercial field and to increase their underwriting activities.¹⁰⁴

There are, however, problems associated with obtaining local financing. “Transfer of profits,” for example, “by companies that have financed their investments locally is restricted.”¹⁰⁵

2. Stocks and bonds

Ghana has no structured stock market.¹⁰⁶ Nevertheless, stocks and debentures of public companies can be sold to the public:

The sale of equity to Ghanaians . . . is made by public subscription. Application forms are available at all bank branches. Eventually, the shares may be purchased by the National Trust Holding Co[mpany], or taken over by the Investment Policy Implementa-

102. IL&T, *supra* note 83, ¶ 6.03, at 8. “No official limits are in effect on the size of royalties or fees, except that payments must be approved by the Bank of Ghana.” *Id.* ¶ 6.04; at 8.

103. IL&T, *supra* note 83, at 12.

104. See *Botchwey on Foreign Banks*, WEST AFR., Jan. 31, 1983, at 296.

105. IL&T, *supra* note 83, ¶ 11.01, at 12.

106. *Id.* ¶ 11.04, at 13.

tion Committee, which can fix their value.¹⁰⁷

3. Short-term credit

Short-term credit can be obtained from one of the many foreign and domestic banks in Ghana. "Working capital requirements," for example, "generally can be secured in the form of 180-day overdrafts from the major commercial banks."¹⁰⁸

B. Outside Sources

Loans from private commercial banks not located in Ghana are a possibility. OPIC offers loan guarantees as an incentive to outside lenders.¹⁰⁹

Development banks might also be a fruitful source of capital. The African Development Bank (AfDB) has been especially active in Ghana. Recently, for example, the AfDB and the World Bank combined efforts to present Ghana with a forty-two million dollar loan for the purpose of modernizing railroad facilities.¹¹⁰ The AfDB also recently approved a ten million dollar loan to the Ghana Cocoa Marketing Board to be used "to import [cocoa] plant[s] and machinery for rehabilitating the cocoa products factories at Tema and Takoradi. . . ."¹¹¹

VI. THE GHANAIAN LEGAL SYSTEM

Ghanaian law "is based on the English Common Law as modified by statute."¹¹² In fact, the Ghanaian legal system is almost a carbon copy of the English system. Ghanaian law books are organized identically to those in the United Kingdom. Current English cases are cited as binding authority; in fact, English decisions are cited as precedent more often than Ghanaian decisions.¹¹³

107. *Id.* The National Trust Holding Company, a subsidiary of the NIB, was set up to assist Ghanaians in purchasing equity in companies. It "will provide financial assistance to Ghanaians for the purchase of shares and will function as a mutual fund providing equity capital and fixed-interest loans." *Id.* ¶ 3.04, 6-7.

108. *Id.* ¶ 11.02, at 12.

109. *See supra* text accompanying note 50.

110. *See Ghana - Railway network to be modernized*, AFR. ECON. DIG., Jan. 21, 1983, at 8.

111. *Ghana - In Brief*, AFR. ECON. DIG., Jan. 21, 1983, at 8.

112. LAW AND JUDICIAL SYSTEMS OF NATIONS 273 (1973). "There is also a reliance on the indigenous customary law in most matters affecting the family, succession and land." *Id.* *See generally* ALLOT, *ESSAYS IN AFRICAN LAW* 153 (1960).

113. *See Overseas Breweries Ltd. v. Acheanpong*, [1973] 1 G.L.R. 421, 427. *See also* ALLOT, *supra* note 112, at 28-51.

VII. GHANAIAN LAWS WHICH MOST DIRECTLY AFFECT FOREIGN OPERATIONS

The current state of all of Ghana's laws is unclear since the passage of the government's "New Law on State Policy Principles."¹¹⁴ The passage of this law abrogated "the 1979 constitution while laws in existence before the coming into force of the proclamation, especially where they [were] derived from foreign sources, are to operate in Ghana only if they are compatible with national aspirations."¹¹⁵ Considering that nearly all Ghanaian laws are "derived from foreign sources," the state of all laws is up in the air. The following discussion will analyze Ghanaian laws as they stood prior to the passage of this new law in February of 1983.

A. Contracts

Ghanaian contract law is very similar to American contract law. Rules regarding contract formation,¹¹⁶ consideration,¹¹⁷ breach,¹¹⁸ and warranties,¹¹⁹ for example, are nearly identical to those in the United States. There do not, however, appear to be any special rules on adhesion contracts.

B. Torts

1. Ordinary torts

Ghanaian tort law is also very similar to that of the United States and the United Kingdom. Ghana has a negligence standard¹²⁰ and recognizes contributory negligence as a defense.¹²¹ Employers are held vicariously liable for the acts of their employees.¹²² Damages are fixed as in the United States,¹²³ and awards tend to be small.¹²⁴

114. See *New Law on State Policy Principles*, WEST AFR., Feb. 14, 1983, at 446.

115. *Id.*

116. See *Domins Fisheries, Ltd. v. Bremen-Vegesacher Fisherei*, [1973] 2 G.L.R. 490 (offer).

117. See *Kwaddey v. Okantey*, [1972] 2 G.L.R. 84.

118. See *Owasu-Afriyie v. State Hotels Corp.*, [1976] 1 G.L.R. 247.

119. See *Franfra v. Boakye*, [1976] 2 G.L.R. 332, 338.

120. See *Kwofie v. Ahmoah*, [1975] 2 G.L.R. 99.

121. See *Ansah v. Baiden*, [1976] 1 G.L.R. 494.

122. See *Agroro v. Ago*, [1973] 1 G.L.R. 45.

123. See *Quarcoo v. Appiah*, [1972] 2 G.L.R. 30, 37 (physical impairment rated).

124. *Id.* at 37.

2. Products liability

Ghana does not have a strict products liability standard.¹²⁵ However, consumers face a relaxed burden of proof in products liability cases because once a consumer shows that an injury has been caused by a product, the burden of proof shifts to the manufacturer to show that it acted with due care.¹²⁶

C. Labor

1. Payments and benefits

Wages in most industries are determined by collective bargaining between unions and employers. "Where no such collective agreement exists, national labor minimums must be followed."¹²⁷

Benefit payments "average 30% of base pay and include social security benefits, vacations, nine public holidays, medical attention . . . etc."¹²⁸ Included in this thirty percent figure is workers compensation insurance. Thus, Ghana has a "classic" workers compensation system.¹²⁹ Finally, the normal work week is forty-five hours.

2. The social security clearance certificate

Foreign employers must obtain a social security clearance certificate for their firm before licenses for imports, exports, or construction will be granted.¹³⁰ The certificate ensures that labor benefit payments are made, because "[f]oreign managers are not able to leave the country unless they can produce this certificate for their firm."¹³¹

3. Training programs

Foreign investors are compelled under the Investment Code, 1981, to train Ghanaians "in administrative, technical, managerial and other skills, with a view to securing the benefits of their knowledge and experience in the conduct of the enterprises concerned."¹³²

125. *Overseas Breweries Ltd. v. Acheampong*, [1973] 1 G.L.R. 421, 427.

126. *Id.* See also Carbonneau & Garvey, *Judicial Experimentation with a Strict Products Liability Rule: A Comparison of the Law in the United Kingdom, Louisiana and the United States' Common Law Jurisdictions*, 5 LOY. L.A. INT'L & COMP. L.J. 1, 14-37 (1982).

127. MARKETING IN GHANA, *supra* note 57, at 9. The current minimum wage is thirty-five dollars per day. *Ghana-Wage guidelines*, WEST AFR., June 25, 1984, at 133.

128. IL&T, *supra* note 83, ¶ 12.05, at 13.

129. See *Salifu v. Ghanen*, [1975] 2 G.L.R. 25.

130. IL&T, *supra* note 83, ¶ 12.05, at 13.

131. *Id.*

132. The Investment Code, 1981 (Act 437), Part V, § 25(a).

Training plans must be filed with the Investment Centre within six months after the investment has been approved.¹³³ Annual reports on the status of the program must also be filed with the Centre.¹³⁴

4. Expatriate labor

Under the Investment Code, 1981, the Ghanaian Investment Centre is given the authority to "determine and approve the quota of expatriate employees required from time to time in respect of any approved investment or enterprise under this Code, and advise the immigration authorities for the necessary [visa] entry and work permits to be issued for them."¹³⁵ In theory, approved investments are "guaranteed immigration quota[s] for necessary expatriate personnel."¹³⁶ In practice, however, "expatriate employees are limited to managerial and technical positions."¹³⁷

D. Antitrust

Antitrust law is not well-developed in Ghana. The Investment Code, 1981, however, does address the issue of monopolies: "Approval for investments under this Code shall be given in such manner as will not create privileges in the competitive position of similar investments nor tend to the establishment of monopolies."¹³⁸ This statute, however, has not been utilized. Anti-competitive policies such as resale price maintenance tend to be a fact of life in Ghana.¹³⁹

E. Enforceability of Foreign Judgments

Ghanaian courts will enforce the judgments of other national courts on a reciprocal basis.¹⁴⁰

F. Conflict of Laws

Ghanaian courts have adopted the English rule for conflicts.¹⁴¹

133. *Id.*

134. *Id.*

135. *Id.* § 10(2)(e).

136. *Id.* at Third Schedule, Part II, Subpart A, § 4.

137. *MARKETING IN GHANA*, *supra* note 57, at 9.

138. Investment Code, 1981 (Act 437), Part IV, § 21.

139. *See* IL&T, *supra* note 83, at 7. The investor should remember, however, that American antitrust laws apply extraterritorially. *See* *Timberlane Lumber Co. v. Bank of Am.*, 549 F.2d 597, 610 (9th Cir. 1976).

140. *See, e.g.,* *Yankson v. Mensah*, [1976] 1 G.L.R. 355; *Republic v. Mallet*, [1975] 1 G.L.R. 68.

141. *See* *Societe Generale de Compensation v. Ackerman*, [1975] 1 G.L.R. 413, 414.

Choice of law provisions in contracts are allowed.¹⁴² Where intent is not manifested, the well-known rules of *lex loci solutionis* prevail.¹⁴³

G. Acquisition of Real Property

Acquiring land poses no problems if an investment is approved by the Investment Centre.¹⁴⁴ There are no special restrictions on foreign investment in land. Local authorities approve construction permits.¹⁴⁵ Leasing is also an available option.¹⁴⁶ In fact, as an incentive to the acquisition of real property, the government offers capital allowances.¹⁴⁷

H. Taxation

1. Direct taxes: resident and non-resident individuals

Individual income tax in Ghana "is charged on income accruing in, derived from, brought into or received in Ghana."¹⁴⁸ Typical examples of such income are wages, dividends, and royalties.¹⁴⁹ Both

142. *Id.*

143. See *Signal Oil & Gas Co. v. Bristow Helicopters, Ltd.*, [1976] 1 G.L.R. 371, 373; *Ackaah v. Asame*, [1973] 2 G.L.R. 429.

144. IL&T, *supra* note 83, ¶ 3.06, at 7.

145. *Id.* ¶ 3.05, at 7. However, "[a]pproval from the Capital Investment Board is necessary before a company's architects can apply to the local authorities for a construction clearance." *Id.*

146. *Id.* ¶ 3.06, at 7.

147. Investment Code, 1981 (Act 437), § 19 (1981).

148. INT'L BUREAU OF FISCAL DOCUMENTATION, AFRICAN TAX SYSTEMS, at Ghana-1 (1982) [hereinafter cited as AFRICAN TAX SYSTEMS].

149. *Id.* Individual tax rates are:

- (a) Resident individuals are subject to tax at the following rates:

Chargeable income	Rate of tax (%)
For every Cedi of the first c 300	Nil
For every Cedi of the next c 480	5
For every Cedi of the next c 540	7.5
For every Cedi of the next c 600	10
For every Cedi of the next c 960	12.5
For every Cedi of the next c 960	15
For every Cedi of the next c 960	25
For every Cedi of the next c 1200	35
For every Cedi of the next c 2400	45
For every Cedi of the next c 2400	55
For every Cedi exceeding c 13500	60

- (b) Resident individuals are subject to tax on overtime earnings at the following rates:

residents and non-residents are liable for tax on such income.¹⁵⁰

Non-residents may also be taxed on their worldwide income. "Where . . . a non-resident carries on any trade, business, profession or vocation in Ghana, part of the operations of which are carried on outside the country, the full gains or profits therefrom shall be deemed to be derived from Ghana[.]" and will be taxed accordingly.¹⁵¹

Deductions from taxable income are allowed. Recognized deductions include, inter alia, expenses incurred in the production of income, expenses incurred to maintain income-producing property, and deductions for bad debts.¹⁵²

Capital gains are taxed at different rates.¹⁵³ There is also a Selective Alien Employment Tax of c 5000 a year "in respect of every non-Ghanaian employed on an immigrant quota granted by the government."¹⁵⁴

Most taxes are deducted at the source of the income, including: (1) salaries; (2) dividends (dividends are taxed at a rate of thirty per cent); (3) interest; and (4) royalties to non-resident companies.¹⁵⁵

2. Direct taxes: resident and non-resident companies

a. taxable income

Resident companies are taxed on income "accruing in, derived from, brought into, or received in, Ghana."¹⁵⁶ But, income of non-resident companies is exempt if it is not "accruing in or derived from

Chargeable monthly income (c)	Rate of tax
1-1,200	5 p per Cedi
1,201-1,440	7.5 p per Cedi
1,441-1,920	10 p per Cedi
1,921-2,400	12.5 p per Cedi
2,401-3,360	15 p per Cedi
3,361-4,320	20 p per Cedi
4,321-5,280	25 p per Cedi
5,281-6,480	30 p per Cedi
6,481-8,880	45 p per Cedi
Exceeding 8,880	60 p per Cedi

150. AFRICAN TAX SYSTEMS, *supra* note 148, at Ghana-2.

151. *Id.*

152. *Id.* at Ghana-3.

153. *Id.* at Ghana-4b. This rate of taxation depends upon the amount of time the asset is held before realizing any gain. *Id.*

154. *Id.* at Ghana-5.

155. *Id.* at Ghana-4a.

156. *Id.* at Ghana-6.

Ghana and would, but for this exemption, have been chargeable to tax solely by reason of being brought into or received in Ghana."¹⁵⁷

Industrial companies are taxed at a fifty percent rate.¹⁵⁸ Other companies, except agricultural and mining companies, are taxed at fifty-five percent.¹⁵⁹

Allowable deductions include: (1) twenty percent initial "qualifying plant expenditure, i.e., expenditure on plants, machinery or fixtures" (similar to the United States Investment Tax Credit program);¹⁶⁰ (2) ten percent qualifying building expenditure for expenses incurred in the construction of buildings;¹⁶¹ and (3) ten percent annual "sinking fund" deduction.¹⁶²

b. special tax incentives for foreign investors

A number of special tax incentives are available to foreign manufacturers under the Investment Code, 1981, including: (1) "exemption for the first five years from payment of customs duties on machinery, equipment and accessories imported exclusively for the establishment of an approved enterprise";¹⁶³ (2) exemption for three years customs duties on spare parts;¹⁶⁴ (3) a five year exemption on Selective Alien Employment Tax; (4) tax rebates of thirty to fifty percent to manufacturers who export seventy-five percent of their total production;¹⁶⁵ and (5) a twenty-five percent deduction for "capital expenditures on scientific research."¹⁶⁶

3. Indirect taxes

a. sales tax

A sales tax of ten percent is imposed in Ghana.¹⁶⁷ Purchases and sales of various kinds of machinery, including industrial and manufac-

157. *Id.*

158. *Id.* at Ghana-8.

159. *Id.*

160. *Id.* at Ghana-7.

161. *Id.*

162. *Id.* The deduction of ten percent of the qualifying plant or building expenditure is given when "there is a sinking fund for the purpose of replacing plant, machinery, fixtures or buildings, etc." *Id.*

163. *Id.* at Ghana-8.

164. *Id.* at Ghana-9.

165. Investment Code, 1981 (Act 437), Third Schedule, § 4(a)-(b).

166. *Id.* Part IV, § 20.

167. AFRICAN TAX SYSTEMS, *supra* note 148, at Ghana-16.

turing, are exempt from the tax.¹⁶⁸

b. vehicle purchase tax

There is a tax of between ten and twenty percent on the purchase of private motor vehicles.¹⁶⁹ Used, imported vehicles are taxed at these same rates,¹⁷⁰ as are commercial vehicle purchases.¹⁷¹

c. external currency levy

A tax foreign exchange of five percent is levied on all external currency allocated for travel by Ghanaian residents.¹⁷² This tax applies without exception.¹⁷³

I. Trade Laws

1. Trade policy

Ghana has, for the most part, a non-discriminatory trade policy.¹⁷⁴ Goods imported from most countries are similarly treated with respect to duty rates.¹⁷⁵ It is a member of GATT, and is a signatory to the Lome Convention.¹⁷⁶

Ghana is also a member of the Economic Community of West African States (ECOWAS). ECOWAS is scheduled to become a free trade area by 1989.¹⁷⁷ However, Ghana was dealt a hard blow by the recent expulsion of Ghanaians from Nigeria.¹⁷⁸ It is unclear whether

168. *Id.* at Ghana-15.

169. *Id.* at Ghana-16. The tax base of a new vehicle is its value, and the purchaser is liable. *Id.*

170. *Id.* The tax base of used vehicles imported for personal use is the price assessed for customs duties purposes. The tax base of other imported, used vehicles is 112.5% of the price assessed for customs duties purposes. The importer is liable for the tax. *Id.*

171. *Id.*

172. *Id.* at Ghana-20. These expenses include remittance abroad for medical, educational and other travelling expenses. *Id.*

173. *Id.* Failure to pay is punishable by fines and/or imprisonment. The secretary responsible for finance may, however, exempt any person from the tax. *Id.*

174. *MARKETING IN GHANA*, *supra* note 57, at 4.

175. *Id.*

176. *Id.* Under the Lome Convention "all manufactured goods and about 96 percent of agricultural exports from ACP [African, Caribbean, and Pacific] countries enter EC [European Community] member countries duty and quota free." The remaining four percent enter at reduced or special rates.

177. The goal is to encourage more interstate trading among African nations. Now "Ghana trades much more with industrialized countries than with other African ones." *IL&T*, *supra* note 83, ¶ 13.01, at 14.

178. See "*Strangers*" and *ECOWAS*, *WEST AFR.*, Jan. 31, 1983, at 246. See also *Groping for Groupings*, *WEST AFR.*, Jan. 3, 1983, at 3.

it will recover.¹⁷⁹

Ghana, like most other African states, officially prohibits trade with South Africa.¹⁸⁰ Ghana also prohibits imports from Namibia.¹⁸¹

2. Tariffs

There are both specific and ad valorem duties on goods imported into Ghana.¹⁸² There are very few duties on exports.¹⁸³ The United States Department of Commerce has described Ghana's import tariff structure as follows:

Ghana's Customs and Excise Tariff is single column. The tariff is based on the Brussels Tariff Nomenclature system of classification. Ghana does not extend tariff preferences, and duty rates apply, generally speaking, equally to imports from all nations.

Most of the duties are ad valorem rates. They are assessed on the value represented by the sale's price negotiated in full, open-market conditions, plus all costs occurring up to the time of their arrival in a Ghanaian port (c.i.f. value). The customs duty rates are 35 percent, 60 percent, and 100 percent.¹⁸⁴

Import duties may be waived under the Investment Code, 1981, on goods needed for the establishment of a new enterprise.¹⁸⁵

3. Non-tariff barriers on imports

a. import licenses and letters of credit

Imports into Ghana are strictly controlled by means of import licenses.¹⁸⁶ Licenses for imports "where no transfer of foreign exchange through the Bank of Ghana or any commercial bank is required (i.e. where the importer has the foreign exchange to import the goods)"¹⁸⁷ are not difficult to obtain. Where imports are to be paid from Ghana's foreign exchange reserves, however, licenses are ex-

179. See "*Strangers*" and *ECOWAS*, *supra* note 178, at 243.

180. See, e.g., *MARKETING IN GHANA*, *supra* note 57, at 4. See A. SEIDMAN, *SOUTH AFRICA AND U.S. MULTINATIONAL CORPORATIONS* 159 (1978).

181. *MARKETING IN GHANA*, *supra* note 57, at 4.

182. *AFRICAN TAX SYSTEMS*, *supra* note 148, at Ghana-12.

183. *Id.* In fact, Ghana offers many export incentives, such as an "export bonus" of twenty to thirty percent of export proceeds. *IL&T*, *supra* note 83, ¶ 13.06, at 15.

184. *MARKETING IN GHANA*, *supra* note 57, at 4.

185. Investment Code, 1981 (Act 437), Third Schedule, Part II, Subpart A1.

186. *IL&T*, *supra* note 83, ¶ 13.04, at 15.

187. *MARKETING IN GHANA*, *supra* note 57, at 4-5. These licenses are called "Special Import Licenses." *Id.* Licenses are obtained from the Ministry of Trade. *IL&T*, *supra* note 83, ¶ 13.02, at 15.

tremely difficult to obtain.¹⁸⁸

All remittances on imports must be made through letters of credit with the Bank of Ghana,¹⁸⁹ which has often suspended issuance of letters of credit.¹⁹⁰

b. quality and quantity inspections

Almost all products brought into Ghana are subject to a quantity and quality inspection.¹⁹¹ Goods will not clear customs without a "Clean Report of Findings,"¹⁹² although this does not appear to be a significant barrier.

J. Law Pertaining to Remittability of Capital

The Investment Code, 1981, purports to guarantee the remittability of profits made in Ghana.¹⁹³ Remittability, however, was a very serious problem before the Code was enacted,¹⁹⁴ and continues to be so to this day.¹⁹⁵ All remittances must be made under letters of credit issued by the Bank of Ghana, and the Bank has occasionally suspended issuance of these documents.¹⁹⁶

VIII. DISPUTE SETTLEMENT

Dispute settlement procedures for foreign investors, as set forth in the Investment Code, 1981, are:

- (1) Where any dispute arises between any non-Ghanaian investor and the Government in respect of any approved investment, the Government shall take all necessary steps to ensure amicable settlement of the dispute.

188. See *Ghana-Efforts to Right Economy Meet With Limited Success*, *supra* note 45. See also The Smith Letter-I, *supra* note 9, at 3. But see *Ghana-Import License Extended*, AFR. ECON DIG., Jan. 28, 1983, at 10.

189. The Smith Letter-I, *supra* note 9, at 3.

190. Telegram from B. Wright, American Embassy, Accra, Ghana, to U.S. Dep't of State (Sept. 1981) (available from U.S. Dep't of Commerce, Office of Country Marketing (Africa), Washington, D.C.).

191. MARKETING IN GHANA, *supra* note 57, at 5. This applies to all commodities valued over \$2,000 which require a transfer of hard currency through the Bank of Ghana. *Id.*

192. *Id.* The report is also required before banks will provide payment for goods. *Id.*

193. Investment Code, 1981 (Act 437), § 16.

194. IL&T, *supra* note 83, ¶ 7.01, at 9-10. Although transferability was guaranteed by the Bank of Ghana, there was a serious balance-of-payments deficit causing "shortages of foreign exchange," and making it difficult if not impossible for banks to satisfy all customers. *Id.*

195. *Review-Ghana*, *supra* note 34, at 12-13.

196. See *supra* text accompanying note 193.

(2) Where it has proved impossible to achieve such amicable settlement then the dispute shall be settled as follows—

(a) in accordance with the laid down procedure for conciliation or arbitration—

(i) within the framework of any bilateral or multilateral agreement on investment protection to which the Government and the country of which the investor is a national are parties, or

(ii) within the framework of the International Convention for the Settlement of Investment Disputes between States and Nationals of other states and under the auspices of the International Centre thereunder established; or

(b) by any other international machinery for the settlement of investment disputes agreed to by the parties.¹⁹⁷

Ghana and the United States are signatories to the Convention of the Settlement of Investment Disputes Between States and Nationals of Other States.¹⁹⁸

IX. CONCLUSION

Ghana has great potential as a base for foreign operations. It is blessed with a wealth of natural resources, a skilled work force, and a location adjacent to major markets in Africa and Europe. The major disincentive to investing in Ghana is the country's political and economic instability. While Ghanaian laws relating to foreign investment are attractive, particularly the Investment Code, 1981, an investor cannot feel secure that these laws will remain in effect for any substantial period of time. Accordingly, a Ghanaian investment should be approached with the utmost of caution.

197. Investment Code, 1981 (Act 437), § 17. On the International Convention for the Settlement of Investment Disputes (ICSID), see D. WILSON, *supra* note 48, at 409-11.

198. MARKETING IN GHANA, *supra* note 57, at 7.