Transfer Pricing (TP) Rules, Procedures and Documentations: A perspective on Ghana

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ABSTRACT

Our primary claim in this paper is that the legal rules pertaining to transfer pricing in Ghana are potentially effective but there exists inherently weak links within the general tax system that may undermine success and sustainability. This predicament provides a little systemic muscle or institutional mechanism for the recovery and retention of revenue to the state. Multi-national corporate bodies have seen this as an economic valve to erode the efforts of the state in tax collection. This basic predicate of the paper is built on the idea that the legal tax regime in Ghana fails to adopt an approach to transfer pricing that recognizes the peculiar circumstances of the Ghana Revenue Authority (GRA) and also that the discretion the Commissioner General of the GRA has in such matters might be an avenue for abuse. This is exacerbated by weak human resource capacity of the institutions responsible for tax collection in the country and in particular, adequate trained personnel on transfer pricing are woefully inadequate. Above all, there is lack of certainty in respect of the methodology usually deployed in the few selected cases for calculating the liability of a person on transfer pricing. There is no dependable database for comparables on the account of which taxpayers liability on transfer pricing are calculated. This gap sometimes leads to delays and arbitrary decisions on the part of tax officers. It is thus suggested that appropriate targeted legislative and administrative measures are required to bring the tax regime of Ghana on transfer pricing up to date and to facilitate efficiency in revenue mobilisation through effective tax administration in the country. It is also recommended that the Ghana should take a second look at its current TP methods and adopt a simplified approach that ensures a more effective use of resources.
A. OVERVIEW

Ghana is a low middle income country located in West Africa and has experienced relatively high rates of economic growth and poverty reduction in the past two decades (World Bank, 2013, 9) and the trend seems to continue according to recent data¹. Children’s nutritional status has improved in recent years, though stunting rate remains at 19%². Ghana also lags on key MDGs, such as maternal and infant mortality and access to improved sanitation methods, with large disparities in access to key health and education services between the north and south and between income quintiles³. Women are actively involved in agriculture and about 49.3% of them are employed in this sector⁴.

Ghana’s population stands at 28.96 million as at 2017 with a GDP per capita (USD) of 1,654. In 2013 agriculture employed 53.6% of Ghana’s total labour force⁵. Public lands are vested in the President in trust for the people of Ghana and apart from land, the major economic natural resources in Ghana include gold, bauxite, manganese, diamond, rubber, timber, petroleum and salt. The GDP growth rate in 2017 is 8.5 percent compared to 3.7 percent in 2016⁶. Though Ghana is an oil exporting country since 2010, she remains somewhat dependent on international financial and technical assistance as well as the activities of a considerable number of Ghanaians in the diaspora. Under British colonial rule, Ghana was officially named the Gold Coast for its large quantity of gold resources and Ghana remains one of the world’s top gold exporters. Other large sectors include cocoa and timber production, mining, and electricity production. The agriculture sector expanded from growth rate of 3.0

³ Ibid
⁴ Ibid @ 5
⁵ FAO (2015), Food and Agriculture Policy Decision Analysis, Country Fact Sheet on Food and Agriculture Policy Trends (FAO) Retrieved on 28 January 2019 @ 19:34 hours GMT
percent in 2016 to 8.4 percent in 2017. Crops\(^7\) remains the largest activity with a share of 14.2 percent of GDP (Ghana Statistical Service, 2017).

**B. GENERAL INFORMATION ON GHANA LEGAL SYSTEM AND THE TAX SYSTEM**

(a) *Ghana’s Legal system*

The Ghana legal system is anchored on a common law tradition. This is the tradition mostly associated with the Commonwealth of Nations. Understandably, Ghana’s fate is pitched with this group because she was colonised by the British for over a century\(^8\) and during the period of colonialism, the British introduced and applied the English common law in Ghana.\(^9\) In the colonial context, the key historical instrument for the identity of law in Ghana was the Supreme Court Ordinance, 1876, which introduced English law and affirmed the continuity of local customary laws in the Gold Coast Colony. Section 14 introduced the common law and equity as well as English statutes of general application. Section 17 provided that these English laws were to be applied subject to local conditions and circumstances, and such laws could be altered by local legislation. And section 19 provided that, where appropriate, courts were to apply local laws and customs so long as they were not “repugnant to justice, equity and good conscience.” This basic legal duality—an English-based common law system plus local customary law—continued after independence with each successive constitution.\(^10\)

But aside this major reception ordinance, it was the *Colonial Laws Validity Act* of 1865 which provided the colonial systems a proper fit into their larger imperial constitutional

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\(^7\) crops = agriculture – (livestock, forestry/logging, and fishing)  
\(^8\) The Bond of 1844, marks the beginning of the colonial period and Ghana attained independence in 1957.  
\(^9\) See section 11 of the Gold Court Supreme Court Ordinance of 1876. See also the Supreme Court of the Gold Coast Ordinance (CAP. 4 of the Laws of the Gold Coast, 1951) which provided that there should apply in the Gold Coast ‘... the common law, the doctrines of equity and the statutes of general application which were in force in England on 24\(^{th}\) July, 1874...’  
\(^10\) See in general S.Y. Bimpong-Buta, “Sources of Law in Ghana” (1983-86), 15 Review of Ghana Law 129, at 131-32. It should be noted that in the colonial period, this country had extensive systems of so-called Native Courts for the application of local customary laws, which were integrated into a regional system of appeals, with a common West African Court of Appeal, and, ultimately, an appeal to the Judicial Committee of the Privy Council in London. See R.E. Robinson, “The Administration of African Customary Law” (1949), 1 Journal of African Administration 158, at 170-172
context. The basic point of the Colonial Laws Validity Act was to confirm that a law made in the colonies that was repugnant to an Act of the imperial (or U.K.) Parliament, or an order made under such an Act, that extended to the colony, was of no force or effect (section 2). But it also confirmed that colonial laws that were repugnant to the “Law of England” were not void, unless, in violating the Law of England, they also violated an Act of Parliament or order made there under extending to the colony (section 3). In fact, the 1865 Act was intended to dispel the notion that colonial legislative authority was in some sense bound by vague notions of humanity or equity associated with the Laws of England. The Act confirmed that the only legal limitation on colonial legislative authority was the express terms of Acts of the imperial Parliament, or orders made there under, that extended to the colony in question.\footnote{For a summary of the history of the 1865 Act, see Mark D. Walters, “The Common Law Constitution in Canada: Return of Lex Non Scripta as Fundamental Law” (2001), 51 University of Toronto Law Journal 91.}

In the post-independence period, this duality of legal norms did not fade off.\footnote{See Marouf A., Jr. Hasian, Colonial Legacies in Postcolonial Contexts: A Critical Rhetorical Examination of Legal Histories (Peter Lang Pub Inc, 2002).} There has been a sustained attempt to recognize the customary law constitutions of the various ethnic groups as part of the corpus of constitutional law in Ghana. Article 11(2) and (3) of the Constitution, 1992 provide that the “common law of Ghana” includes not only the rules of law generally known as the common law, but also “rules of customary law” or “rules of law which by custom are applicable to particular communities….” That is, it is no longer the “English Common Law“ but rather the the \textit{common law of Ghana} which embraces both general common law and particular local customary norms. It is inescapable that the multiplicity of customary rules operating within a network of common law, equitable, statutory and constitutional codes and principles make a strong case for the assertion that legal pluralism is a legal reality in Ghana. Here, rules of customary law are valid and enforceable if properly held so as rules of law which are by custom applicable in a particular community.

At present, the preeminent political classification or categorisation of the system of government practised in Ghana is that it is a unitary system. At best, the country is not
federated with autonomous power holders at the provincial or regional levels. There is concentration of power at the centre with executive President operating under a unicameral Parliament. But we should note that it is not an absolute or exclusive concentration as some powers have been delegated or decentralised to the local government units- which can be likened to counties but called metropolitan, municipal or district assemblies, in a descending order depending on their population size\textsuperscript{13} among others.\textsuperscript{14} These local government units have the power to levy some small sums as taxes in their area of authority. Some of the taxes are property taxes, business operating permit, and market tolls (taxes paid by traders who sell merchandise in physical markets, often built solely by the metropolitan authority or jointly with a private company).

At the more normative level of constitutional practice and arrangement, there is, in Ghana, a tradition of separation of powers across legislative, executive and judiciary functions.\textsuperscript{15} Such a tradition is much more clear and neater under written constitutional rules than under military regimes. We should note that since independence, there have been about five (5) spells of military interventions, covering a period of about twenty one years (21) during which periods, the legislative and executive functions were exercised by the military governments.\textsuperscript{16} The system of separation of powers envisaged under the present Ghana’s Constitution is however not one that dictates that the arms of government should live in water-tight compartments from one another\textsuperscript{17}. For instance, until amended, the Constitution requires that majority of the ministers must come from Parliament. This requirement takes Ghana’s separation of powers conceptual framework outside the tradition of the United States of America where there is a strict separation between the personnel who form the executive and congress.

\begin{itemize}
\item \textsuperscript{13} Local Governance Act, 2016 (Act 936); Section 1(4) (a) (i)
\item \textsuperscript{14} Ibid @ Section 1(4) (b)
\item \textsuperscript{15} Constitution of the Republic of Ghana (1992 ), articles 57, 92 and 125, Ghana Publishing Company.
\item \textsuperscript{16} A.M. Ocquaye, Politics in Ghana 198…..
\item \textsuperscript{17} See generally Asare v. Attorney General [2003-2004] SCGLR 823
\end{itemize}
In respect of the relationship between international law and municipal or national law, we should observe here that Ghana is a dualist country. As a matter of both principle and practice, Ghana places great emphasis on the distinction between international law and municipal law.\textsuperscript{18} As a result, international law can be implemented domestically only when it has been formally incorporated into the laws of Ghana by parliamentary approval.\textsuperscript{19} This parliamentary approval can be done either by a resolution or through a substantive Act. It is not clear however, which treaty or international agreement will be adopted or received by a resolution or an Act of parliament. In any case, the primary rule is that mere signature on a treaty by the President is not in itself sufficient for the direct application of such a treaty in a court of law. An international agreement or treaty even if properly signed by the President or his authorised agent can neither be enforced nor applied in Ghana if it has not been converted into domestic law by legislative action. Without this domestic translation, international law does not exist as law in the Ghanaian context. Lastly, where there is a conflict between the demands of international law and domestic law, the conflict is to be resolved in favour of the latter.

\textit{(b) Ghana’s Tax system}

Until the passage of the current Income Tax Act, 2015 (Act 896) Ghana used to tax its residents (companies and individuals) on their worldwide income; however, income sourced outside Ghana was taxed in Ghana only if it is brought into or received in Ghana. Non-resident persons were taxed only on Ghana-source income. A company is resident in Ghana if it is incorporated under the laws of Ghana or its management and control are exercised in Ghana at any time during the year of assessment. Under Act 896 however, a resident person is liable to pay tax on all income no matter the source, whether or not the income is brought into or received in Ghana\textsuperscript{20}. There is


\textsuperscript{19} Constitution of the Republic of Ghana (1992 ), article 75

however credit for taxes paid in other jurisdictions on income which have sources outside Ghana\textsuperscript{21}. The country has various legal instruments and institutions that form the framework for taxation throughout the country. These include the Constitution, (1992), Ghana Revenue Authority Act, 2009 (Act 791), Income Tax Act, 2015 (Act 896) and a host of legislative instruments, including Transfer Pricing Regulations, 2012 (LI 2188) among others. The Constitution of the Republic of Ghana (1992) is the supreme law of Ghana.\textsuperscript{22}That is, at the apex of Ghana’s hierarchy of legal norms, is the Constitution of which all other laws must be consistent with its provisions. In the face of multiple legislative instruments on taxation in the country, article 174 of the Constitution imposes the rule that there cannot be taxation without prior parliamentary approval or authorisation.

Flowing from this, no person and or enactment shall have the power to impose or waive a tax without the authority of Parliament.\textsuperscript{23} Any waiver, variation or imposition of tax arising from the exercise of statutory authority shall be subject to the prior approval of Parliament by resolution. An example of the exercise of this power of waiver can be found in the National Pensions Act, 2008 (Act 766) under section 112, which exempts up to 16.5\% of a person’s income from taxation where such income is contributed towards pensions. In order to prevent the use of this waiver as a tax avoidance tool, the law further provides under sub-section (5) that a withdrawal of all or part of a contributor’s accrued benefits under a provident fund or personal pension scheme shall be subject to the appropriate income tax for contributors in the formal sector before ten years of contributions and before retirement.

At the more general level, citizens are enjoined to declare their income honestly to the appropriate and lawful agencies and to satisfy all tax obligations\textsuperscript{24} with the exception of pension income\textsuperscript{25} and the income of the President or an ex-President (Article 68(3)

\textsuperscript{21}See section 112 of Act 896
\textsuperscript{22}Constitution, 1992 article 1(2)
\textsuperscript{23}Constitution, 1992 article 174 (1)
\textsuperscript{24}Constitution, 1992 article 41 (g)
\textsuperscript{25}Constitution, 1992 article 199(3)
to (5)). A person who has not paid all his taxes or made arrangements satisfactory to the appropriate authority for the payment of same, shall not be eligible to be elected into certain positions, including election as a member of parliament\textsuperscript{26}. Similar provisions are contained in section 7 of the Local Governance Act, 2016 (Act 936) with respect to persons seeking election or appointment to a District Assembly.

Parliament, in accordance with the power conferred on it under article 174, has enacted a number of laws that govern the tax regime in Ghana. The \textit{Ghana Revenue Authority Act, 2009 (Act 791)} is one of these. This Act is a product of a series of reforms in the administration of taxes and customs duties in Ghana. This led to the creation of the \textit{Ghana Revenue Authority (GRA)},\textsuperscript{27} which replaced the \textit{Internal Revenue Service}\textsuperscript{28}, the \textit{Customs, Excise and Preventive Service}\textsuperscript{29} and the \textit{Value Added Tax Service}\textsuperscript{30}, and is the main agency mandated to collect national taxes and custom duties, as well as combat tax fraud and tax evasion among others.\textsuperscript{31} As noted above, the tax and custom institutions were largely independent of each other.\textsuperscript{32} The main reason for bringing together these hitherto independent bodies under one umbrella was to provide a holistic approach to tax and customs administration,\textsuperscript{33} to improve information linkage and sharing of information among the Divisions of the Authority\textsuperscript{34}. This mechanism is aimed at eliminating the practice among taxpayers where they could make different declarations to different tax institutions with the view to avoiding tax. It must however be pointed out that to achieve this goal, there must be the extra steps of ensuring the free flow of information among the various units and sections and across departments. Secondly, tax officials must insist on the consistent use of taxpayer identification number (TIN) when filling customs declarations. Indeed there is some progress with respect to information sharing among the various units and also between the GRA

\begin{itemize}
\item \textsuperscript{26} Constitution, 1992 article 91(1)(c)
\item \textsuperscript{27} Act 791 s 1(1)
\item \textsuperscript{28} Act 791 s 30 (1) (b)
\item \textsuperscript{29} See the Schedule to Act 791
\item \textsuperscript{30} Ibid
\item \textsuperscript{31} Ghana Revenue Authority Act, 2009 (Act 791) s 3.
\item \textsuperscript{32} See the long title to Act 791
\item \textsuperscript{33} Act 791 s 2 (a)
\item \textsuperscript{34} Act 791 s 2 (e)
\end{itemize}
and other state institutions like the Registrar General’s Department (RGD)\textsuperscript{35}. The Act also prescribes criminal sanctions for persons who fail to co-operate with the Authority to ensure the assessment and optimum collection of revenue\textsuperscript{36}.

Though Parliament may create other divisions, the Authority presently has three main divisions, namely the Domestic Tax Revenue Division, the Customs Division, and the Support Services Division.\textsuperscript{37} The Domestic Tax Revenue Division collects all internal national taxes such as income tax, value added tax, and excise tax. The Customs Division collects custom duties on the imports of some merchandise into Ghana and export of merchandise outside Ghana. The tax officers are usually stationed at the various points of entry and exit from Ghana, such as the air and sea ports, and road border check points. The Support Services Division undertakes procurement of goods, and services to help the GRA fulfil its mandate.

Besides, the \textit{Income Tax Act, 2015 (Act 896)} as amended provides among others for a “[G]eneral anti-avoidance rule” under its section 34 by empowering the Commissioner General of the Ghana Revenue Authority to re-characterise or disregard any arrangement that is entered into or carried out as part of a tax avoidance scheme “\textit{which is fictitious or does not have a substantial economic effect; or whose form does not reflect its substance}”\textsuperscript{38}.” Tax avoidance is defined to include any arrangement which has the main purpose of avoiding or reducing tax liability. It would appear these provisions were in response to cases like \textit{Multichoice Ghana Limited v. Commissioner, Internal Revenue Service}\textsuperscript{39} where the Supreme Court of Ghana held that the arrangement by which the Respondent had prepared its financial statement and thereby reduced its tax liability did not breach the then Income Tax Decree, 1975 (SMCD 5). This much was recognized by Wood C.J. (as she then was) when she stated that “[t]he passage of the


\textsuperscript{36} Act 791 s 20

\textsuperscript{37} Act 791 s 17

\textsuperscript{38} See the Seventh Schedule to Act 896 s 34(1)

\textsuperscript{39} [2011] 2 SCGLR 783 at 789-790
new law, Act 592, was intended to plug any legal loopholes that this dispute may have unearthed.”

There are similar other anti-tax avoidance provisions as in paragraphs 31, 32, 33 of the Seventh Schedule to Act 896. Paragraph 31(1) in particular deals with transactions between or among persons in a controlled relationship, which is a fertile ground for transfer pricing, by providing that persons in a controlled relationship shall calculate their income, and tax payable, according to the arm’s length standard. Section 32 provides against income splitting, by empowering the Commissioner General to adjust or re-characterize the incomes for the purposes of taxes. Finally, paragraph 33 limits the debt-to-equity ratio of exempt persons to three-to-one.

Similar provisions can be found in the *Customs Act, 2015 (Act 891)*. For example, subsections (1), (2) and (3) of section 3 empower the Ghana Revenue Authority to conduct customs controls including random checks and to collaborate with foreign customs administrations to carry out joint control activities with the aim of ensuring security in shipment and combatting transnational crime. The Act also mandates vessel owners, importers and exporters among others to keep stipulated records and to make same available to the Authority for examination, inspection and audit purposes. In addition, section 7 empowers the Authority to conduct a post-clearance audit after the release of goods with the goal of ensuring that the right amount of duty has been paid.

The Act also prescribes various penalties and charges as well as other deterrence regimes to ensure that the provisions of the Act are complied with. Section 139 deals with bribery. It provides that a person who gives, offers, or agrees to give or procure to give, a bribe, gratuity, recompense reward to an officer, or gives, offers, or agrees to give an unauthorised fee or reward to an officer, or induces or attempts to induce an officer to connive to evade a provision of the law or otherwise to neglect

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40 Act 891 s 9 (1) & (2)
41 See ss 23, 41, 100, 121 etc.
the duty of that officer, commits an offence and is liable on summary conviction to a fine of not more than two hundred per cent of the total loss that would have been occasioned by the offence or to a fine of not more than two thousand five hundred penalty units whichever is higher or to a term of imprisonment of not more than five years or both.

In a similar vein, an officer who demands or takes a bribe, gratuity, recompense or reward for the neglect or non-performance of the duty of the officer; or delivers up or agrees to deliver up or not to seize anything liable to forfeiture; or commits an offence under the law or conspires or connives with any person for the purpose of committing an offence under this Act, shall, on proof to the satisfaction of the Commissioner-General, be dismissed from office. An officer who commits an offence is liable on summary conviction to a penalty of not more than two thousand five hundred penalty units or a term of imprisonment not more than five years or both.

The *Value Added Tax Act, 2013 (Act 870)* imposes taxes on goods and services supplied in Ghana. These include goods and services that are sourced locally as well as imported goods and services.\(^4^2\) An important provision is section 16 of Act 870 which provides that an unregistered, non-resident person who provides telecommunication services or electronic commerce to persons for use or enjoyment in the country, other than through a Value Added Tax registered agent must register if that person makes taxable supplies exceeding the threshold under subsection (1) or (2) of section 6. Electronic commerce covers business transactions that take place through the electronic transmission of data over communications networks like the internet. This provision is based on the the source of income\(^4^3\) rule as the basis of taxation and is a very forward looking intervention in the face of developments in technology such as

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\(^4^2\) *Act 870 s 1*

WhatsApp, Facebook and Twitter among others and their gradual venture into financial services.\(^{44}\)

In fact, the CEO of WhatsApp is reported to have singled Ghana out for commendation that the country was using the App in ways he never envisioned.\(^{45}\) It is obvious that the business man is raking in a decent amount of revenue from these creative ways in which Ghanaians are using the App but the question is, how will the Ghana Revenue Authority determine whether or not this revenue has reached the threshold set under section 6 of the Act? Can it compel such multi-national to submit returns on their activities when in fact, they are not registered in Ghana? These are some of the gaps that require urgent attention. There are a number of offences under the Act including a failure to issue tax invoice\(^{46}\) and the evasion of tax payment.\(^{47}\)

The \textit{Excise Tax Stamp Act, 2013 (Act 873)} provides that specified excisable products which are imported or locally produced are required to be affixed with tax stamps, which have specific features before they are released unto the market. The benefits of this approach to tax include: increased tax collection without raising tax rates, deterrence to smuggling and illicit activity, and creation of level playing field for all legitimate enterprises.\(^{48}\) It is estimated that the absence of a stamp policy attracts a 30\% rate of fraud\(^{49}\) amounting to approximately US$ 49,090,909.1\(^{50}\) of uncollected taxes annually while Ghana loses US$ 134,571,363.63\(^{51}\) each year in unrecoverable revenue in products alone.\(^{52}\)

\(^{44}\) Hannah Kuchaler, ‘WhatsApp Launches Service to Help Business Talk to Clients’ \textit{Financial Times} (San Francisco, 5 September 2017) \(<\text{www.ft.com/content/35a5cae6-924d-11e7-ddfa-eda243196c2e}>\) accessed on 10-03-18


\(^{46}\) Act 870 s 58

\(^{47}\) Act 870 s 59


\(^{49}\) \textit{Ibid}

\(^{50}\) The local currency figure is 216 Million Ghana Cedis but converted to US$ for clarity.

\(^{51}\) The local currency figure is 592, 114 Million Ghana Cedis but converted to US$ for clarity.

\(^{52}\) \textit{Ibid}
Another important tax law is the *Local Governance Act, 2016 (Act 936)*. The Act empowers District Assemblies under section 124 to impose taxes and rates on the income of persons specified in the Twelfth Schedule to the Act. In addition, section 145 to 146 impose a duty on District Assemblies to levy rates, including property rates on premises located within their jurisdictions. The *Anti-Money Laundering (Amendment) Act 2014*, introducing changes to the AML regime, was passed by Parliament and received presidential assent in April 2014, effectively broadening the scope of the AML regime. All accountable entities are now also obliged to conduct ongoing due diligence and update the records of all clients for whom they act. In August 2013, the Ghanaian Judiciary set up a separate “Tax Court” which is mandated to deal specifically with tax cases. This initiative has been undertaken both to ensure the level of specific expertise required for dealing with complex tax cases and also to expedite the hearing of tax related cases. In May 2014, the GRA conducted a sensitisation programme for the tax court judges and is finalised other aspects, such as the logistical support for the Tax Courts, which are now operational since the latter half of 2014.

A number of legislative instruments have been passed under the Acts identified above. First is the *Income Tax Regulations, 2016 (LI 2244)* which is one of the regulations passed in 2016 with the goal of providing clarity to and for the more effective implementation of the provisions of Act 896. The Regulations which came into force on 3rd August, 2016, revoked the *Internal Revenue Regulations, 2000 (LI 1675)*. It introduced a number of reforms including those on overtime, casual workers, temporary employee, loan benefit and provident fund. Others are, Installment Sale, Finance Lease, Capital Allowance and Withholding Certificate. Within the Petroleum sector, a sub-contractor who enters into an agreement with a non-resident person to provide works or services must notify the Commissioner-General within 30 days after entering into the contract.
The Transfer Pricing Regulations, 2012 (LI 2188) was originally passed under the now repealed Internal Revenue Act, 2000 (Act 592). It deals basically with the implementation of the arm's length principle in transactions between persons in a controlled relationship, both locally and internationally. The Practice Note on LI 2188 in its introduction provides that the commentaries in the OECD Transfer Pricing Guidelines may assist where necessary in the interpretation of LI 2188. Additionally, the Value Added Tax Regulations, 2016 (LI 2243) which revoked the Value Added Tax Regulations, 1998 (LI 1646) came into force on 3rd August, 2016. It clarifies certain rules and provides for some matters necessary for the effective implementation of Act 870.

The Excise Duty Regulations, 2016 (LI 2242) came into force on 3 August, 2016, purposely to provide for the administration and carrying into effect the provisions of Act 878. Under the regulation, registered manufacturers and importers are mandated to maintain accurate records in a form approved by the Commissioner General (C-G) of the GRA that supports the determination of excise duty liabilities and preparation of excise duty returns. These records must at a minimum, provide evidence of the manufacture, storage, removal, delivery and any other information the C-G may request.

There are other minor tax legislations including the Airport Tax Act, 1963, as amended by the Airport Tax (Amendment) Act, 2013, Act 858, which imposes on all passengers departing from an airport by an aircraft, a tax payable to the Commissioner General of the Ghana Revenue Authority. In respect of gaming and the operation of casinos, the Casino Revenue Tax
Act, 1973 (NRCD 200) and the Gaming Act, 2006 (Act 721) regulate the activities of persons licensed to operate in the sector. Sections 4 and 26 of NRCD 200 and Act 721 respectively mandate licensees to keep records of their operations for the purposes of determining their tax obligations. It is important to add that under the Anti-Money Laundering Act, casinos are accountable institutions and have the responsibility, as discussed earlier, of maintaining records on their customers and to report unusual transactions to the Financial Intelligence Centre.

C. THE GENERAL CONTEXT OF TRANSFER PRICING

The term transfer pricing refers to the price assigned to goods and services that are exchanged between or among related business entities of a multinational enterprise (MNE). It is the price paid in a business transaction for tangible goods, intellectual property, or service provision within affiliated companies. Taxmann, an online blog, describes it as the value attached to transfer of goods or services between related parties. Thus, transfer pricing can be defined as the price paid for goods transferred from one economic unit to another, assuming that the two units involved are situated in different countries, but belong to the same multinational firm.

The Ghana Revenue Authority (GRA), like most tax administrations, has taken a keen interest in transfer pricing because it is a potential avenue for tax evasion. In other words, the potential for MNEs to assign fictitious values to the goods and services that are exchanged within their network is quite high and is a matter of concern to the GRA. For the GRA “the situation creates opportunities for these MNEs to put in place a transfer pricing mechanism to ensure that they maximise their global profit at the detriment of tax revenue to Ghana in the absence of a transfer pricing regime.

59 <https://www.taxmann.com/blogpost/2000000197/transfer-pricing-meaning-objective.aspx> accessed 25 January 2019 @ 12:50 hours GMT
60 Ibid
adhering to international standards”\textsuperscript{61}. This is generally referred to as transfer mispricing. However, some studies have established that tax avoidance is not the sole factor MNEs consider when fixing their transfer prices\textsuperscript{62}. For example, in performance evaluation, transfer price can used as a tool within large segmented firms\textsuperscript{63}. Transfer pricing may therefore be analysed from two main perspectives: the economic perspective\textsuperscript{64} and the fiscal perspective\textsuperscript{65}.

\textbf{The economic approach} - this perspective involves a technical analysis of prices, differentiating them from the political-economic sector in which they are used. According to this perspective, these transfer prices are used by multinational companies to achieve fixed targets, to assess the individual performance of subsidiaries, but also to allocate resources within the group.

\textbf{The fiscal approach} - the tax perspective wants to create tools that allow transfer pricing not to deviate from market values in order not to inflate competition and the level of taxation in the different jurisdictions where the multinational company operates\textsuperscript{66}.

\begin{footnotesize}
\begin{itemize}
\item[61] GRA, Transfer Pricing Regime – Ghana. Available at \texttt{<http://www.oecd.org/ctp/tax-global/Ghana-Transfer-Pricing-Regime.pdf>} accessed 26 March 2019 @ 18:50 hours GMT
\item[64] Jose Rafael Monsalve (2017) \textit{The economists’ approach to transfer pricing analysis} (Inter-American Center of Tax Administrations) \url{www.ciat.org/the-economists-approach-to-transfer-pricing-analysis/?lang=en} accessed 26 March 2019 @ 18:50 hours GMT
\item[65] Andreea- Lavinia Cazacu, Gheorghe Matei, Transfer Pricing Instrument of Fiscal Planning, at 12
\item[66] Andreea- Lavinia Cazacu, Gheorghe Matei, Transfer Pricing Instrument of Fiscal Planning, at 12
\end{itemize}
\end{footnotesize}
Tax authorities appear to adopt the latter perspective. The GRA estimates that over 70 percent of cross border business activities are transacted through Multinational Enterprises and therefore its interest in the phenomenon is quite justified.

(a) Motivation for Transfer Pricing Rules

Transfer pricing abuse is both national and international tax problem and for businesses to operate in optimal conditions, the OECD directives have laid the foundations of the arm's length principle and have enshrined it as the basic principle of transfer pricing theory. The principle of market value or full competition is the international standard of transfer pricing and is used for tax purposes by multinational companies and tax authorities. The reason for adopting this principle is that it ensures a parity of treatment between independent and multinational companies, thus avoiding the creation of tax advantages or disadvantages that could distort the competitive positions of each type of entity. Most countries require multinational companies to demonstrate that their intra-firm transactions respect the market value principle or the "arm length" principle. OECD member countries are encouraged to comply with the OECD Guidelines in their national transfer pricing practices and taxpayers are

encouraged to follow it when assessing for fiscal purposes whether pricing is in line with the principle of full competition.

The “OECD Guidelines analyze the assessment methods to see if the commercial and financial relationships of multinational companies respect the principle of full competition and discuss the practical application of these methods" (OECD, 2009, p.14).

Before the enactment Ghana’s regulations on transfer pricing, the Minister of Finance in the 2012 Budget Statement made the following observation about tax revenue loss to the country:

‘Madam Speaker, it is estimated that developing countries lose about US$160 billion every year through transfer pricing fraud. Recent studies in the mining sector showed that Ghana loses about US$36 million a year through transfer pricing. Together with the Ghana Revenue Authority we have drafted regulations to strengthen existing tax legislation to deal with taxation of multinational companies and minimize the incidence of abuse of transfer pricing. The regulation will soon be presented to Parliament."  

Similarly, at the launch of the 2012/13 GHEITI report in Accra, the Minister of Finance was quoted as saying: “transfer pricing in the extractive sector is one major challenge our revenue institutions must overcome because of its negative effect on revenue collections.” These were views not from the skies but as in a research, Ghana was ranked 93rd out of 145 developing countries in terms of illicit financial

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69 Note......Redhead
flows in 2013. Addo, et al observes that a great number of MNEs take advantage of their size and complexity of structure to influence and subsequently deprive many of these developing nations tax revenues that could be used to advance their development agenda of accelerated and sustainable economic growth. Ghana for example is reported to have lost GBP 74 million between 2005 and 2007 to multinationals of US and EU residence. The case of SABMiller Plc., the majority shareholder of Accra Brewery Limited provides a telling example as it established complex structures that enabled the company avoid paying the required taxes, estimated at GHS2.2 million per annum.

The Global Financial Integrity Report of 2014 indicated that the cost of fraudulent trade invoicing in five African countries amounted to $14.4 billion in revenue in the 10 years to 2011. The tax authorities in the five countries studied by Global Financial Integrity (GFI) - Ghana, Kenya, Mozambique, Tanzania and Uganda – lacked the trade, and tax and deals data to curb the illicit flows. The report further stated that over-invoicing and under-invoicing in the five countries facilitated the illegal inflows or outflows of more than $60 billion during the 10-year period. As reported, advanced countries such as the US have decreased the incidence of transfer mispricing through transfer pricing rules, enhanced recovery and an apprised citizenry who are supportive. It has been argued that transfer mispricing has been applied to shift profit from one jurisdiction to another - usually from tax jurisdictions where the effective tax rates are higher to tax jurisdiction where the effective tax rates are significantly lower.

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74 N 144 p.86
75 Op cit.
76 Holzmann, C. M. 2016; ‘Transfer pricing as tax avoidance under different legislative schemes, Beiträge zur Jahrestagung des Vereins für Socialpolitik 2016: Demographischer Wandel - Session: Taxation and firm
These unfortunate occurrences arising from institutional and legislative gaps on general tax rules and particular rules on transfer pricing provide the specific case for transfer pricing legislation. The apparent loss of revenue from these legislative cracks constitutes a denial of social capital and general development to the country. It is thus essential for specific legal rules on transfer pricing to be enacted in order to regulate tax deals of corporate bodies and eligible persons in a similar category. Such rules will curb the despicable acts of transfer mispricing by multinational corporations which drains nations of the much needed revenue.

a) Standard approach to tackle the problem: OECD TP regime (arm’s length price principle and a snapshot of the 5 ‘standard’ methods (traditional transaction methods, consisting of the Comparable Uncontrolled Price, Cost Plus and Resale Price Methods, and the so-called “transactional profit methods” consisting of the Transactional Net Margin Method and the Profit Split Method”.

The international transfer pricing system forms an essential part of the global tax regime, which was established under the auspices of the League of Nations in order to address the issue of double taxation and thus foster international trade and investment. At the general level, transfer pricing is a phenomenon studied in developed countries since the second half of the 20th century. Though in Ghana this is an area of relatively recent importance as it originally appears in the tax regime in 2000s, it has been observed that this area of study ‘existed since antiquity since the emergence of the first multinational groups, starting in the 1600s, by the establishment...
of the British East Indies Company’. In 1984, the OECD issued its report on transfer pricing, and in 1995 issued the first version of the OECD Transfer Pricing Guidelines, updated later in 2010. The Guidelines contain five methods that are recognised for computing transfer prices.

In practice, the OECD’s five transfer pricing methods form the bases for calculating transfer pricing, to ensure that they are consistent with the arm’s length principle. These include the comparable uncontrolled price method, the resale price method, the cost-plus method, the transactional profit split method, and the transactional net margin method. These are divided into two categories: traditional transactional methods, requiring higher comparability and methods based on transactional profit.

The traditional transactional methods include comparable uncontrolled price, the resale price, and the cost-plus methods. The comparable uncontrolled price (CUP) method draws a comparison between the price charged in a controlled transaction and the price charged in a comparable uncontrolled transaction (OECD 2010a: 2). The OECD Transfer Pricing Guidelines entreats taxpayers to apply the CUP where the this method and any other transfer pricing method can equally be reliably adopted.

The next method is the resale price method (RPM), where the resale price margin (i.e. the gross margin) that the reseller earns from the controlled transaction is compared with the gross margin from comparable uncontrolled transactions. This method commences with the price at which goods and or services are resold to non-associated third parties after they have been purchased from associated parties. The resale price is then reduced by an appropriate gross margin, which is arrived at by reference to

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79 Ibid
80 OECD (2010), Transfer Pricing Methods (OECD Publishing) 2
81 OECD (2010), Transfer Pricing Methods (OECD Publishing) 4
82 Ibid
uncontrolled transaction\textsuperscript{83}. The amount that is left after subtracting the gross margin can is regarded as an arm’s length price for the original transfer of property between the associated enterprises, subject to adjustment for other expenses associated with the purchase of the product\textsuperscript{84}.

The third method is the cost plus method (CPM). The OECD Transfer Pricing Guidelines explains the cost plus method thus:

"The cost plus method begins with the costs incurred by the supplier of property or services in a controlled transaction for property transferred or services provided to an associated enterprise. An appropriate mark-up, determined by reference to the mark-up earned by suppliers in comparable uncontrolled transactions, is then added to these costs, to make an appropriate profit in light of the functions performed and the market conditions."\textsuperscript{85} In other words, in this method, the mark-up on costs that the manufacturer or service provider earns from the transfer of goods and services in a related party transaction is compared with the mark-up on costs from comparable uncontrolled transactions\textsuperscript{86}.

The final method that the OECD recognizes is the transactional profit split method (TPSM). The method begins by identifying the combined profits to be split among the various related entities from the controlled transactions in which the associated enterprises are engaged\textsuperscript{87}. The method then divides the combined profits between or among the associated entities using an economically viable basis that approximates the division of profits that would have been reasonably expected between or among unrelated enterprises\textsuperscript{88}.

\textsuperscript{83} Ibid
\textsuperscript{84} Ibid
\textsuperscript{85} Ibid \textsuperscript{5}
\textsuperscript{86} Ibid
\textsuperscript{87} Ibid \textsuperscript{8}
\textsuperscript{88} Ibid
So by way of recap, transfer pricing refers to the pricing of transactions between related legal entities within the same multinational enterprise (MNE). It can be legitimate (if the transfer price matches the arm’s length price between unrelated parties) or abusive (also called, transfer mispricing, if the related parties distort the price to evade taxes.

In principle, this works when the price that is set matches the “arm’s length” price at which a transaction would have taken place between unrelated parties. However, transfer pricing may become abusive or illegal when related parties seek to distort the price as a means of reducing their overall tax bill. In these instances the practice may be referred to as “transfer mispricing.” For example, when a business enterprise domiciled in Nigeria transfers goods or services to a related entity in Ghana, the price charged by the Nigerian company are referred to as the “transfer price”. TP schemes lack economic substance. To deal with such challenges, the GRA has adopted legislative mechanisms that incorporate the OECD’s transfer pricing methods as a way of streamlining the activities of entities that engage in related party transactions.

### D. THE LEGAL FRAMEWORK ON TRANSFER PRICING IN GHANA

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URL: https://doi.org/10.15640/ijat.v5n2a6
The rules that govern the transfer pricing regime of Ghana are interrelated but have varied statuses and binding effects. Some take precedence over others; while some are binding on both the taxpayer and CG of the GRA but others only on the CG of the GRA. The hierarchy of legislation in respect of transfer pricing in Ghana per the principles enshrined under article 11 of Ghana’s Constitution is as follows:

The Income Tax Act, 2015 (Act 896)\(^\text{90}\) is the main parent legislation on transfer pricing\(^\text{91}\). Act 896 is binding on both the taxpayer and the CG of the GRA. The same applies to the Transfer Pricing Regulations, 2012 (LI 2188) and the Technology Transfer Regulations, 1992 (LI 1547) which are the next in the hierarchy. LI 2188 will however take precedence over LI 1547 where there is a conflict between the two regulations because the former is later in time; unless it can be shown that on a particular matter, LI 1547 is a special legislation.

The next in the hierarchy is the Commissioner General’s Practice Notes. Generally, these notes provide a guidance to taxpayers on the interpretation the CG assigns to the binding provisions on transfer pricing. They are not binding on taxpayers but are binding on the CG. A Private Ruling has the same status as the Practice Note but is restricted to a particular taxpayer to whom the ruling was made. It generally states the position of the CG on a particular transaction and is binding on both the CG and the taxpayer to whom the ruling is addressed.

The Transfer Pricing Regulations, 2012 (LI 2188) was originally passed under the now repealed Internal Revenue Act, 2000 (Act 592). The LI which now derives its validity from section 136 (2) of Act 896 deals basically with the implementation of the arm’s length principle in transactions between persons in a controlled relationship,\(^\text{92}\) both

\(^{90}\)This replaced the now repealed Internal Revenue Act, 2000 (Act 592).

\(^{91}\)Other Acts of Parliament that are later in time might amend Act 896 subject to the principle that the provisions in a special legislation take precedence over those contained in a general one where there exists irreconcilable differences in the two pieces of legislation on the same subject matter.

\(^{92}\)Controlled relationship is explained under section 128 (1) & (2) as:
locally and internationally. Ghana’s transfer pricing regulations, adopted substantially the OECD Guidelines on transfer pricing (2010) by adopting a modified version of the Most Appropriate Method analysis.\textsuperscript{93} Thus Ghana adopted the ALP as the method for determining transfer pricing, and also made provision for the use of other methods not excluding the formulary approach/unitary tax system, where the tax payer can justify that the use of the formulary approach/unitary tax system is the best method under the circumstances of the transactions it is engaged in.\textsuperscript{94}

According to officials at the Transfer Pricing Unit of the GRA, the generality of business entities adopts and uses the five methods outlined in the Transfer Pricing Regulations. There have however arisen situations where some businesses have sought


\textsuperscript{94} Transfer Pricing Regulations 2012 (L.I. 2188), \textit{Transfer pricing methods}

3. (1) For purposes of these Regulations, the transfer pricing methods approved by the Commissioner-General are

(a) the comparable uncontrolled price method;
(b) the resale price method;
(c) the cost-plus method;
(d) the transactional profit split method; and
(e) the transactional net margin method.

(2) A transfer pricing method specified in subregulation (1) shall be computed as specified in the Schedule.

(3) Despite subregulation (1), the Commissioner-General may

(a) use a method other than a method stated in subregulation (1), or
(b) in writing permit a person to use a method other than a method stated in subregulation (1), if the Commissioner-General is of the opinion that considering the nature of the transaction, the arm’s length price cannot be determined by use of a method specified in subregulation (1).

(4) Where the application of the most appropriate method identifies a range of relevant indicators which are of equal reliability, then the terms of the transaction is at arm’s length if the relevant indicator falls within that range.
to use other methods besides the five that have been outlined in the Regulations. The reasons that have been given have been that the use of the preferred methods has had the potential of negatively affecting the competitiveness of some local branches of MNEs as compared to independent businesses within the same sector. An example that was cited was involved multinational vehicle and spare parts dealers. They claimed that the preferred methods placed them at a disadvantage in comparison with their purely local counterparts in terms of pricing. Some of them therefore proposed to use other methods for particular items. In principle, this was not a problem for the GRA, provided it did not result in less tax to the GRA.

Ghana’s adoption of the OECD Guidelines is not peculiar as many other countries have done same. It would however appear that Ghana is more flexible in its approach. It follows therefore that the debate among proponents and supporters of each approach as to the superiority of one approach over the other may not affect Ghana’s current regime.

The 1990 transfer pricing hearings held by the Subcommittee on Oversight, House Committee on Ways and Means, the Joint Committee on Taxation cases found that suitable comparables could not be found in order to successfully apply one of the three traditional methods. This is instructive for Ghana which is faced with a similar problems. Difficulties with finding comparables has always been a challenge to tax administrations. In the United States, the Joint Committee on Taxation found that "...regardless of which method is used for tangible assets, much controversy arises between IRS and taxpayers in establishing proper comparables". The Commissioner for the IRS illustrated the extent of the challenge using plastic hubcaps:

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96 Curbing Illicit Financial Flows (IFFs) from Resource-rich Developing Countries: Improving Natural Resource Governance to Finance the SDGs, Discussion Paper Literature review: The current international transfer pricing regime pp 3-4, 12.

"How does anyone determine and value comparable hubcaps if no other company manufactures a similar part and no other company's distributors sell the part?"^98

As indicated above, Ghana’s regulations came at the wake of perennial loss of revenue to Ghana due to gaps on the existing tax legislation. Prior to the passage of LI 2188, section 17 of Act 592 contained some provisions against transfer mispricing, but it was not vigorously enforced. The law gave considerable discretion to the head of the Ghana Revenue Authority (GRA) in the assessment of transactions subject to transfer pricing adjustments.

The Technology Transfer Regulations, 1992 (LI 1547) of the Ghana Investment Promotion Centre (GIPC) is another precursor to LI 2188. The GIPC made those rules among others to curb transfer pricing.

The Practice Note on LI 2188, in its introduction provides that the commentaries in the OECD Transfer Pricing Guidelines may assist where necessary in the interpretation of LI 2188.

The Income Tax Act, 2015 (Act 896) provides for a “general anti-avoidance rule” under section 34. The section empowers the Commissioner General of the Ghana Revenue Authority to re-characterise or disregard any arrangement that is entered into or carried out as part of a tax avoidance scheme “which is fictitious or does not have a substantial economic effect; or whose form does not reflect its substance."^99

Again, section 31(3) of Act 896 empowers the Minister to make Regulations on matters relating to transfer pricing and the application of the arm’s length standard. Sub-section (4) of the same section gives the Commissioner General the power to adjust the tax payable where in his or her opinion, there has been a failure to comply with the arm’s length standard. Section 32 provides against income splitting, by empowering the Commissioner General to adjust or re-characterize the incomes for

^98 Ibid
^99 The Seventh Schedule to Act 896 s 34(1)
the purposes of taxes. Finally, section 33 limits the debt-to-equity ratio of exempt persons to three-to-one. This means that where in respect of the source of funding of a company, the debt-to-equity ratio exceeds the statutory ratio, the deductible income for interest in excess of this ratio may be disallowed. This is to prevent the situation where taxpayers take advantage of debt financing as a means of avoiding tax.

Another important mechanism by which the Ghana Revenue Authority is empowered to deal with transfer pricing and other tax avoidance schemes is the power to access, at all times and without prior notice, any premises, place, property, book, record, computer or other electronic storage device\(^{100}\) as well seize any book, record, other document, computer or other electronic storage device that in the opinion of the Commissioner-General or authorized officer, affords evidence which may be material in determining the liability of a person to tax.\(^{101}\) Similar provisions can be found in the *Customs Act, 2015 (Act 891)*. For example, section 3 (1), (2) and (3) of Act 891 empowers the Ghana Revenue Authority to conduct customs controls including random checks and to collaborate with foreign customs administrations to carry out joint control activities with the aim of ensuring security in shipment and combatting transnational crime. The Act also mandates vessel owners, importers and exporters among others to keep stipulated records and to make same available to the Authority for examination, inspection and audit purposes.\(^{102}\) In addition, section 7 empowers the Authority to conduct a post-clearance audit after the release of goods with the goal of ensuring that the right amount of duty has been paid.

*(b) Institutional Framework*

After the passage of LI 2188, the GRA set up the Transfer Pricing Unit (TPU) at the Large Taxpayer Office in 2013. The office is part of the Domestic Tax Revenue Division of the GRA. The Unit is responsible for all transfer pricing issues across the

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100 Ibid s 18(1) (a)
101 Ibid s 18(1) (c)
102 Act 891 s 9 (1) & (2)
(c) Documentation: Tax Filing and Transfer pricing

From these rules stated above, we may observe that Ghana has made a sufficient legislative effort to introduce the tax and accounting concept of transfer pricing into the legal landscape of the country. The existence of rules merely underscore the reception and acceptance of their core idea into Ghana. Nonetheless, their existence is not to suggest that they are detailed and at all material times applied across board by the state of Ghana. Besides, their statutory existence is not in itself sufficient to suggest that the rules are at all cost consistent with the international transfer pricing regime nor they are well within best practice in respect of transfer pricing as an area of study within tax law and accounting.

Starting 14 September 2012 when the Transfer Pricing Regulations came into force, all taxpayers in Ghana are required to file, as part of their annual returns, information on transactions involving associated persons that are undertaken during the year to which the returns relate. These should be submitted within four months after the end of the business’ financial year.

The Commissioner General of the GRA also has power under Regulation 7(4) of LI 2188 to require a person or any other person to produce within a specified time any document or information that will enable the GRA obtain full information with respect to the income of a person. Such a request should not be difficult to respond to because the Regulations impose a duty on all taxpayers who engage in a transaction with another person with whom that person has a controlled relationship to maintain

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103 See Regulation 7(3) of LI 2188; see also https://www.ey.com/Publication/vwLUAssets/Ghana_publishes_Transfer_Pricing_Return_and_Practice_Notes_on_transfer_pricing_regulations/$FILE/2013G_CM3820_TP_Ghana%20publishes%20TP%20Return%20and%20Practice.pdf. Retrieved 29 January 2019 @ 11:59 hours GMT
contemporaneous documentation of the transaction engaged in by that person for each tax year\textsuperscript{104}.

There is however no specific legislation that mandates or serves as a guide to the GRA on when to conduct a transfer pricing audit. The decision is left to the discretion of the officers of the TPU.

The absence of a binding set of guidelines to serve as a basis for identifying which entities should be selected for transfer pricing (TP) audit has meant that TP audits have not been done in an organised coordinated manner. At best, a transfer pricing audit is \textit{only} carried out at the instance of the GRA. Where the GRA decides to undertake TP audit, it will accordingly inform the tax payer well ahead of time. In addition, the TPU will hold a series of consultative meetings with the tax payer to plan the audit exercise in order to make the exercise successful. By way of documentation, the taxpayer has to obtain and fill in the necessary forms (returns) and present same to the TPU. The following documents may also be required.

\begin{itemize}
\item[a)] A general description of the organisational, legal, and operational structure of the group of associated enterprises of which the taxpayer is a member, as well as any relevant change therein during the taxable period.
\item[b)] The group's financial report or equivalent annual report for the most recent accounting period.
\item[c)] A description of the group's policy in the area of transfer prices, if any.
\item[d)] A general description of the nature and value of the controlled transactions in which the taxpayer is involved or which have an effect on the income of the taxpayer.
\item[e)] A description of the functions, assets and risks of group companies to the extent that they affect or are affected by the controlled transactions carried out by the taxpayer, including any change compared to the preceding period.\textsuperscript{105}
\end{itemize}

\textsuperscript{104} Regulation 7(1) of LI 2188
In addition, the taxpayer must show with respect to each material controlled transaction carried out by the taxpayer, the following:

a) a description of the transfer pricing method used by taxpayer to demonstrate that the prices and other financial indicators associated with the transaction satisfy the requirements of the arm's length principle and a description of why such methods are the most appropriate transfer pricing methods within the meaning of Regulation 3 of Transfer Pricing Regulation 2012 (LI 2188).

b) A comparability analysis supporting the taxpayer's application of the most appropriate transfer pricing method prepared in accordance with the provisions of Section 3.

c) Financial data showing the results of controlled transactions sufficient to demonstrate the taxpayer's compliance with section 1 applying the most appropriate transfer pricing method within the meaning of Section 4, paragraph 1.106

The above discussion must however not be understood to mean that the TPU does not use guidelines at all. Be this as it may, the tax authorities have in the past exercised their discretion to ensure that some taxpayers are held accountable for transactions that fell within the rules. As of 2015, the GRA had undertaken 250 cases of transfer pricing audits.107 As of April 2018, the audits, had resulted in extra assessment of taxes to the tune of about fifty seven million United States Dollars (USD 56,818,181.8)108 out of which about eighteen million United States Dollars has been paid. The rest of the assessments are still being contested by the tax payers. However, recently, the biggest defaulting company, Ghana Telecommunication Company Ltd (popularly called ‘Vodafone’, that is its trade name), has abandoned its legal challenge. Vodafone

106 Op cit. p.16.
107 https://home.kpmg.com/content/dam/kpmg/pdf/2015/10/tp-review-ghana-v2.pdf (last accessed April 4, 2018)
108 The local currency equivalent is two hundred and fifty million Ghana Cedis (GHC 250,000,000,00).
was assessed to pay about US$ 36,363,636.4.\textsuperscript{109} Vodafone will pay up now, considering that the legal battle is over.

The Transfer Pricing Unit of the Ghana Revenue Authority (GRA) like most Tax administrations is faced with finite resources and limited time\textsuperscript{110}. There is therefore the need to determine the potential tax revenue at stake and to select the most suitable audit cases\textsuperscript{111}. This principle was described by Adam Smith as one of the attributes of an effective tax\textsuperscript{112}. To ensure the most productive use of resources and limit compliance costs, tax authorities need to develop and use risk-based assessment systems for selecting taxpayers for transfer pricing audits\textsuperscript{113}.

The approach most tax administrations adopt is to create either a large taxpayer office (LTO) or a large business and international (LB&I) division, to host the transfer pricing team. The LTO or LB&I is predominately organized along industry specialization, which reflects the country’s main economic activities. Most taxpayers in the scope of transfer pricing legislation will be classified as large taxpayers, although in some countries with domestic transfer pricing legislation\textsuperscript{114}, which encompasses a very broad definition of associated enterprises, even taxpayers classified as small can have their transactions subjected to scrutiny under the transfer pricing rules\textsuperscript{115}.

\textsuperscript{109} The local currency equivalent is one hundred and sixty million Ghana Cedis (GHC 160,000,000.00).https://www.ghanabusinessnews.com/2017/09/19/vodafone-ghana-sues-gra-over-gh%C2%A2160m-transfer-pricing-assessment/ (last accessed April 4, 2018).


\textsuperscript{111} Ibid

\textsuperscript{112} Ali-Nakyen Abdullah (2014), Taxation in Ghana; Principles, Practice and Planning (3rd Ed. page 7)

\textsuperscript{113} Op cit page 234

\textsuperscript{114} Ghana is one of such countries (See Transfer Pricing Regulations, 2012 (L.I. 2188). See also paragraph 1.1.3 of the Commissioner General’s Practice Note on L.I. 2188 provides in part “although provisions of arm’s length principle are applicable to persons who are separate legal entities, the contents of this Practice Note will also apply to determine the arm’s length consideration for tax purposes of dealing concluded by:

a. a transaction between persons who are in a controlled relationship;

b. dealings between a permanent establishment and its head office;

c. dealings between a permanent establishment and other related branches of that permanent establishment;

d. a transaction between a taxpayer and another taxpayer who are in controlled relationship; and

e. a transaction between a taxpayer and another taxpayer who are in an employment relationship

\textsuperscript{115} Op cit page 341
The World Bank underscores the need, following the enactment of transfer pricing legislation, for tax administrations to develop, implement, and continuously update an effective transfer pricing audit program. Ghana is yet to develop its own guidelines which will provide the basis for the selection of companies for transfer pricing audit but relies on guidelines contained in the OECD’s Guidelines as well as the UN Transfer Pricing Manual. We may concede that the TPU does a lot of serious preparatory work (risk assessment), in order to identify which companies to select for the audit. The TPU uses the OECD and UN Manuals on the selection criteria. But in practice only the high risk companies are selected for the audit— for example companies that have 80% of their transactions with related parties.

We must note that this discretion selectively exercised by the tax authorities may lead to loss of revenue. It reduces the potential revenue to be generated through transfer pricing returns to only cases decided as such by the tax authorities. For the fact that the corporate world is large in Ghana and the fact that this discretion to select cases for transfer pricing returns is centralised, the system does have a real challenge in dealing comprehensively with the “transfer pricing constituency” within the tax administration. For instance, certain genuine cases with potential revenue to the state may be overlooked. Besides, the exercise of the discretion to select a case may be final but the determination of the selected case is not final as such a determination can be challenged on a number of grounds including the fact that the method adopted is not the most appropriate. Overall, the tax regime is still operating with a less aggressive and non-country specific guideline for selecting cases that require transfer pricing audit which in effect narrowed the scope of revenue collection in the country.

E. TAX ADMINISTRATION, TAX PERSONNEL AND TRANSFER PRICING

116 Commissioner General’s Practice Note on L.I. 2188. Paragraph 1.1.4 at pages 4 and 5
(a) Institutional Capacity on Transfer Pricing

Every good tax system depends on an efficacious tax administration. The effectiveness and efficiency of a tax administration will, in part, depend upon the quality of the personnel deployed there. It is thus reasonable to suppose that the quality of the personnel in tax administration is evaluated within the specific context of the scope of work and the technicality of that work. More detailed and technical work requires a highly trained personnel. In the light of this, to deal with transfer pricing returns within Ghana’s tax administration requires more technical personnel. This is not only required in terms of numbers but the requisite training of such persons. Even more importantly, the authority must begin to consider a simplified approach to dealing with TP issues that reduce the burden of fact-intensive, transactional TP analysis.

Some countries have begun the process of moving away from this traditional approach to transfer pricing audit to what is generally perceived to be a more efficient method. The Netherlands' approach to transfer pricing audit is a proactive one. They use the enhanced engagement approach\textsuperscript{117}. In short, the approach can be described as “certainty in exchange for transparency”\textsuperscript{118}. The prompt disclosure of significant tax risks is critical to the success of this approach. In addition, businesses have the responsibility of ensuring that there is a “tax control framework in place to ensures that they are ‘in control’ and to ensure timely discovery of these risks”\textsuperscript{119}.

The UK and USA have also adopted variants of this approach. It appears this is the new way to go especially because "[t]raditional post-filing examinations for large corporations tend to be time-consumming and resource-intensive for both taxpayers and the [tax administrations] ... Additionally, the further back in time an exam is focused, the greater the administrative and financial burdens on the taxpayer and the [tax administrations]... In particular, when issues under examination remain unresolved for extended periods, taxpayers may be obliged to maintain tax reserves on

\textsuperscript{117} OECD, Draft Handbook on Transfer Pricing Risk Assessment (2013) 34
\textsuperscript{118} Ibid
\textsuperscript{119} Ibid
their books in anticipation of an exam outcome.”\textsuperscript{120} The challenges associated with post filing audit may extend to other matters other than cost to a business and this includes “a corporation’s financial statements and share price”\textsuperscript{121}

In the United States, the Internal Revenue Service (IRS) introduced a pilot program in March 2005 to assess the feasibility of an alternative approach to large corporate tax administration\textsuperscript{122}. “Th[e] approach – known as the “Compliance Assurance Program” (“CAP”) – was structured to leverage new, non-tax corporate governance and financial reporting requirements brought about by the Sarbanes-Oxley Act of 2003.”\textsuperscript{123} (OECD Draft Handbook).

Even though the phrase "transfer pricing" did not appear anywhere in the original Act, neither did compliance assurance program (CAP) there are several provisions that imposed obligations on companies for disclosure\textsuperscript{124}. Beginning in 2015, amendments were introduced to cater for transfer pricing and advance pricing agreement (see subsection 4.51.8.5.1, 4.51.8.3 (3) and 4.51.8.6 (1))\textsuperscript{125}.

The approach under CAP is for a taxpayer to work cooperatively with revenue agents “in a contemporaneous, pre-filing environment to resolve issues of potential controversy and to determine the appropriate tax treatment of all events and items that could have a material effect on the taxpayer’s liability”\textsuperscript{126}. A defining feature of the program is that at the very beginning of the CAP cycle, the taxpayer enters into a

\textsuperscript{120} Ibid @ 35
\textsuperscript{121} Ibid
\textsuperscript{122} OECD, Draft Handbook on Transfer Pricing Risk Assessment (2013) 35; See also https://www.irs.gov/businesses/corporations/compliance-assurance-process
\textsuperscript{123} OECD, Draft Handbook on Transfer Pricing Risk Assessment (2013) 35
\textsuperscript{124} For example, Title IV-Enhanced Financial Disclosures (sections 401-409) imposes a duty to disclose transactions involving management and principal stockholders among others.
\textsuperscript{125} https://www.irs.gov/irm/part4/irm_04-051-008#idm139704850343520
\textsuperscript{126} OECD, Draft Handbook on Transfer Pricing Risk Assessment (2013) 35
Memorandum of Understanding (MOU) with the IRS\textsuperscript{127} which spells out the duties of each party to the program as well as outlines the process to be followed\textsuperscript{128}.

The program appears to be quite popular among taxpayers. It has grown from a total of 17 corporate taxpayers to 181 since it began.\textsuperscript{129} In 2011, the CAP was made permanent, and expanded to include the Pre-CAP and Compliance Maintenance phases. The IRS was however compelled to announce a freeze effective 1st October 2016\textsuperscript{130}. The freeze meant that the IRS was accepting no new applications. The popularity of the program is explained by one observer thus:

“In a nutshell, taxpayers who participate in CAP have IRS auditors review and agree to their tax positions prior to filing their tax return. In other words, CAP reduces tax audit risk and removes the uncertainty surrounding tax positions.”\textsuperscript{131}

However, on August 27, 2018, the Internal Revenue Service (IRS) announced that the Compliance Assurance Process (CAP) program will continue, with some modifications\textsuperscript{132}.

Another jurisdiction that is gradually moving away from the traditional approach is Australia. The Australian Tax Office (ATO) is now moving to a product that is less onerous yet retains the goal of being current and having greater certainty\textsuperscript{133}.

ATO is presently testing a product called the **Annual Compliance Arrangement (ACA)**\textsuperscript{134}. This product is similar to the CAP and is about continuous disclosure and

\textsuperscript{127} Ibid
\textsuperscript{129} https://www.bloombergtaxtech.com/resources/articles/irs-compliance-assurance-program-cap-freeze-impact-on-corporate-taxpayers. Last accessed on 23 December 2018 @ 20:18 Hours GMT
\textsuperscript{130} https://www.bloombergtaxtech.com/resources/articles/irs-compliance-assurance-program-cap-freeze-impact-on-corporate-taxpayers. Last accessed on 23 December 2018 @ 20:18 Hours GMT
\textsuperscript{131} https://www.bloombergtaxtech.com/resources/articles/irs-compliance-assurance-program-cap-freeze-impact-on-corporate-taxpayers. Last accessed on 23 December 2018 @ 20:18 Hours GMT
\textsuperscript{132} OECD, Draft Handbook on Transfer Pricing Risk Assessment (2013) 35; See also https://www.natlawreview.com/article/irs-announces-cap-will-continue. Last accessed on 23 December 2018 @ 20:28 Hours GMT
\textsuperscript{133} OECD, *Compliance Management of Large Business Task Group; Guidance Note-Experiences and Practices of Eight OECD Countries* (CTPA, 2009) 28
\textsuperscript{134} Ibid
an annual discussion to ensure the tax return is correct. The ATO would then provide a list of risks and a forward plan to deal with those risks. Just like in the United States, early indications are that the corporate groups are very interested in this approach.135

The Canada Revenue Agency (CRA) has provided Real Time Audits (RTA) since 1997. This allows taxpayers to request a CRA review of possible contentious issues prior to a corporation filing its income tax return. There are few RTA requests in Canada.

In the case of Ghana, it appears the legal basis already exists for the adoption of the Enhanced Engagement Approach. As discussed above, this approach will allow early engagement between the Ghana Revenue Authority (GRA) and taxpayers and ensure that transfer pricing risks are identified and discussed between the parties before the taxpayer files returns or even engages in a transaction. Under the Income Tax Act, 2015 (Act 896), a taxpayer is entitled to apply to the Commissioner-General for a private ruling before entering into any transaction:136

“Private ruling

4. (1) The Commissioner-General may, on an application in writing made by a person, issue to that person a private ruling setting out the position of the Commissioner-General regarding the application of this Act to that person with respect to a transaction proposed or entered into by that person.

(2) Where prior to issuing a ruling under subparagraph (1),

(a) the person in respect of whom the ruling is issued makes, a full and true disclosure of all aspects of the transaction relevant to the ruling to the Commissioner-General, and

(b) the transaction proceeds in all material respects as described in the application of that person for the ruling, the ruling is binding

135 Ibid
136 See paragraph 4 of the Seventh Schedule to the Income Tax Act, 2015
(c) on the Commissioner-General with respect to the application of this Act at the time of the ruling, and

(d) on that person with respect to the transaction.”

Without waiting for the Commissioner General, MNEs can take advantage of the above provisions to initiate this approach to transfer pricing audit. It's advantages for both tax administrations and the taxpayer needs no repeating.

Such an approach will enable the TPU to focus on the more technical aspects of TP, which will require not just trained personnel but also adequate numbers to deal with the peculiar technical needs of the area. Be this as it may be, the GRA in collaboration with Ministry of Finance, and the Institute for Austrian and International Tax Law at WU Vienna University of Economics and Business held a 3-day International Conference and Capacity building workshop on the theme “Countering Treaty and Transfer Pricing Abuse: The Tax and Financial Crime Dimension”. The FIC was also subsequently drawn in as a co-host. The conference was aimed at contributing to raising awareness on the importance of the role of tax administration in countering all forms of illicit activities. It was attended by one of Ghana’s deputy ministers of finance, over 150 participants from 17 countries, as well as international organisations and CSOs.

At the most substantive level, according to a recent needs assessment of the GRA, the Transfer Pricing Unit needs about 40 trained personnel to be able to handle the workload of that unit. Of this number, the current personnel number about 15 out of which 5 are recent recruitments. Though there a further requisition for 3 more, about 2 of the 15 trained personnel to handle transfer pricing issues have recently been transferred to another unit (training) thereby reducing the number to 13. This is a reduction in the human resource capacity. But this reduction of personnel does not

138 Ibid.
lead to reduction in the scope of the activities expected of the unit. The unit is expected to deal with the countrywide issues on transfer pricing with this negligible number of staff. With a vibrant corporate world and demonstrated need for revenue, efficient and effective staff on transfer pricing is indispensable in Ghana. On that account since this is a highly centralised body operating principally in Accra for the whole country, this recorded and contemplated number of staff is woefully unsatisfactory.

It is important to state that the effectiveness of the TP unit is blunted by this abysmal number of staff. The volume of work even with the exercise of guided discretion to select cases for review on transfer pricing is huge such that this number of personnel cannot practically deal with the work within a reasonable time. The technical complexity of some of the cases especially decoding and applying a particular method in determining the tax liability of a person or the selection of a comparable transaction for the purposes of calculating the tax liability of a taxpayer may not be without retrogressive hurdles. The overall effect is to claw back the administrative efficacy of the unit in revenue mobilisation in the country. This will not only lead to loss of revenue from multinational enterprises, but also serves as a mockery to the statutory goals on the anti-transfer mispricing project. Besides, at the state level, it highlights a negative practical political mood in dealing with transfer pricing and non-preparedness of the government to embrace international standards or best practices.

F. METHODOLOGICAL HURDLES

Ghana’s journey to put in place transfer pricing rules, has not been a smooth journey. Ghana’s failure to enact transfer pricing rules until 2012, which is twelve years after the Minister of Finance, has been given power to enact the rules in 2000 raises
concerns. According to Redhead, one of the precursor laws that sought to introduce TP was not well stated thereby defeating its purpose. Redhead argued, “Section 70 of the IRA provided the legal basis for the government to re-characterize transactions not conducted at arm’s length, the Act failed to define “arm’s length,” explain how the arm’s length principle is to be applied, nor did it set out transfer pricing documentation requirements. According to a senior official at the GRA: “When the transfer pricing regulations came out, the petroleum companies said that they didn’t apply to them, but we managed to get them with Section 5 of the PIT.”

The confusion that ensued and the parochial reading of the rules by taxpayers led some taxpayers to lobby the government directly or through parliament, with the concern that the regulations would be applied retroactively and that documentation requirements would be too onerous. To neutralize these concerns the committee organized a forum with all stakeholders to allay fears and build buy-in. According to some writers, the LI 2188, has outlined new procedures for documentation, including maintaining the “master file”, the local file, providing an overview of the group activities, detailed in-country operations, as well as the country-by-country reporting template. This calls for a break-down on a country-by-country basis of group data such as revenue, profits, taxes paid, taxes accrued, assets, and employees.

The successful implementation of transfer pricing regulations essentially depends, in part, on the commitment of accounting firms and accountants. Accountants working with MNEs are required to provide additional information on the measures and data

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143 Op cit page 6.

144 Ibid
on financial transfers to subsidiaries of a multinational group of companies. Tax authorities require this data as part of the measures for addressing Base Erosion and Profit Shifting (BEPS). In this regard, accountants have a duty to ensure full compliance with the transfer pricing regulations.\textsuperscript{144} The LI places a crucial role on accountants to keep accounts in a manner that makes it easy to undertake a transfer pricing audit. Professional accountants are therefore expected to account for profits in a way that aligns with economic activities and value creation otherwise they will face scrutiny and pose a financial risk to the MNEs.

Price Waterhouse Coopers asserts that in 2012, a taxpayer that was to be audited under the rules, had the option to choose a preferred method of calculating the arm’s length transactions and that availability of choices gives some form of comfort to professionals including accountants working with the MNEs\textsuperscript{145}. Such a choice requires a justification that:

1. none of the approved methods in the LI can be reasonably applied to determine arm’s length conditions for the controlled transaction;
2. such other method yields a result consistent with that which would be achieved by independent persons engaging in comparable uncontrolled transactions under comparable circumstances;
3. the taxpayer asserting the use of a method other than the approved methods shall bear the burden of demonstrating that the requirements listed above have been met.\textsuperscript{146}

Even in the face of these rules, it has been posited that although the transfer pricing rules are commendable, they are not designed to achieve optimal results. This is because among others, the arm’s length methodology adopted in the rules for determining the value of a comparable contract for use in assessing whether a contract

\textsuperscript{144} Ibid
\textsuperscript{146} Op cit.
between companies within MNEs represents an arm’s length contract, is not fool
proof. That methodology is subject to weaknesses such as difficulty in finding a
contract that qualifies as a comparable arm’s length contract for the purposes of
comparison, requiring an enormous amount of time to find comparable contracts for
the large volumes of contracts that MNEs undertake, and the failure of the GRA to
provide guidance on the meaning of ‘a contract that provides value’ to a company.
The requirement of ‘a contract that provides value’ is one of the threshold
requirements for determining whether a company within an MNE network has
entered into a contract with another company within the network, and must be
answered in the affirmative together with the other requirements, for such a contract
to qualify for comparison with an arm’s length contract.

The GRA itself has seen the need to revise the TP rules to make them more efficient
as such and is in the process of engaging stakeholders for their input into the revision
of the law. Sometime ago, the head of the Mining Audit Desk at the GRA, stated that
‘the new regulations are not sufficiently specific to the extractive industries, nor does
the relevant mining and petroleum legislation explicitly address the requirement for
arm’s length pricing.147

But the overall effect of the methodological hurdle is much more biting because the
Authority failed to develop and maintain a data base of comparable transactions which
database can always serve as a ready source of information for evaluating the tax
liabilities of taxpayers. Without this database, the obviously strained staff of the TPU
may find it difficult to get a fitting and true comparable transaction for the purpose.
This lack of ready data at the disposal of tax officials often leads to arbitrariness in the
calculations as wrong methods and principles are adopted and more often than not the
results obtained from such calculations by tax authorities are vigorously contested by
taxpayers. Such contestations often take time to be resolved through more vigorous

147 Redhead A, Transfer Pricing in the Extractive Sector in Ghana, Natural Resource Governance Institute, 2016),
March 6, 2018).
assessments of the applicable method, documents and the particular transaction which necessitated the adoption of the contested method. The period of time required for this exercise is often long and within that period it puts beyond reach potential revenue to the state or deny taxpayers their much needed liquidity.

G. CONCLUSION AND RECOMMENDATIONS

There exist in Ghana the right legal framework to ensure that the GRA can embark on an aggressive implementation of a transfer pricing regime that serves as a disincentive to transfer pricing abuse. There is also evidence on the ground to support the effectiveness of these rules. It is also quite encouraging to note that through Ghana’s collaboration with the OECD and other organisations, there is continuous training to ensure that the skills of the tax officials are updated to ensure that MNEs do not exploit the current rules through more aggressive tax planning and tax evasion schemes.

This, we think, is the most appropriate first *a priori* level for an effective tax regime on transfer pricing; the second level being the quality of commitment on the part of both taxpayers and tax authorities to leave up to expectation of such rules of mandatory disclosure.

There are however systemic issues that threaten to undermine the potential of rules and the existing institutional framework. The first is the non-existence of a Ghana specific set of guidelines that forms the basis for selecting cases for transfer pricing audit. This exposes the country to the potential loss of revenue from genuine cases that might not fall within the parametres of guidelines the TPU currently relies on.

Closely related to the above challenge is the wide discretion the CG has in such matters. This in our view exposes the authority to political patronage and cronyism.
This is particularly important in the light of the fact that the CG reports directly to the Minister of Finance who is an appointee of the President.

Finally, the volume of work that the TPU is expected to do relative to their number is a potential source of inattention, which is a key requirement for effective TP monitoring. It is even more worrying that some of the experienced hands have been moved to other units without being first replaced.

We recommend based on the foregoing observations that it is critical to take a second look at Ghana’s approach to TP. An approach that eliminates the need to review large documents as the traditional methods require will auger well for both taxpayers and the GRA. This will also eliminate the need to bring in large numbers of experts and free the TPU to focus on very technical and sensitive cases.

It is also critical to formulate a country specific set of guidelines that takes into account the peculiar circumstances of Ghana. This will ensure that as much as possible, all cases of transfer mispricing are identified and the appropriate adjustments made. This will also reduce if not eliminate the scope of issues on which the CG has discretion. This will also reduce the number of litigation that the GRA will be engaged in with taxpayers because there guidelines would not only serve as a guide to the GRA, but also to MNEs.
H. APPENDIX

CDE - University of Bern
Phase 1 Stocktaking
Ghana: Checklist & Questionnaire
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I. GENERAL

A. LEGAL SYSTEM

B. INFORMATION AND COOPERATION NETWORKS (TAX AND CUSTOMS ADMINISTRATION)

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1. Tax authorities
   a) General
   b) Information sharing with other domestic agencies
   c) Information sharing with foreign agencies

2. Customs agencies
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3. Literature

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ANNEX

II. COCOA-SPECIFIC

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E. LITERATURE REVIEW

III. GOLD-SPECIFIC

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3. Regulation of, engagement in and monitoring of operations .......... Error! Bookmark not defined.
4. Foreign exchange and capital restrictions .................................. Error! Bookmark not defined.
C. COLLECTION OF TAXES AND ROYALTIES ......................... Error! Bookmark not defined.
   1. Competent authority and revenue distribution ........................ Error! Bookmark not defined.
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   3. Taxes and quasi-tax instruments ......................................... Error! Bookmark not defined.
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Introduction

1. General

A. Legal system

The Ghana legal system is anchored on a common law tradition. This is the tradition mostly associated with the Commonwealth of Nations. Understandably, Ghana’s fate is pitched in this group because she was colonised by the British for over a century and during the period of colonialism, the British introduced and applied the English common law in Ghana. In the colonial context, the key historical instrument for the identity of law in Ghana was the Supreme Court Ordinance, 1876, which introduced English law and affirmed the continuity of local customary laws in the Gold Coast Colony. Section 14 introduced the common law and equity as well as English statutes of general application. Section 17 provided that these English laws were to be applied subject to local conditions and circumstances, and such laws could be altered by local legislation. And section 19 provided that, where appropriate, courts were to apply local laws and customs so long as they were not “repugnant to justice, equity and good conscience.” This basic legal duality—an English-based common law system plus local customary law—continued after independence with each successive constitution.

But aside this major reception ordinance, it was the Colonial Laws Validity Act of 1865 which provided the colonial systems a proper fit into their larger imperial constitutional context. The basic point of the Colonial Laws Validity Act was to confirm that a law made in the colonies that was repugnant to an Act of the imperial (or U.K.) Parliament, or an order made under such an Act, that extended to the colony, was of no force or effect (section 2). But it also confirmed that colonial laws that were repugnant to the “Law of England” were not void, unless, in violating the Law of England, they also violated an Act of Parliament or order made there under extending to the colony (section 3). In fact, the 1865 Act was intended to dispel the notion that colonial legislative authority was in some sense bound by vague notions of humanity or equity associated with the Laws of England. The Act confirmed that the only legal limitation on colonial legislative authority was the express terms of Acts of the imperial Parliament, or orders made there under, that extended to the colony in question.

In the post-independence period, this duality of legal norms did not fade off. There has been a sustained attempt to recognize the customary law constitutions of the various ethnic groups as part of the corpus of constitutional law in Ghana. Article 11(2) and 11(3) of the Constitution, 1992 provide that the “common law of Ghana” includes not only the rules of law generally known as the

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1The Bond of 1844, marks the beginning of the colonial period and Ghana attained independence in 1957.
2See section 11 of the Gold Court Supreme Court Ordinance of 1876. See also the Supreme Court of the Gold Coast Ordinance (CAP 4 of the Laws of the Gold Coast, 1951) which provided that these laws should be applied subject to local conditions and circumstances, and such laws could be altered by local legislation. And section 19 provided that, where appropriate, courts were to apply local laws and customs so long as they were not “repugnant to justice, equity and good conscience.” This basic legal duality—an English-based common law system plus local customary law—continued after independence with each successive constitution.
3See in general S.Y. Bimpong-Buta, “Sources of Law in Ghana” (1983-86), 15 Review of Ghana Law 129, at 131-32. It should be noted that in the colonial period, this country had extensive systems of so-called Native Courts for the application of local customary laws, which were integrated into a regional system of appeals, with a common West African Court of Appeal, and, ultimately, an appeal to the Judicial Committee of the Privy Council in London. See E.E. Robinson, “The Administration of African Customary Law” (1949), 1 Journal of African Administration 158, at 170-172
common law, but also “rules of customary law” or “rules of law which by custom are applicable to particular communities....” That is, it is no longer the „English Common Law“ but rather the the common law in Ghana which embraces both general common law and particular local customary norms. It is inescapable that the multiplicity of customary codes, and for that matter legal pluralism, is a legal reality in Ghana. Here, rules of customary law are valid and enforceable if properly held so as rules of law which are by custom applicable in a particular community.

At present, the preeminent political classification or categorisation of the system of government practised in Ghana is that it is a unitary system. At best, the country is not federated with autonomous power holders at the provincial or regional levels. There is concentration of power at the centre. But we should note that it is not an absolute or exclusive concentration as some powers have been delegated or decentralised to the local government units- which can be likened to counties but called metropolitan, municipal or district assemblies, in a descending order depending on their population size among others. These local government units have the power to levy some small sums as taxes in their area of authority. Some of the taxes are property taxes, business operating permit, and market tolls (taxes paid by traders who sell merchandise in physical markets, often built solely by the metropolitan authority or jointly with a private company).

At the more normative level of constitutional practice and arrangement, there is, in Ghana, a tradition of separation of powers across legislative, executive and judiciary functions. Such a tradition is much more clear and neater under written constitutional rules than under military regimes. We should note that since independence, there have been about five (5) spells of military intervention, covering about twenty one years (21) during which periods, the legislative and executive functions were exercised by the military governments. The system of separation of powers envisaged under the present Ghana’s Constitution is however not one that dictates that the arms of government should live in water-tight compartments from one another. For instance, until amended, the Constitution requires that majority of the ministers must come from Parliament. This requirement takes Ghana’s separation of powers conceptual framework outside the tradition of the United States of America where there is a strict separation between the executive and congress.

In respect of the relationship between international law and municipal or national law, we should observe here that Ghana is a dualist country. As state and as a matter of both principle and practice, Ghana places great emphasis on the distinction between international law and municipal law. As a result, international law can be implemented domestically only when it has been formally incorporated into the laws of Ghana by parliamentary approval. This parliamentary approval can be done either by a resolution or through a substantive Act. It is not clear however, which treaty or international agreement will be adopted or received by a resolution or an Act of parliament. In any case, the primary rule is that mere signature on a treaty by the President is not in itself sufficient for the direct application of such a treaty in a court of law. An international agreement or treaty even if properly signed by the President or his authorised agent can neither be enforced nor applied in Ghana if it has not been converted into domestic law by legislative action. Without this domestic translation, international law does not exist as law in the

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6 Local Governance Act, 2016 (Act 936); Section 1(4) (a) (b)
7 Ibid @ Section 1(4) (b)
9 A.M. Ocquaye, Politics in Ghana 198....
12 Constitution of the Republic of Ghana (1992 ), article 75
Ghanaian context. Lastly, where there is a conflict between the demands of international law and domestic law, the conflict is to be resolved in favour of the latter.

Treaties
The state of Ghana maintains constant interaction with the global or regional systems on various thematic matters leading to the conclusion of a number of treaties or agreements. Without a doubt, Ghana is party to several treaties, conventions and protocols on human rights, trade investment and taxation. Of remarkable relevance is the fact that Ghana has been a member of the World Trade Organisation (WTO) and the General Agreement on Tariffs and Trade (GATT) since 1st January, 1995 and 17th October, 1957 respectively. She is also a member of the World Custom Organisation (WCO). Ghana joined the WCO on the 1st of August, 1968.

Ghana is also a signatory to the Convention on Mutual Administrative Assistance in Tax Matters. It currently has Double Taxation Agreements with 11 countries and an OECD Tax Information Exchange Agreement (TIEA) with Liberia. As at 12th May, 2008, Ghana had signed over 52 protocols and conventions at the level of the Economic Community for West African States. We will provide below at least at the ECOWAS level some of the conventions that relate to human rights, trade, investment and taxation and indicate their general tenor so far as the objectives of this work is concerned.

Convention A/P5/5/82 on Mutual Administrative Assistance in Customs Matters, signed in Cotonou on 29th May, 1982.

Article 2(1) of this Convention provides that the Member States agree that their competent authorities shall render to each other assistance with a view to the prevention, detection and punishment of customs infringements, in accordance with the provisions of the present convention. Article 9 which is headed Obligatory Assistance imposes on the competent authorities of any Member State the duty to communicate to the competent authorities of other Member States, any significant information reaching it in the course of its normal activities, which leads it to suspect that a serious customs or trade infringement has been or is about to take place on the territory of that Member State. Such information shall concern the movement of entities or of merchandise or the means of transport used.

Protocol A/PI/7/91 on the Community Court of Justice signed in Abuja on 6th July, 1991 and ratified on 07/12/92

Article 62 of the Rules provides that the Judgment[of the Court of Justice] shall be binding from the date of its delivery. Article 22 (3) of the Protocol enjoins all Member States and Institutions of the Community to immediately take all necessary measures to ensure the execution of the decisions of the Court. Finally Article 15 (4) of the Revised Treaty provides that ‘Judgments of

the Court of Justice shall be binding on the Member States, the Institutions of the Community and on individuals and corporate bodies”.

It has been observed that the above provisions are not adequate for the enforcement of the decisions of the Court. More elaborate provisions have been made in the proposed draft supplementary Protocol of the Court. The proposed new Article 24 reads as follows:

“24: 1. Judgments of the Court that have financial implications for nationals of Member States or Member States are binding. 2. Execution of any judgment of the Court shall be in the form of a writ of execution, which shall be submitted by the Registrar of the Court to the relevant Member State for execution according to the rules of civil procedure of that Member State. 3. Upon the verification by the appointed authority of recipient Member State that the writ is from the Court, the writ shall be enforced. 4. All Member States shall determine the competent national authority for the purpose of receipt and processing of execution and notify the Court accordingly. 5. The writ of execution issued by the Community Court may be suspended only on the authority of a decision of the Community Court of Justice.

With its useful proposals, it should state though that individuals and corporate bodies do not have direct access to the Court. Article 9.3 of the Protocol only provides that a Member State may institute proceedings on behalf of its nationals before the Court on the interpretation and application of the Treaty after attempts to settle the dispute amicably have failed. The lack of direct access to the Court by individuals is a major constraint on the competence of the Court and remains an incapacitating rule against the Court. It also amounts to a denial of a fundamental right to Community citizens.

It should be noted that since the establishment of the Court, no Member State or Institution of ECOWAS has instituted proceedings before the Court for the interpretation and application of the Treaty or requested for an advisory opinion on any legal questions. The few applications that have been filed before the Court were filed by individuals. In a landmark case, the ECOWAS Court of Justice in a well considered judgment in OLAJIDE AFOLABI V FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/APP/ 01/03 applied the law in holding that the applicant does not have direct access to the Court. This case raised a novel issue in the sense that the applicant is a Nigerian national and it is a legal impossibility for Nigeria to have sued itself on behalf of the citizen.

In the context of ECOWAS Court of Justice and the application of the Revised Treaty there is a basic flaw on the issue of access to Justice. The importance of access to Justice, in any judicial process in the determination of civil rights and obligations cannot be over emphasized. Access to justice is a fundamental concept and its essential elements are: the rule of law, access to Court, effective legal remedy and respect for human rights and fundamental freedoms. Access to justice, is a human right. It has been argued that it is indeed the most important right, without which it is not possible to enjoy any other right, be it civil and political or social and economic.

Protocol A/P2/7/96 Establishing Value Added Tax in ECOWAS ratified on 28/10/98; This Protocol establishes under article 2 a consumer tax known as "value added tax" (VAT) which applies within the Member States of the Economic Community of West African States (ECOWAS). The tax replaced all the other indirect taxes on turnover. Taxes on certain products

and services, particularly those which rely on banking or insurance operations, along with excise duties shall remain applicable. It allows member States to define the structure and application of the VAT. The other treaties and protocols at the level of the sub-region are: Protocol A/P3/12/01 on the Fight Against Corruption ratified on 18/10/02; Protocol A/P.1/01/06 Establishing an ECOWAS Criminal Intelligence and Investigation Bureau; and the Convention A/PI/7/92 on Mutual Assistance in Criminal Matters signed in Dakar, on 29th July, 1992 and ratified on 07/12/92.

At the continental level, Ghana had signed up to a total of 33 treaties or protocols or conventions as at 12th May, 2008. The following is a list of some of the treaties on human rights, trade, investment and taxation;

**African Charter on Human and Peoples Rights (ACHPR).** This Convention was ratified by Ghana on 24th January, 1989. It is essentially an African Human Rights Charter that imposes on State Parties the duty to ensure that the rights of its members are protected. Article 1 for instance mandates Member States to recognize the rights, duties and freedoms enshrined in this Convention and to adopt legislative or other measures to give effect to them. Ghana’s commitment to this charge is evidenced by Chapter 5 of the Constitution, 1992 which is essentially a re-enactment of the African Charter on Human and People’s Rights. For example, both the Convention and the Ghanaian Constitution contain provisions that guarantee that a person charged with a criminal offence shall be presumed innocent until he or she is found guilty by a competent court of jurisdiction or has pleaded guilty to the offence charged. This right was given a resounding recognition by the Supreme Court of Ghana when it held in the case of **Martin Kpebu (2) v. Attorney-General (2)**

“...This principle of presumption of innocence is a very important one in the criminal justice system and it underpins the basic concept of individual liberty under the Constitution... The principle has gained worldwide acceptance. The UN Declaration of Human Rights, Article 11(1) states that: Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. The same principle is re-stated by Article 7(1)(b) of the African Charter on Human and Peoples’ Rights. Article 19(2)(c) of the Constitution reaffirms this principle which Ghana has subscribed to at both the UN and AU”

**The African Charter on the Rights and Welfare of the Child** is another human rights charter with special focus on children. It was ratified by Ghana on 15th July, 2005. The principles enunciated in the Convention have found expression in the Children’s Act, 1998 (Act 560). In order to give effect to the provisions contained in these human rights conventions, the African Union enacted the **Protocol to the African Charter on Human and People’s Rights on the establishment of an African Court on Human and People’s Right.** The court has jurisdiction to under article 3 extends to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned. It also grants individual citizens the right to “...institute cases directly before it, in accordance with article 34 (6) of the Protocol”

19 See article 7 of the Convention and article 19 of the Constitution of Ghana respectively.
20 [2015 – 2016] 1 SCGLR 171
21 [2015 – 2016] 1 SCGLR 171 @ 197
22 Referring to the African Charter on Human and People’s Rights
23 See article 5(2)
implies that persons who are not satisfied with the treatment of a State Party relative to his or her rights, including economic rights, he or she or it may, after exhausting the internal mechanisms provided for dispute settlement, institute an action in this Court.

Another Protocol to ACHPR is the Protocol to the African Charter on Human and People’s Rights on the rights of women in Africa which as the name suggests, seeks to give special protection to women from the numerous human rights abuses that they are subject to, including harmful widowhood rights and forced marriage.

The Constitution of the Association of African Trade
Ghana ratified this treaty on 12th August, 1971. In the preamble to the treaty, referred to as “Constitution, it is recognized that exchange of information and coordination of activities of trade promotion has crucial advantages for the African Region. This finds expression under paragraph 1 of Article II in the following words:

“The main objectives of the Association shall be to foster contact and regular flow of information and communication between African countries in trade matters and to assist in the harmonization of the commercial policies of African countries in order to promote intra-African trade.”

The treaty further states under the same article that the Association shall serve as an instrument for the promotion of trade, market research and export oriented investments particularly within Africa.

Others are the African Convention on Preventing and Combating Corruption and the OAU Convention on the Prevention and Combating of Terrorism among others. This Convention is essentially an African version of the International Convention for the Suppression of the Financing of Terrorism. The preamble to the latter underscores, among other things, the conviction of the contracting parties of the urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators. Towards this end, the Convention entreats States Parties to enact legislation that establishes the offences identified under article 2 of the Convention as criminal offences under their domestic law. Article 2 provides in part thus:

“Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act”

24 See for example paragraph 22 of the Seventh Schedule to the Internal Revenue Act, 2015 (Act 896)
Article 12 provides that States parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings. The International Convention for the Suppression of the Financing of Terrorism is one of the at least 245 treaties, protocols and conventions\(^{26}\) that Ghana is a party to at the global level. The others include:

**United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.** Resolution 1 which is headed exchange of information encourages use of the machinery developed by the International Criminal Police Organization for the timely and efficient exchange of crime investigation information between police authorities on a world-wide basis, and further that the widest possible use should be made by police authorities of the records and communications system of the International Criminal Police Organization in achieving the goals of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Ghana has also signed on to the **Convention on the Rights of the Child; International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; and Convention on the Elimination of All Forms of Discrimination against Women.** Most importantly, Ghana is a signatory to the **International Convention for the Suppression of counterfeiting Currency; and the Convention concerning Customs Facilities for Touring.** The net effect of these treaties is that they impose on Ghana the duty to ensure that it eliminates opportunities for cross-boundary crime such as human trafficking and the associated transfer of the proceeds of such crime from one country to the other.

**INFORMATION AND COOPERATION NETWORKS (TAX AND CUSTOMS ADMINISTRATION)**

**TAX AUTHORITIES**

**Institutional Framework for the Administration of Taxes and Customs Duties in Ghana**

Ghana has various legal instruments and institutions that form the framework for taxation throughout the country. These include the Constitution, (1992), Ghana Revenue Authority Act, 2009 (Act 791), Income Tax Act, 2015 (Act 896) and a host of legislative instruments, including Transfer Pricing Regulations, 2012 (LI 2188) among others. The Constitution of the Republic of Ghana (1992) is the supreme law of Ghana.\(^{27}\) That is, at the apex of Ghana’s hierarchy of legal norms, is the Constitution of which all other laws must be consistent with its provisions. In the face of multiple legislative instruments on taxation in the country, the article 174 of the Constitution imposes the rule that there cannot be taxation without priori parliamentary approval or authorisation.

Flowing from this, no person and or enactment shall have the power to impose or waive a tax without the authority of Parliament\(^{28}\). This provision protects the state against corrupt state officials. Indeed, where an Act, enacted in accordance with clause (1) of article 174 confers power on any person or authority to waive or vary a tax imposed by that Act, the exercise of the power of waiver or variation, in favour of any person or authority, shall be subject to the prior approval of Parliament by resolution. An example of the exercise of this power of waiver can be found in

\(^{26}\) As at 2\(^{nd}\) February, 2009.

\(^{27}\) Constitution, 1992 article 1(2)

\(^{28}\) Constitution, 1992 article 174 (1)
the National Pensions Act, 2008 (Act 766) under section 112, which exempts up to 16.5% of a person’s income from taxation where such income is contributed towards pensions. In order to prevent the use of this waiver as a tax avoidance tool, the law further provides under sub-section (5) that a withdrawal of all or part of a contributor’s accrued benefits under a provident fund or personal pension scheme shall be subject to the appropriate income tax for contributors in the formal sector before ten years of contributions and before retirement. There is a similar provision with respect to those in the informal sector.

Furthermore, District Assemblies are empowered under article 245(b) to levy and collect taxes, rates duties and fees for the purposes of developing their communities. Citizens in general are enjoined to declare their income honestly to the appropriate and lawful agencies and to satisfy all tax obligations with the exception of pension income and the income of the President or an ex-President (Article 68(3) to (5)). A person who has not paid all his taxes or made arrangements satisfactory to the appropriate authority for the payment of same, shall not be eligible to be elected into certain positions, including election as a member of parliament. Similar provisions are contained in section 7 of the Local Governance Act, 2016 (Act 936) with respect to persons seeking election or appointment to a District Assembly. Parliament, in accordance with the power conferred on it under article 174, has enacted a number of laws that govern the tax regime in Ghana. These are discussed below, in no particular order.

First is the Ghana Revenue Authority Act, 2009 (Act 791). This Act is a product of a series of reforms in the administration of taxes and customs duties in Ghana. This led to the creation of the Ghana Revenue Authority (GRA), which replaced the Internal Revenue Service, the Customs, Excise and Preventive Service and the Value Added Tax Service, and is the main agency mandated to collect national taxes and custom duties, as well as combat tax fraud and tax evasion among others. As noted above, the tax and custom institutions were largely independent of each other. The main reason for bringing together these hitherto independent bodies under one umbrella was to provide a holistic approach to tax and customs administration, to improve information linkage and sharing of information among the Divisions of the Authority. This mechanism is aimed at eliminating the practice among taxpayers where they could make different declarations to different tax institutions with the view to avoiding tax. The Act also prescribes criminal sanctions for persons who fail to co-operate with the Authority to ensure the assessment and optimum collection of revenue. Though Parliament may create other divisions, the Authority presently has three main divisions, namely the Domestic Tax Revenue Division, the Customs Division, and the Support Services Division.

The Domestic Tax Revenue Division collects all internal national taxes such as income tax, value added tax, and excise tax. The Customs Division collects custom duties on the imports of some merchandise into Ghana and export of merchandise outside Ghana. The tax officers are usually stationed at the various points of entry and exit from Ghana, such as the air and sea ports, and

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29 Constitution, 1992 article 41 (g)
30 Constitution, 1992 article 199(3)
31 Constitution, 1992 article 91(1)(c)
32 Act 791 s 1(1)
33 Act 791 s 30 (1) (b)
34 See the Schedule to Act 791
36 Ghana Revenue Authority Act, 2009 (Act 791) s 3.
37 See the long title to Act 791
38 Act 791 s 2 (a)
39 Act 791 s 2 (e)
40 Act 791 s 20
41 Act 791 s 17
road border check points. The Support Services Division undertakes procurement of goods, and services to help the GRA fulfil its mandate.

The *Income Tax Act, 2015 (Act 896)* as amended is the next major source of tax law. It provides among others for a “[G]eneral anti-avoidance rule” under section 34 of the Seventh Schedule to the Act by empowering the Commissioner General of the Ghana Revenue Authority to re-characterise or disregard any arrangement that is entered into or carried out as part of a tax avoidance scheme “which is fictitious or does not have a substantial economic effect; or whose form does not reflect its substance.” Tax avoidance is defined to include any arrangement which has the main purpose of avoiding or reducing tax liability. It would appear these provisions were in response to cases like *Multichoice Ghana Limited v. Commissioner, Internal Revenue Service* where the Supreme Court of Ghana held that the arrangement by which the Respondent had prepared its financial statement and thereby reduced its tax liability did not breach the then *Income Tax Decree, 1975 (SMCD 5).* This much was recognized by Wood C.J. (as she then was) when she stated that “[t]he passage of the new law, Act 592, was intended to plug any legal loopholes that this dispute may have unearthed.”

There are similar other anti-tax avoidance provisions as in sections 31, 32, 33 of the Seventh Schedule to Act 896. Section 31(1) in particular deals with transactions between or among persons in a controlled relationship, which is a fertile ground for transfer pricing, by providing that persons in a controlled relationship shall calculate their income, and tax payable, according to the arm’s length standard. The arm’s length standard requires persons who are in a controlled relationship, to quantify, characterize, apportion and allocate amounts to be included in or deducted from income to reflect an arrangement that would have been made between independent persons.

Again, sub-section (3) of section 31 of the Seventh Schedule to Act 896 empowers the Minister to make Regulations on matters relating to transfer pricing and the application of the arm’s length standard; sub-section (4) of the same section gives the Commissioner General the power to make adjustments to the tax payable where in his or her opinion, there has been a failure to comply with the arm’s length standard.

Section 32 provides against income splitting, by empowering the Commissioner General to adjust or re-characterize the incomes for the purposes of taxes. Finally, section 33 limits the debt-to-equity ratio of exempt persons to three-to-one. This means that where in respect to the source of funding of a company, the debt-to-equity ratio exceeds the statutory ratio, the deductible income for interest in excess of this ratio may be disallowed. This is to prevent the situation where taxpayers take advantage of debt financing as a means of avoiding tax.

Another important mechanism by which the Ghana Revenue Authority is empowered to deal with transfer pricing and other tax avoidance schemes is the power to access, at all times and without prior notice, any premises, place, property, book, record, computer or other electronic storage device as well seize any book, record, other document, computer or other electronic storage device that in the opinion of the Commissioner-General or authorised officer, affords evidence which may be material in determining the liability of a person to tax.

Similar provisions can be found in the *Customs Act, 2015 (Act 891).* For example, sub-sections (1), (2) and (3) of section 3 empower the Ghana Revenue Authority to conduct customs controls including random checks and to collaborate with foreign customs administrations to carry out joint control activities with the aim of ensuring security in shipment and combatting transnational crime. The

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42 See the Seventh Schedule to Act 896 s 34(1)
43 [2011] 2 SCGLR 783 at 789-790
44 See the Seventh Schedule to Act 896 as amended s 31
45 See the Seventh Schedule to Act 896 as amended s 18(1) (a)
46 See the Seventh Schedule to Act 896 as amended s 18(1) (c)
Act also mandates vessel owners, importers and exporters among others to keep stipulated records and to make same available to the Authority for examination, inspection and audit purposes. In addition, section 7 empowers the Authority to conduct a post-clearance audit after the release of goods with the goal of ensuring that the right amount of duty has been paid.

The purpose of Act 891 is provided for in its long title as “An Act to provide for the imposition, collection and accounting of customs duty, tax and for related matters”. Towards these goals, the Commissioner-General is empowered to designate an area within the country as a “customs-controlled” area for purposes of administering or enforcing the provisions of the Act. The Harmonised Commodity Description and Coding System (Harmonised System), which was approved by the Customs Co-operation Council on 14th June, 1983, and which is an international nomenclature for the classification of products is incorporated by Section 1 of the Act. The provisions of the Postal and Courier Services Regulatory Commission Act, (Act 649) are incorporated into Act 891 under section 62.

The Act also prescribes various penalties and charges as well as other deterrence regimes to ensure that the provisions of the Act are complied with. Section 139 deals with bribery. It provides that a person who gives, offers, or agrees to give or procure to give, a bribe, gratuity, recompense reward to an officer, or gives, offers, or agrees to give an unauthorised fee or reward to an officer, or induces or attempts to induce an officer to connive to evade a provision of the law or otherwise to neglect the duty of that officer, commits an offence and is liable on summary conviction to a fine of not more than two hundred per cent of the total loss that would have been occasioned by the offence or to a fine of not more than two thousand five hundred penalty units whichever is higher or to a term of imprisonment of not more than five years or both.

In a similar vein, an an officer who demands or takes a bribe, gratuity, recompense or reward for the neglect or non-performance of the duty of the officer; or delivers up or agrees to deliver up or not to seize anything liable to forfeiture; or commits an offence under the law or conspires or connives with any person for the purpose of committing an offence under this Act, shall, on proof to the satisfaction of the Commissioner-General, be dismissed from office. An officer who commits an offence is liable on summary conviction to a penalty of not more than two thousand five hundred penalty units or a term of imprisonment of not more than five years or both. These are very important provisions and must be implemented to the letter.

The Value Added Tax Act, 2013 (Act 870) imposes taxes on goods and services supplied in Ghana. These include goods and services that are sourced locally as well as imported goods and services. An important provision is section 16 of Act 870 which provides that an unregistered, non-resident person who provides telecommunication services or electronic commerce to persons for use or enjoyment in the country, other than through a Value Added Tax registered agent must register if that person makes taxable supplies exceeding the threshold under subsection (1) or (2) of section 6. Electronic commerce covers business transactions that take place through the electronic transmission of data over communications networks like the internet. This provision is based on the source of income rule as the basis of taxation and is a very forward looking intervention in the face of developments in technology such as WhatsApp, Facebook and Twitter among others and their gradual venture into financial

47 Act 891 s 9 (1) & (2)
48 Act 891 s 4
49 See ss 23, 41, 100, 121 etc.
50 Act 870 s 1
services. In fact, the CEO of WhatApp is reported to have singled Ghana out for commendation that the country was using the App in ways he never envisioned.

It is obvious that the business man is raking in a decent amount of revenue from these creative ways in which Ghanaians are using the App but the question is, how will the Ghana Revenue Authority determine this whether or not this revenue has reached the threshold set under section 6 of the Act? Can it compel such multi-nationals to submit returns on their activities when in fact, they are not registered in Ghana? These are some of the gaps that require urgent attention. There are a number of offences under the Act including a failure to issue tax invoice and the evasion of tax payment.

The Excise Tax Stamp Act, 2013 (Act 873) provides that specified excisable products which are imported or locally produced are required to be affixed with tax stamps, which have specific features before they are released unto the market. The benefits of this approach to tax include; increased tax collection without raising tax rates, deterrence to smuggling and illicit activity, and creation of level playing field for all legitimate enterprises. It is estimated that the absence of a stamp policy attracts a 30% rate of fraud amounting to approximately US$ 49,090,009.1 of uncollected taxes annually while Ghana loses US$ 134,571,363 each year in unrecoverable revenue in products alone. A number of legislative instruments have been passed under the Acts identified above. First is the Income Tax Regulations, 2016 (LI 2244) which is one of the regulations passed in 2016 with the goal of providing clarity to and for the more effective implementation of the provisions of Act 896.

The Regulations which came into force on 3rd August, 2016, revoked the Internal Revenue Regulations, 2000 (LI 1675). It introduced a number of reforms including those on overtime, casual workers temporary employee, loan benefit and provident fund. Others are, Installment Sale, Finance Lease, Capital Allowance and Withholding Certificate. Within the Petroleum sector, a sub-contractor who enters into an agreement with a non-resident person to provide works or services must notify the Commissioner-General within 30 days after entering into the contract.

The Transfer Pricing Regulations, 2012 (LI 2188) was originally passed under the now repealed Internal Revenue Act, 2000 (Act 592). It deals basically with the implementation of the arms length principle in transactions between persons in a controlled relationship, both locally and internationally. Ghana is reported to have lost GBP 74 million between 2005 and 2007 to multinationals in US and EU resident.

Prior to the passage of LI 2188, the transfer pricing

52 Hannah Kuchaler, ‘WhatsApp Launches Service to Help Business Talk to Clients’ Financial Times (San Francisco, 5 September 2017) <www.ft.com/content/35a5cae6-924d-11e7-ddfa-eda243196e2e> accessed on 10-03-18
54 Act 870 s 58
55 Act 870 s 59
57 The local currency figure is 216 Million Ghana Cedis but converted to US$ for clarity.
58 The local currency figure is 592, 114 Million Ghana Cedis but converted to US$ for clarity.
59 Ibid
rules in Ghana were generally weak, although Section 17 of Act 592 contained some provisions against transfer mispricing\textsuperscript{62}, it was not vigorously enforced. The law gave considerable discretion to the head of the Ghana Revenue Authority in the assessment of transactions subject to transfer pricing adjustments\textsuperscript{63}. The Technology Transfer LI of the Ghana Investment Promotion Centre (GIPC), is another precursor to LI 2188. The GIPC made those rules among others to curb transfer pricing.

The \textit{Practice Note on Transfer Pricing Regulations, 2012 (LI 2188)}, in its introduction provides that the commentaries in the OECD Transfer Pricing Guidelines may assist where necessary in the interpretation of LI 2188\textsuperscript{64}. The LI provides various methods by which transactions between or among associated persons are to be treated for the purposes of determining the tax liability of such persons. Where a taxpayer is of the opinion that the methods provided under the Regulation are inappropriate to its peculiar circumstances relative to a particular transaction, it may apply to use an alternative method with the approval of the Commissioner General\textsuperscript{65}.

The \textit{Value Added Tax Regulations, 2016 (LI 2243)} which revoked the \textit{Value Added Tax Regulations, 1998 (LI 1646)} came into force on 3\textsuperscript{rd} August, 2016. It clarifies certain rules and provides for some matters necessary for the effective implementation of Act 870\textsuperscript{66}. The LI empowers the Commissioner-General to request any person who qualifies to register within 30 days of the receipt of a notice from the Commissioner-General to that effect. A failure to comply may warrant a lock up or seal off of the business premises by the Authority. The Regulations also mandates ministries, departments and agencies of government to register for VAT when they carry on taxable activities including auction, hiring of equipment or any activity conducted for profit.

The \textit{Excise Duty Regulations, 2016 (LI 2242)} came into force on 3 August, 2016, purposely to provide for the administration and carrying into effect the provisions of Act 878\textsuperscript{67}. Under the regulation, registered manufacturers and importers are mandated to maintain accurate records in a form approved by the Commissioner General (C-G) of the GRA that supports the determination of excise duty liabilities and preparation of excise duty returns. These records must at a minimum, provide evidence of the manufacture, storage, removal, delivery and any other information the C-G may request.

There are other minor tax legislations including the \textit{Airport Tax Act, 1963}, as amended by the \textit{Airport Tax (Amendment) Act, 2013, Act 858}, which imposes on all passengers departing from an airport by an aircraft, a tax payable to the Commissioner General of the Ghana Revenue Authority\textsuperscript{68}. In respect of gaming and the operation of casinos, the \textit{Casino Revenue Tax Act, 1973 (NRCD 200)} and the \textit{Gaming Act, 2006 (Act 721)} regulate the activities of persons licensed to operate in the sector. Sections 4 and 26 of NRCD 200 and Act 721 respectively mandate licensees to keep records of their operations for the purposes of determining their tax obligations. It is important to add that under the Anti-Money Laundering Act, casinos are

\textsuperscript{62}Ibid
\textsuperscript{63}Op Cit footnote 47
\textsuperscript{64}See paragraph 1.1.4 of the Practice Note on Transfer Pricing Regulations, 2012 (LI 2188)
\textsuperscript{65}Op Cit
\textsuperscript{68}Act 290 as amended s 1
accountable institutions and have the responsibility, as discussed earlier, of maintaining records on their customers and to report unusual transactions to the Financial Intelligence Centre.

Another important tax law is the Local Governance Act, 2016 (Act 936). The Act empowers District Assemblies under section 124 to impose taxes and rates on the income of persons specified in the Twelfth Schedule to the Act. In addition, section 145 to 146 impose a duty on District Assemblies to levy rates, including property rates on premises located within their jurisdictions.

**Capacity Building**

The GRA recognises that it constantly has to strengthen the capacities of its tax officers to make them more efficient and effective. It is common knowledge that tax evaders are fast changing their *modus operandi*. The GRA usually organises training seminars for its employees to keep them abreast with current trends in trade-based tax evasion. Similarly, soon after recruiting employees, in-service training spanning several months is organised for them. The GRA also organises tax education for tax payers.

**Information sharing with other domestic agencies**

<table>
<thead>
<tr>
<th>Custom agencies</th>
<th>Law enforcement</th>
<th>Financial intelligence units (FIU)</th>
<th>Banking supervisors</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes, with restrictions</td>
<td></td>
<td></td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>No</td>
<td></td>
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</table>

Source: Adapted from FATF, Trade Based Money Laundering (FATF/OECD, 2006)

The GRA is mandated to share information with other domestic agencies such as law enforcement agencies, the Auditor-General, the Statistical Service among others. In addition, where any other law directs the GRA to disclose information to another institution, the GRA is bound to obey such law. The Financial Intelligence Centre (FIC) and the Bank of Ghana (BOG), among other institutions and agencies that are also mandated to request and receive information from the GRA. We should note that the obligation to share information is mandatory. A refusal of a request for information will likely trigger a legal suit.

For instance, the Customs Division is required to furnish the Driver and Vehicle Licensing Authority (DVLA) every quarter with statistics on cars imported, duties paid and other information under the Customs Act (891). Similarly, the revenue agencies, law enforcement, public institutions, and banks have an obligation to furnish the FIC with any information that it requires to carry out its work within seven (7) days of the request. It follows that the FIC can sue any institution that defaults in providing the information required. In addition, on a practical term, when information about such a failure to provide information gets to the press, it will likely create a public furore that will help compel the institution to conform, thus the media also serves as a check. It worth noting that Ghana has pluralistic and very vibrant mass media platforms that are quick to mount pressure on the government, when they find that any failure to take action will result in losses to the public purse.

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69 Revenue Administration Act, 2016 (Act 915) section 7 (5), Ghana Publishing Company (Assembly Press).
70 Ibid section 7 (4).
71 Ibid.
Is information sharing between tax authorities and other domestic agencies mandatory or voluntary?

<table>
<thead>
<tr>
<th></th>
<th>Customs agencies</th>
<th>Law enforcement</th>
<th>FIU</th>
<th>Banking supervisors</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mandatory</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Voluntary</td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not applicable (if no exchange)</td>
<td></td>
<td></td>
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</tbody>
</table>

Source: Adapted from FATF, *Trade Based Money Laundering* (FATF/OECD, 2006)

As stated earlier, the custom institution in Ghana (Custom Division of GRA) is actually part of the unified tax authority called the GRA. In the event that the Custom Division requires information from another unit of the same organisation, say the Domestic Tax Revenue Division, it is an internal matter for which the information is granted as a matter of course since it is expressly stated in the GRA Act, that one of the objects of the GRA is to ‘improve information linkage and sharing of information among Divisions of the Authority’. Similarly, when the GRA’s prosecutors require information from the GRA, it is granted.

b) Information sharing with foreign agencies

Different administrations over the years have entered into several double taxation treaties, that compel them to share tax information with those countries. Ghana has signed tax treaties, commonly referred to as double taxation agreements with 11 countries. These countries are the United Kingdom, France, Belgium, The Netherlands, Germany, South Africa, Italy, Switzerland, Denmark and very recently, with Mauritius, and the Czech Republic. Ghana has also signed a Tax Information Exchange Agreement (T.I.E.A.) with Liberia. Beyond that, Ghana’s laws also mandate her to share tax information with foreign authorities. The legal basis for double taxation treaties is the article 75 of the Constitution, 1992. All such treaties even though signed by the President are subject to Parliamentary approval. The courts have not minced words in holding that agreements that have failed to meet this Constitutional requirement are void.

Some of the exchange of information (EOI) arrangements used to share information with foreign competent authorities are as follows: The Convention on Mutual Administrative Assistance in Tax Matters came into force in Ghana on 1st day of September, 2013 and imposes on her the duty to share information with participating parties. Ghana is one of the countries in which the Tax Inspectors Without Borders (TIWB ) Project is being observed. This is a multinational intervention programme under the auspices of the OECD and the United Nations Development Programme aimed at plugging traditional loopholes that are used by

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73 Ghana Revenue Authority Act, 2009 (Act 791) s 2(e).
75 Revenue Administration Act, 2016 (Act 915) s 7(5)(d), Customs Act, 2015 (Act 891), s 7(6); Mutual Legal Assistance Act, 2010 (Act 807)
multinationals for tax evasion in developing countries. The TIWB projects are currently being supported by a range of organisations, including revenue authorities in the Netherlands, Spain and the United Kingdom, the African Tax Administration Forum and the Paris-based TIWB Secretariat, which facilitates full-time or periodic deployment of experts for all programmes. The programme which deploys tax experts from across the globe allows for expert information sharing among participating countries.

There are no statutory bank secrecy provisions in place that would restrict effective exchange of information. There are no rights or safeguards (e.g. notification, appeal rights) in Ghana that appear to restrict the scope of information the GRA can obtain. All of Ghana’s exchange of information agreement however permit Ghana to decline a request if responding to the request will disclose any trade, business, industrial, or professional secret or trade process or information, the disclosure of which will be contrary to public policy. This follows the standards set forth in article 26 of the OECD Model Tax Convention and the OECD TIEA.

The Ghana Revenue Authority has a Memorandum of Understanding in place with the Financial Intelligence Center which envisages a certain amount of information flow between the two agencies.

<table>
<thead>
<tr>
<th>EOI arrangement</th>
<th>Yes (and with whom)</th>
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</tr>
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<tbody>
<tr>
<td>Exchange of information under Double Taxation Conventions/Agreements</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Tax Information Exchange Agreements (TIEAs)</td>
<td></td>
<td></td>
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<tr>
<td>OECD Convention on Mutual Administrative Assistance in Tax Matters</td>
<td></td>
<td></td>
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<tr>
<td>Automatic exchange of information (AEOI)</td>
<td></td>
<td></td>
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<tr>
<td>Other</td>
<td></td>
<td></td>
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</tbody>
</table>

**Tax information exchange arrangement with Switzerland**

Ghana has a tax information exchange arrangement with Switzerland details of which are as follows.

<table>
<thead>
<tr>
<th>Type of EOI arrangement</th>
<th>Date signed</th>
<th>Date entered into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exchange of information</td>
<td>23 July 2008</td>
<td>1 January 2010</td>
</tr>
</tbody>
</table>

79 Ibid
81 Ibid
82 Ibid
83 Ibid
85 Ibid
under Double Taxation Conventions/Agreements

| Tax Information Exchange Agreements (TIEAs) | Because both contracting states wished to bring the agreement into effect without the minimum of delay, the renegotiation of extended administrative assistance according to OECD standards has been suspended for the time being. |
| OECD Convention on Mutual Administrative Assistance in Tax Matters | |
| Automatic exchange of information (AEOI) | Yet to be activated |
| Other | |

2. Customs Agencies

The Customs Division of the GRA is in charge of the collection of customs duties and of customs administration. This Division is further arranged into departments to ensure efficiency and effectiveness. The departments are:

A. Operations Department
B. Preventive Department
C. Policy and Programs Department
D. Post Clearance Audit Department
E. Warehousing and Free Zones Department

The main customs laws and regulations in Ghana are: The Customs Act, 2015 (Act 891) which came into force on the 11th day of March, 2015, provides for the imposition, collection and accounting of customs duty and for related matters. The Act repealed, among others, the Customs, Excise and Preventive Service (Management) Act, 1993 (PNDCL 330) as amended and the Customs House Agents (Licensing) Act, 1978 (SMCD 188). The Customs (Amendment) Act, 2016 (Act 923) amended the Customs Act, 2015 (Act 891) to provide for the establishment of the National Single Window System (NSWS). The NSWS allows persons involved in trade and transport to lodge standardized information and documents with a single entry point to fulfil all import, export, transit and other customs related requirements.

In order to achieve the objects of Act 923, which is to provide a “one-stop-shop” for the collection of information relating to customs duty, the law establishes two very important bodies namely, the National Risk Management Committee (NRMC) and the National Risk Management Team (NRMT). This is to ensure that there is consistency with respect to the declarations made by importers, exporters etc. to the relevant state institutions and to prevent tax avoidance schemes such as under invoicing. Section 3B as inserted outlines over twenty (20) institutions, including ministries, authorities and a commission that make up the NRMC. Quite apart from the anti-avoidance goal of Act 923, it appears that it will help in facilitating the processes of declaration and inspection that are associated with imports and exports.

The Customs Regulations, 2016 (LI 2248) was made under the power conferred on the Minister responsible for Finance by section 150 of the Customs Act, 2015 (Act 891). To qualify as an

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86 Ibid
87 Search conducted at OECD-Automatic Exchange Portal at <www.oecd.org/taxautomatic-exchange/international-framework-for-the-crest/exchange-relationships/> on 21st March 2018 at 06:29 hours GMT
Economic Operator under the Regulations, and to be able to use the National Single Window System, an applicant must among other things provide a Tax Identification Number (TIN) and provide proof that he or she has filed tax returns in accordance with the relevant law as well as have a computerized accounting system, secured and accessible to the Ghana Revenue Authority for collection of information and data. The Authority is empowered under Regulation 16 to apply different inspections methods to different kinds of goods depending on the risk level as determined by Pre-Arrival Assessment Reporting System. This means that while for some consignments the authorities might carry out only documentary inspections, they might carry out scanning and physical inspection in addition to documentary checks with respect to others to ensure that the right taxes are paid.

Another relevant customs law is the Free Zone Act, 1995 (Act 504) as amended by the Free Zone (Amendment) Act, 2002 (Act 618) which established the Free Zones Authority. It repealed the Ghana Industrial Free Zone authority Decree 1979 (SMCD 157). Act 504 provides for the creation or designation of certain areas as a “free zone” which is defined under section 43 as an area or building declared as a free zone by publication in the Commercial and Industrial Bulletin and includes single factory zones, free port, free airport, free river or lake port. A free zone is not affected by the same tax regime as applies in a national customs territory including direct and indirect taxes and duties. The Act grants a free zone enterprise the right to produce any type of goods and services for export including the right to ‘export’ into the national customs territory such quantities, up to a maximum of 30% annual production, subject to the payment of applicable taxes and duty.

Conversely, sales of goods and services by a domestic enterprise from the national customs territory to enterprises in the free zone and single-factory zone shall be considered as exports and shall be subject to applicable customs even though the domestic enterprise shall not require an export license for sale of any goods and services. The Act provides that after the 10 years tax holiday starting from the date of operation, a free zone enterprise shall pay a maximum 8% income tax on its earnings. It is illegal to carry or attempt to carry anything into or out of a free zone or conceal anything with intent to illegally carry it into or out of a free zone and an authorized officer acting under the power conferred in sub-sections (1) and (2) may enter and inspect a free zone, buildings, aircraft, ships, boats or vehicles in the free zone. The Act empowers the Commissioner General to ask licensee to pay duty and or penalty in situations where goods stored in a free zone are found to be missing without an acceptable explanation. Finally, Act 618 amends sub-section (4) of section 34 to provide for the payment of appropriate income tax by foreign employees of a free zone enterprise, subject to any subsisting double taxation agreement between Ghana and the country of origin of that employee.

The Free Zone Regulations, 1996 (LI 1618) was passed in exercise of the powers conferred under sections 26(2) and 41 of the Free Zone Act 1995 (Act 504). This sets out in detail the functions of the Free Zones Authority as well as provides for related matters including the registration procedures and fees.

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88 See the Tax Identification Number Act, 2002 (Act 632)
89 See Regulation 15 of LI2248
90 Formerly Free Zones Board
91 Act 504 as amended s 22(1)
92 Act 504 as amended s 13(1)
93 Act 504 as amended s 23
94 Act 504 as amended s 24(1)
95 Act 504 as amended s 24(2)
96 Act 504 as amended s 28(1) & (2)
97 Act 504 as amended s 40(a) & (b)
98 Act 504 as amended s 27
**Customs Division and Trade Mispricing/Abusive Transfer Pricing**

The customs division carries out trade data analysis to identify trade anomalies (trade mispricing/abusive transfer pricing). That is the role of the policy and programmes department. They analyse the import and export data. When anomalies are found, Customs then liaise with the Transfer Pricing Unit of the Domestic Tax Revenue Division of the GRA. There are specific laws on transfer pricing such as the *Transfer Pricing Regulation, 2012 (L.I. 2188)*. However, Ghana has not established Trade Transparency Units (TTUs) to detect suspicious trade transactions. In practice, that function is being performed by the policy and programme though.

**Investigations/Risk Models / Analytical Tools**

Frequently, information or analysis lead to investigations. Where information on suspicious activities or transactions is received in respect of a company, same is forwarded to the Investigative Unit which conducts in-depth investigations into the activities of the particular company. Thus far, we have not seen any investigations that involved statistical models econometrix models, regression models, and standard deviation. Where the entity being investigated is found culpable, the Customs Division issues demand notices to recover the custom duties. A decision to prosecute may also be made as an additional measure to curb such deviant behaviour.

**Training Programmes to Strengthen Capacities**

In order to ensure and improve efficiency and effectiveness, the GRA has a policy to train staff periodically. The training institution situated in Kpetoe in the Volta Region called the GRA Academy which teaches basic direct tax topics. Sometimes, the Academy conducts the training with Ghana’s development partners (foreign governmental assistance) targeted at specific areas both foreign and in Ghana. However, these training programmes have not proved themselves sufficient. Besides, the GRA has a Training and Development Unit (T&D) which falls under the Support Services Division of the GRA. The T & D Unit has the mandate to plan and ensure training of staff in relevant areas of capacity needs. There is a specific budget allocated to staff training each year. The Unit relies on managers of various other Units to know the performance of staff, capacity gaps, etc. to enable them build the training modules. Currently, the T & D Unit has established programmes and modules which combine theory and practice of the areas that are taught. The current programmes being run are:

- **A. Basic Professional Course;**
- **B. Advanced Professional Course;** and
- **C. Refresher Courses.**

The current professional module provides training for Domestic Tax Revenue Division (DTRD) staff who are also taught basic customs operations. This is to ensure that GRA officers have at least a basic knowledge of how to administer the various tax types. This initiative is targeted at a “total tax person” who would have basic knowledge in the interlinkages of the various Units/Divisions of the GRA. However, these training programmes have not proved themselves sufficient. No wonder the T&D Unit is very young considering that it is now centralized since the integration of the hitherto different revenue agencies into one Revenue Authority. Young as it is, the unit is now developing a needs and gap analysis from which it will design course contents for training the staff of the various units/departments of the GRA…"99 Indeed, it has been asserted that although capacity building is a shared responsibility, the T & D Unit must

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possess the ability to capture and predict the training needs of various Divisions/Units/Departments of GRA and align available training to needs effectively.\(^{100}\)

Even though no specific Capacity Needs Assessment (CNA) has been conducted on the Customs Division, the findings of the CNA of the Petroleum Unit in the Large Tax Office of the GRA are instructive ‘Neither the GRA’s 2\(^{nd}\) Strategic Plan 2015-2017 nor the T & D Units training strategy has expressly targeted the Petroleum Unit in LTO/DTRD for enhanced capacity building of its officers and staff. In the circumstances, and not withstanding that the 2\(^{nd}\) Strategic Plan 2015-2017 is a one-stop-shop which has proved useful in improving revenue collection despite some difficulties, respondents nevertheless agree that the unit should be supported to develop its own independent strategic human resource development plan (which could and should be incorporated into any future broad GRA Strategic Plan) which should cover the core training needs of the unit.’\(^{101}\)

\(\text{a) Information sharing with other domestic agencies}\

The Custom Division has been sharing information with other domestic agencies such as the National Security Service, Interpol Unit of Ghana Police Service, Domestic Tax Revenue Division (DTRD) of GRA, partner government agencies (statistical service, ministry of finance, and ministry of trade).

<table>
<thead>
<tr>
<th></th>
<th>Tax agencies</th>
<th>Law enforcement</th>
<th>FIU</th>
<th>Banking supervisors</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Yes (DTRD)</td>
<td>Yes (National Security, EOCO, Interpole)</td>
<td>Yes</td>
<td>Yes (through a platform)</td>
<td>Yes (Statistical service)</td>
</tr>
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<td>Yes, with restrictions</td>
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</table>

Source: Adapted from FATF, *Trade Based Money Laundering* (FATF/OECD, 2006)

Information sharing between customs agencies and other domestic agencies

<table>
<thead>
<tr>
<th></th>
<th>Tax agencies</th>
<th>Law enforcement</th>
<th>FIU</th>
<th>Banking supervisors</th>
<th>Other</th>
</tr>
</thead>
<tbody>
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<td>Mandatory</td>
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<tr>
<td>Voluntary</td>
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<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Not applicable (if no exchange)</td>
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</table>

Source: Adapted from FATF, *Trade Based Money Laundering* (FATF/OECD, 2006)

Information sharing between the Customs Division and other domestic agencies is basically mandatory once the requesting agency is mandated at law to make a request for such information.\(^{102}\) Indeed, information sharing or analysis have led to numerous specific investigations, in the past.

\(^{100}\) Op cit.

\(^{101}\) Op cit.

\(^{102}\) Customs Act, 2015 (Act 891), section 7 (6).
a) Information sharing with foreign agencies

The Customs Division is permitted to share information with foreign customs authorities and other foreign authorities, provided there is underlying agreement between the government of Ghana and that foreign government. Apart from the Customs Act, the Customs Division has a number of MOUs with some foreign custom authorities. Ghana does not have a customs assistance arrangement with Switzerland.

<table>
<thead>
<tr>
<th>EOI arrangement</th>
<th>Yes (and with whom)</th>
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<tbody>
<tr>
<td>Customs mutual assistance agreements</td>
<td>yes (US customs and Border Control, His Majesty Customs)</td>
</tr>
<tr>
<td>Other (specify)</td>
<td></td>
</tr>
</tbody>
</table>

1. Literature

Tax Evasion

Without dispute, Ghana has serious challenges with roping in all persons required to pay tax. In 2017, the government was not able to meet its overall tax revenue target due partly to problems with domestic tax collection; and as a result had to revise the target downwards. The government has been trying to solve this problem through a number of strategies, one of which is the use of electronic point of sale devices to be connected to the point of sale devices used by a significant number of service providers and traders. This strategy is meant to monitor VAT collections on a real-time basis. The GRA in a bid to increase revenue collection, introduced some reforms in the clearing of imports and exports. This is popularly referred to as the creation of a ‘paperless port’.

In addition, the need for serious scrutiny or monitoring procedures has been urged. For instance, Professor Newman Kusi has urged government to improve collection by scrutinising the mining sector, the Free Zones, the Informal sector and the state owned enterprises among others. This is more relevant with an ever present tax evasion menace. A study into tax evasion has revealed that Ghana loses close to $2.1 billion annually to tax evasion by corporate groups, individuals, multinationals and organisations operating in the country. Between 1970 and 2008, the nation lost in excess of $4.9 billion as a result of the dodging of taxes by such entities. However, the granting of tax incentives is not viewed by all as a healthy exercise of political power as it has been considered as a viable window through which substantial revenue is lost to the state. For instance some public service workers expressed concern over the government’s decision to grant tax incentives in excess of $932 million to the Meridian Port Services, a private company.

103 Ibid.
105 Op cit.
106 Op cit
107 Op cit
108 https://www.graphic.com.gh/news/general-news/ghana-loses-2-1-billion-annually-to-tax-evasion.html (last accessed March 6, 2018). The study, carried out by the Integrated Social Development Centre (ISODEC), a civil society organisation, on behalf of the National Coordinating Council of Public Services International (PSI).
109 Op cit
110 Op cit
Yet one of the main problems that the tax authorities face in Ghana is the issue of smuggling, which is a form of tax evasion. Smuggling persists as a result of several factors some of which are Ghana’s porous borders. The GRA and the Ghana Immigration Service do not have the requisite capacity and logistics to curb this problem. However, the GRA recently announced some initiatives aimed at curbing smuggling. These include plans to intensify patrols of the borders to arrest the smugglers and prosecute.111 It should be suggested here that the problem is more of a cooperation between smugglers and the state officials who sometimes are bargain with each other in respect of how the proceeds of the smuggling are to be shared. This does not in and of itself convey any value to the state. Besides, the said practice renders redundant, if not, reverses the clock on the real value of the intended patrols or prosecution to be mounted.

We should also state that under declaration is another serious predicament for the state and tax authorities for that matter. This comes in various forms. Just be way of illustration, some importers provide insufficient information on their imports thereby making it impossible for the GRA to verify the value, weight, and volume of those goods.112 Again, some of the importers successfully outsmart the GRA (Customs Division) by declaring lower values for goods they import, in order to reduce the customs duties payable.113 To curb it, the GRA has recently acquired GFTrade114 and Temporary Vehicle Importation Monitoring System (TVIMS) to increase revenue collected.115

Nonetheless, the GRA had earlier on announced its intention to introduce in Ghana, the Cargo Tracking Notes (CTN) which is a global platform for collection and management of commercial and logistical information on cargo and ships from the port of origin to the port of discharge which is currently being used in over 22 African countries, the US, the European and some Asian countries.116 The CTN would have required all exporters shipping cargo to Ghana, to provide detailed and timely information about their shipment in advance, on a global online platform to enable the GRA carry commence the import review process well in advance resulting in several benefits including plugging of identified loopholes and leakages.117 However, the reforms were not implemented because the vice-President of the Republic informed the GRA that the CTN would among others increase the cost of doing business which was contrary to the government’s policy of making Ghana the most business friendly country in Africa.118 Even though the vice-President’s letter also stated that a shipper’s manifest could provide the information being sought by the GRA, it turns out this directive does not meet the reforms being sought by the GRA.

In a 2016 study, ‘according to the finance ministry, thin capitalization is particularly problematic for Ghana, as in other developing countries. The interest rate in Ghana is so high, up to 30 percent, that companies can get loans at a much lower rate elsewhere.’119 The same study, made a finding the GRA needs to improve coordination between the various divisions.120 The 2016 study also made the following finding ‘Currently, the GRA receives no information from other tax

113 Daily Guide February 27, 2018 p 15.
114 Op cit GFTrade is a valuation tool that enables customs to access the correct values of imported goods from the countries of importation.
115 Op cit. TVIMS is used to track imported which have overstayed as well as identify vehicles smuggled into Ghana. Thus it helps the GRA to verify values declared by importers.
118 Letter from vice-president dated February 16, 2018 (Copy with researchers).
120 Op cit.
jurisdictions on the parent companies or affiliates of local companies registered in Ghana. In 2011, Ghana signed the OECD Convention on Mutual Administrative Assistance in Tax Matters, however they have yet to establish any relationships with tax administrations in signatory countries other than South Africa. The African Tax Administration Forum (ATAF) holds more promise, with Ghana recently being made a member of the ATAF technical committee, and beginning to develop strong partnerships with South Africa, Tanzania, and Kenya. The head of the Transfer Pricing Unit was very positive about the possibilities of information exchange with other African countries, and the opportunity to develop an “African approach” to transfer pricing rules and comparable data.\textsuperscript{121}

\section*{B. BANKING AND FINANCIAL SUPERVISION AND ANTI-MONEY LAUNDERING FRAMEWORKS}

\textit{Banking Supervisors}

The Bank of Ghana (BOG) has overall supervisory and regulatory authority in all matters relating to banking and non-banking financial business.\textsuperscript{122} Under Ghana’s Constitution (1992) the BOG is the Central Bank of Ghana and is the only authority to issue the currency of Ghana.\textsuperscript{123} The functions are as follows: BOG must promote and maintain the stability of the currency of Ghana and direct and regulate the currency system in the interest of the economic progress of Ghana; it must be the sole custodian of State funds of Ghana both in and outside Ghana authorise any other person or authority to perform that function; it encourage and promote economic development and the efficient utilisation of the resources of Ghana through effective and efficient operation of a banking and credit system in Ghana; and perform all other functions as may be prescribed by law.\textsuperscript{124}

In addition to the functions above, the Bank of Ghana Act\textsuperscript{125}, repeats the functions of the BOG as stated above and creates more functions as follows: must formulate and implement monetary policy aimed at achieving the objects of the Bank; promote by monetary measures the stabilisation of the value of the currency within and outside Ghana; it must also institute measures which are likely to have a favourable effect on the balance of payments, the state of public finances and the general development of the national economy; regulate, supervise and direct the banking and credit system and ensure the smooth operation of the financial sector; promote, regulate and supervise payment and settlement systems; and issue and redeem the currency notes and coins; ensure effective maintenance and management of the Republic’s external financial services, and license, regulate, promote and supervise non-banking financial institutions. The Bank acts as banker and financial adviser to the Government, promote and maintain relations with international banking and financial institutions and subject to the Constitution and any other relevant enactment, implement international monetary agreements to which the Republic is a party; and do all other things that are incidental or conducive to the efficient performance of its functions.

\textsuperscript{121} Op cit p 18.
\textsuperscript{123} Constitution of Ghana, 1992, article 183.
\textsuperscript{124} Op cit
\textsuperscript{125} Bank of Ghana Act, 2002 (Act 612)
Similarly, the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930), outlines the functions of the BOG as follows: has overall supervisory and regulatory authority in all matters relating to deposit-taking business; responsible for promoting the safety and soundness of banks and specialised deposit-taking institutions; considering and proposing reforms of enactments relating to deposit-taking business; ensure the stability and soundness of the financial system and the protection of depositors in the country through the regulation and supervision of financial institutions and develop appropriate consumer protection measures to ensure that the interest of clients of the banks and the specialised deposit-taking institutions are adequately protected; and deal with unlawful or improper practices of banks and specialised deposit-taking institutions.

**Regulatory and Legal Framework**

The regulatory and legal framework within which banks, non-bank financial institutions as well as forex bureaux operate in Ghana are the following:

- b) Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930)
- c) Non-Bank Financial Institutions Act, 2008 (Act 774)
- d) Bank of Ghana Notices /Directives / Circulars / Regulations
- f) Anti-Money Laundering Act, 2008 (Act 749)
- g) Credit Reporting Act, 2007 (Act 726).
- h) Ghana Deposit Protection Act, 2016 (Act 931)

To stem the scourge of money laundering, banks are required to file suspicious transaction reports (STRs). The STRs are filed with the Financial Intelligence Centre, which conducts investigations into same and prosecutes the clients, where there is sufficient evidence.

From which sources do banking supervisors receive trade-related information?

<table>
<thead>
<tr>
<th>Source</th>
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Source: Adapted from FATF, *Trade Based Money Laundering* (FATF/OECD, 2006)

The BOG receives trade-related information from the GRA, including its Customs Division, Law Enforcement Agencies, Financial Intelligence Centre, Financial institutions. With which of the following domestic agencies can they share trade-related information?

<table>
<thead>
<tr>
<th>Source</th>
<th>Customs agencies</th>
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Source: Adapted from FATF, *Trade Based Money Laundering* (FATF/OECD, 2006)

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126 section 3
The BOG has authority at law to share information with foreign authorities including foreign banking supervisory authorities.\textsuperscript{129} In the past, the BOG has shared information with many governments. Similarly, Ghana has established a Financial Intelligence Centre (FIC) which among other functions receives and analyses STRs from financial institutions (FIs) and other entities\textsuperscript{130} with reporting obligations. However, the FIC has not reported cases on export trade.

<table>
<thead>
<tr>
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Source: Adapted from FATF, \textit{Trade Based Money Laundering} (FATF/OECD, 2006)

With which of the following domestic agencies can the FIC share intelligence?

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<tr>
<th>Customs agencies</th>
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<td>Yes, with restrictions</td>
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</table>

Source: Adapted from FATF, \textit{Trade Based Money Laundering} (FATF/OECD, 2006)

The FIC joined the Egmont Group of Financial Intelligence Units in June, 2014.\textsuperscript{131} According to the FIC, ‘Joining the Egmont Group has brought diverse benefits and improved the Centre’s efficiency through the stimulation of international cooperation.’\textsuperscript{132} The FIC has over the years collaborated with other international bodies in the realization of its mandate. One of them is the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), which was established by ECOWAS Authority of Heads of State and Government in the year 2000. GIABA is the regional Financial Action Task Force –styled body responsible for facilitating the adoption and implementation of anti-money laundering/countering of financing of terrorism and the financing the proliferation of weapons of mass destruction measures in West Africa.\textsuperscript{133} GIABA is a specialized institution of ECOWAS that is responsible for strengthening the capacity of member states towards the prevention and control of money laundering and terrorist financing in the region.\textsuperscript{134}

FIC asserts that since 2010, with the continued support of GIABA, Ghana has demonstrated strong and high –level political commitment towards addressing its strategic anti-money laundering/countering of financing of terrorism deficiencies and, thus established the required legal and regulatory framework to meet its commitment in the action plan, including the passage

\textsuperscript{129} Section 147 of Act 930.
\textsuperscript{130} By section 50 of Act 749, those other entities are real estate companies, auctioneers, accountants, lawyers, notaries, religious bodies, and non-governmental organisations, money remittance or exchange of funds companies, operators of game of chance, insurance companies, dealers in precious metals and precious stones, dealers in motors and trust and company service providers.
\textsuperscript{131} Financial Intelligence Centre, Ghana Annual Report, 2014, p x. FIC.gov.gh (last accessed April 6, 2018)
\textsuperscript{132} Op cit.
\textsuperscript{133} Financial Intelligence Centre, Ghana Annual Report, 2016. FIC.gov.gh. (last accessed March 26, 2018)
\textsuperscript{134} (www.GIABA.org. Last accessed date 3rd April, 2018)

The record of cases shows that in 2009, FIC received 1 STR and deseminated 1 STR to another agency. In 2010, it received 75 and deseminated 25 to other agencies. In 2011, the FIC received 375 STRs and deseminated 254. Even though the cases declined in 2013 and 2014, it increased in 2015 and 2016, with 2016, recording the highest number of 420 STRs received. The FIC takes pride in its collaboration with other agencies both in Ghana and abroad and has deseminated 720 STRs to these agencies mostly EOCO, and GRA between 2012-2016. The other agencies that the STRs were deseminated to are BOG, BNI, CID, NSCS, and NACOB.

The FIC has also been creating awareness about the menace of money laundering and trained about a thousand stakeholders in this subject in 2016. According to FIC, the Centre does not require a Memorandum of Understanding (MoU) to disseminate information spontaneously or upon request with foreign jurisdictions, however, the Centre may enter into agreement with foreign jurisdictions and organizations as and when it deems expedient. To date, the Centre has executed twenty-three (23) MoUs with foreign counterparts across Africa, Europe, America and Asia. Besides, the FIC also reports that in 2016, the Centre received sixty-two (62) requests for information from counterpart Egmont Members. Two hundred and five (205) spontaneous disclosures were however disseminated to various foreign counterparts. The Centre requested for twenty-five (25) spontaneous disclosures and received one hundred and twenty-five (125).

**Anti-Money Laundering Legislation**

The FIC is established by the *Anti-Money Laundering Act, 2007 (Act 749)*. The objects of the FIC are to assist in the identification of proceeds of unlawful activity and assist in the combat of money laundering activities, financing of terrorism, financing of the proliferation of weapons of mass destruction, and other transnational organized crime. The Centre also has an obligation to make information available to accountable institutions, investigating authorities, intelligence agencies and revenue agencies to facilitate the administration and enforcement of the laws of Ghana as well as exchange of information with similar bodies in other countries towards the aim of fighting money laundering among other crimes.

Section 2(1) of the Act provides that

“…a person commits an offence of money laundering if the person knows or ought to have known that property is or forms part of the proceeds of unlawful activity and the person (a) converts, conceals, disguises or transfers the property; (b) conceals or disguises the unlawful origin of the property; or (c) acquires, uses or takes possession of the property.”

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137 Financial Intelligence Centre, Ghana Annual Report, 2016, p 9-10. FIC.gov.gh (last accessed April 6, 2018)
138 Op cit p11.
140 Op cit 48.
141 Op cit.
142 See section 4 of the Anti-Money Laundering Act, 2007 Act 749 as amended
143 Section 5 of the Anti-Money Laundering Act, 2007 (Act 749) as amended
144 Ibid
The Act further defines unlawful activity as conduct which constitutes a serious offence. To achieve these objects, the FIC is empowered among other powers to request, receive, analyse, interpret and disseminate information concerning suspected proceeds of crime and to monitor and give guidance to accountable institutions et cetera. The FIC also has power to take measures that are necessary for the enforcement of the United Nations Consolidated List. The Act makes provision for accountable institutions, which have the duty to conduct due diligence on their customers and report suspicious transactions to the FIC within 24-hours.

An accountable institution has a very wide definition, and includes banks and non-bank financial institutions, auctioneers, a real estate company or agent, only to the extent that the real estate company or agent, dealers in precious metals and precious stones, dealers in motor vehicles, trust and company service providers and lawyers. Others are notaries, accountants, religious bodies, non-governmental organisations, operators of game of chance, and companies carrying on insurance business within the meaning of the Insurance Act, 2006 (Act 724). Under Act 724, accountable institutions have a responsibility to document their responsibilities with respect to anti-money laundering, financing of terrorism and financing of proliferation of weapons of mass destruction or any other serious offence. In addition to this, accountable institutions have to keep, up to five (5) years, books and records with respect their customers and transactions, and to ensure a timely availability of such records to the FIC enable the FIC carry out its functions.

Another instructive provision is the requirement that accountable institutions must submit reports on all currency transactions which exceed the set threshold to the FIC within 24 hours of the transaction. This requirement must be satisfied whether or not the threshold is exceeded in a single or a series of transactions. The importance of this provision cannot be overemphasized, in light of the fact that money laundering is mainly a cross border crime. Finally, Act 749 as amended imposes a duty on accountable institutions to formulate and implement internal rules to prevent money laundering. The rules must include those relating to politically exposed persons and must be made available to the Centre upon request.

But is important to observe that the FIC also has regulations- Anti-Money Laundering Regulations, 2011 (LI 1987). The regulations provide some detailed rules for the enforcement of Act 749. The BOG’s Financial Stability Department, specifically the Financial Integrity Office directly investigates banks when money laundering allegations are made against banks. The findings of their investigations are sent to the FIC for further investigations and actions. The office has not recorded a gold or cocoa money laundering case since the creation of the Department under a different name in 2003. The cases have been in other areas instead.

The Anti-Money Laundering framework is general in nature but relevant to commodity trade. As long as an STR relates to commodity trade, the FIC and the BOG will investigate it. The FIC has lauded the enactment of laws on beneficial ownership to meet the FATF recommendations. These laws are Companies (Amendment Act), 2016 (Act 920) and the Securities Industries Act, 2016 (Act 929). Act 920 requires an applicant who desires to register a company to ensure that where any

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145 This is defined under section 51 to mean an offence for which the maximum penalty is death or imprisonment for a period of not less than twelve months.
146 Section 6 of Act 749.
147 Section 6 of Act 749 as amended. The United Nations Consolidated List is defined the list of persons and entities designated under United Nations sanctions regimes relating to terrorism and financing of other illegal activity. See section 51 of the Act as amended.
148 See sub-section (15) of section 23 of Act 749 as amended.
149 See sub-section (15) of section 23 of Act 749 as amended.
150 section 31A of Act 749 as amended.
151 Sub-sections (2) and (4) of section 40 of Act 749 as amended.
152 FIC Annual Reports, 2016. FIC.gov.gh page x. (last accessed March 26, 2018)
of the shareholders is not the beneficial owner of the shares he has subscribed to, that shareholder must disclose the details of the beneficial owner as follows - full name, and former name, date, and place of birth, telephone number, nationality and proof of identity, residential, postal and email address, if any, place of work and position held, and the nature of the interest including the legal arrangement in respect of beneficial ownership. The company must also keep a share register, which must contain details of beneficial owners stated there, if there are any. The law extends to companies and shareholders already in existence.

Failure to provide the information is an offence punishable by a fine of not less than one hundred and fifty penalty units (US$ 409.00) and not more than two hundred and fifty penalty units (US$ 681.80) or to term of imprisonment not less than one year and not more than two years or both. Where the company defaults in complying with the law, the company and every officer of the company that is in default is liable to pay to the registrar of companies, an administrative penalty of twenty-five penalty units for each day that breach continues. The law also makes provision for the creation of a central register, which shall contain all the information about every company registered including details of beneficial ownership. The register shall be made available in a timely manner upon request to the FIC, EOCO and any other body investigating or prosecuting money laundering, and associated predicate offences and terrorist financing.

Another instructive provision that helps in tracing beneficial ownership is the requirement that a bank or other financial institution must furnish the following information about the bank to the BOG twice in a year - organogram including direct and indirect affiliates and associates of the bank or financial institution, the nature of the relationship between the affiliates and associates and any other information required by BOG. Where there is a change in the structure of the company, which does not involve BOG, the company must inform the BOG. A company that intends to control a bank or financial institution, must apply to the BOG and provide among others the following information and documents - (a) the capital resources, including the original sources (b) information about the significant shareholders or persons who will benefit from the significant shareholder directly or indirectly: names, addresses, occupation, business and professional history for the preceding 10 or more by requested by BOG, certified financial positions, and corporate affiliations and (c) Organogram of companies controlled by the applicant. Lastly, banks are prohibited from opening accounts in fictitious names.

Yet another relevant institution is Economic and Organised Crime Office (EOCO) which is established by the Economic and Organised Crime Office Act, 2010 (Act 804). This institution was previously known as the Serious Fraud Office (SFO). The functions of EOCO include the investigation prosecution of serious offences that involve, among others, financial or economic loss to the Republic or any State entity or institution in which the State has financial interest.

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153 Section 27 (a) of Act 179, as amended by Act 920.
154 Section 27 (3) of Act 179, as amended by Act 920.
155 Section 32 (2) of Act 179, as amended by Act 920.
156 The penalty units were converted into dollars at the prevailing exchange rate for ease of appreciation. Each penalty unit is equivalent to GHC 12.00.
157 Section 32 (14) of Act 179, as amended by Act 920.
158 Section 32 (15) of Act 179, as amended by Act 920.
159 Section 32 (15) of Act 179, as amended by Act 920.
160 Section 42 of Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930).
161 Section 44 of Act 930.
162 Sub-section (1) of section 1 of Act 804.
163 Sub-section (1) of section 76 of Act 804.
money laundering and tax fraud.\textsuperscript{164} The officers of EOCO have the powers and immunities of the police including the power to request for information\textsuperscript{165} from persons they suspect to have engaged in illegal activity and to search and remove documents from premises.\textsuperscript{166} EOCO as an entity may also seize currency or tainted property.\textsuperscript{167} In relation to the power of EOCO to prosecute, the Act provides that during such trials, a court is entitled to presume that an accused person may have unlawfully obtained pecuniary resources or property in the absence of evidence of taxes having been paid in respect of such resources or property.\textsuperscript{168} This provision is clearly intended to encourage tax compliance among taxable persons and to prevent economic crime in general. The Act allows lifting the veil on a person for the purposes of treating property as belonging to a person of interest. The interest that may be affected by the lifting of the veil may be legal or equitable, and this includes shares, debentures or even directorship in a company. Lastly, EOCO is also empowered to request, in accordance with the Mutual Assistance Act, 2010 (807), from a foreign country in the performance of its duties relative to property located outside the jurisdiction and to apply to the court for a freezing order against assets of a person or entity being investigated.

We may end here on the note that under the laws of Ghana financial and non-financial institutions must keep books and records with respect to their customers and transactions as follows: account files, business correspondence, copies of documents evidencing identification of customers and beneficial owners, records of transactions sufficient to reconstruct each individual domestic or international transaction for both account holders and non-account holders, copies of suspicious transaction reports, cash transaction reports, and other relevant documents.\textsuperscript{169} They must also keep a written record of findings in respect of complex, unusual large transactions or unusual pattern of transactions which do not have apparent or visible economic or lawful purpose and business relationships,\textsuperscript{170} transactions, and legal arrangement with persons and other financial businesses from countries which do not sufficiently apply FATF recommendations.\textsuperscript{171} A failure to keep these records for a period of at least 5 years, constitutes a crime which is punishable by a fine of not more than a 1000 penalty units or term of imprisonment of not more than 5 years.\textsuperscript{172}

\textit{Literature}

FIC looks forward to the enactment of some more laws and implementation of some formulated policies, in order to plug some of the loopholes in the system.\textsuperscript{173} The laws are operationalization of the beneficial ownership register, enactment of real estate agency Bill, development of AML/CFT Guidelines for some selected businesses and professions. The policies to be implemented are National Risk Assessment Action Plan and special control unit against money laundering.\textsuperscript{174}

\begin{footnotesize}
\begin{enumerate}
\item Section 3 of Act 804
\item Section 19 of Act 804
\item Sections 20, 25 & 26 of Act 804
\item Sections 23 & 24 of Act 804
\item Sub-section 2 of section 69 of Act 804
\item Section 24 (2) of Act 749 as amended by 874
\item Section 23 (6) of Act 749 as amended by Act 874
\item Op cit.
\item Section 29 (1) of Act 749 as amended by Act 874
\item FIC Annual Reports, 2016. FIC.gov.gh page 56.(last accessed March 26, 2018)
\item Op cit.
\end{enumerate}
\end{footnotesize}
FOREIGN EXCHANGE CONTROL

The foreign exchange regime is quite business friendly but regulated. The BOG is the regulator in this sector. Consequently, the BOG licences persons who wish to deal in foreign exchange and has in place some requirements for applicants who wish to secure or use foreign exchange. The Foreign Exchange Act, 2006 (Act 723) requires all exporters, including mining companies to repatriate proceeds from the sale of their exports on pain of a conviction and payment of a fine or a term of imprisonment for up to ten (10) years, for failing or disobeying the law. The BOG also has power to prescribe rules in the form of a notice to the general public setting out the information required by the BOG from a person licensed to carry out foreign exchange business or foreign exchange transfers between residents and non-residents in respect of foreign currency, the maintenance of bank accounts within or outside Ghana, and the settlement of the payment by a resident or non-resident.

For purposes of supervision and monitoring, the BOG may require a bank or any other person in writing to submit to it any information or data that relates to the assets, liabilities, income and expenditure of that bank and, any of that bank's affairs at intervals and within the time frame that the BOG may stipulate and that request must be complied with otherwise the failure constitutes an offence. That is, a defaulter is liable on summary conviction to a fine of not less than five hundred penalty units or to a term of imprisonment of not less than four years or to both.

In addition to the general and specific relevance of Act 723, the Minerals and Mining Act, 2006 (Act 703) makes provision for a mining company to enter into a stability agreement with the government to hold the effect of certain laws and conditions of the lease at the time an investor makes an investment, constant for a certain number of years often exceeding 10 years. One of the terms that is usually part of the negotiations is easy access to foreign exchange and transferability of same. There are a number of these agreements in force now. As a result of the business friendly law, mining companies are allowed, easy access to foreign exchange in order to buy mining equipment and parts to undertake their mining business. Similarly, there is easy access to foreign exchange to repatriate their profits and transfer of their dividends out of Ghana. There are no capital restrictions except for thin capitalisation.

In fact, some of the instructive provisions are easy transferability of capital. A holder of a mining lease who earns foreign exchange from mining operations may be permitted by the Bank of Ghana to retain in an account, a portion of the foreign exchange earned, for use in acquiring spare parts and other inputs required for the mining operations, which would otherwise not be readily available without the use of the earnings. The Minister for Finance, in consultation with the Minister acting on the advice of the Commission may where the net earnings of a holder of a mining lease from the holder's mining operations are in foreign exchange, permit the holder of the lease to open and retain in an account, an amount not less than twenty five (25%) percent of the foreign exchange for the acquisition of spare parts, raw materials, and machinery and equipment, debt servicing and dividend payment.

Besides, the companies are also allowed to do remittance in respect of quotas for expatriate personnel, and the transfer of capital in the event of a sale or liquidation of the mining operations. A holder of a mining lease shall be guaranteed free transferability of convertible

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176 Section 15 (4).
177 The Newmont Stability Agreement and Goldfields Stability Agreement.
178 Section 30(1) of Act 703
179 Section 30(1) of Act 703
180 Section 30(4) of Act 703
currency. It has been asserted that the reforms in Ghanaian mining industry were not a specific innovation for Ghana. Indeed, they reflected global neo-liberal thinking that sought to increase the power and leverage of multinational corporations and prescribe the power of the state, with the World Bank and IMF acting as effective conduits for the delivery of these goals. It would seem true that the relatively liberal foreign exchange regime is not new. Prior to Act 723, Ghana had similar laws dating back to 1986, when such laws and other incentives, were specially put together to help attract mining investors into Ghana. That period marked the beginning of Ghana’s third mining boom.

D. TRANSFER PRICING (TP) RULES, PROCEDURES AND DOCUMENTATIONS

Transfer pricing refers to the pricing of transactions between related legal entities within the same multinational enterprise (MNE). It can be legitimate (if the transfer price matches the arm’s length price between unrelated parties) or abusive (also called, transfer mispricing, if the related parties distort the price to evade taxes. Others have explained transfer pricing as a mechanism by which prices are chosen to value transactions between related legal entities within the same multinational enterprise (MNE). These are referred to as “controlled transactions” and may include the purchase and sale of goods or intangible assets, the provision of services, the provision of financing, cost allocation, and cost sharing agreements.

In principle, this works when the price that is set matches the “arm’s length” price at which a transaction would have taken place between unrelated parties. However, transfer pricing may become abusive or illegal when related parties seek to distort the price as a means of reducing their overall tax bill. In these instances the practice may be referred to as “transfer mispricing.” For example, when a business enterprise domiciled in Nigeria transfers goods or services to a related entity in Ghana, the price charged by the Nigerian company are referred to as the “transfer price.” TP schemes lack economic substance.

Legal framework
The Transfer Pricing Regulations, 2012 (LI 2188) was originally passed under the now repealed Internal Revenue Act, 2000 (Act 592). It deals basically with the implementation of the arm’s length principle in transactions between persons in a controlled relationship, both locally and internationally. Ghana is reported to have lost GBP 74 million between 2005 and 2007 to multinationals in US and EU residence. Prior to the passage of LI 2188, section 17 of Act 592 contained some provisions against transfer mispricing, but it was not vigorously enforced. The law gave considerable discretion to the head of the GRA in the assessment of transactions subject to transfer pricing adjustments. The Technology Transfer LI of the Ghana Investment Promotion Centre (GIPC), is another precursor to LI 2188. The GIPC made those rules among others to curb transfer pricing.

The Practice Note on Transfer Pricing Regulations, 2012 (LI 2188), in its introduction provides that the commentaries in the OECD Transfer Pricing Guidelines may assist where necessary in

182 Minerals and Mining Law, 1986 (PNDC 153).
183 Aryee B “Ghana Mining Sector: Its Contribution to the National Economy” Resources Policy, 27, 61-75 (2001) puts it “For four decades up to the 1980s no new mine was opened in Ghana due to a myriad of problems faced by mining sector investors and potential investors alike, as a result of the economic, financial, institutional and legal framework within which the mining sector operated” (2001:62).
URL: https://doi.org/10.15640/ijat.v5n2a6
185 Controlled relationship means……
the interpretation of LI 2188. The LI provides various methods by which transactions between or among associated persons are to be treated for the purposes of determining the tax liability of such persons. Where a taxpayer is of the opinion that the methods provided under the Regulation are inappropriate to its peculiar circumstances relative to a particular transaction, it may apply to use an alternative method with the approval of the Commissioner General.

Administrative Arrangements

After the passage of LI 2188, the GRA set up the Transfer Pricing Unit (TPU) at the Large Taxpayer Office in 2013. The office is part of the Domestic Tax Revenue Division of the GRA. Currently, it has a staff strength of ten (10) as of April 2018 and there are plans to recruit six (6) extra persons to beef up the staff. Besides, the GRA in collaboration with Ministry of Finance, and the Institute for Austrian and International Tax Law at WU Vienna University of Economics and Business held a 3-day International Conference and Capacity building workshop on the theme “Countering Treaty and Transfer Pricing Abuse: The Tax and Financial Crime Dimension”. The FIC was also subsequently drawn in as a co-host. The conference was aimed at contributing to raising awareness on the importance of the role of tax administration in countering all forms of illicit activities. It was attended by one of Ghana’s deputy ministers of finance, over 150 participants from 17 countries, as well as international organisations and CSOs.

Transfer Pricing Documentation

A transfer pricing audit is only carried out at the instance of the GRA. Consequently a tax payer is not required to file in the TP returns and accompanying documentation, when filing annual tax returns. Where the GRA decides to undertake TP audit, it will accordingly inform the tax payer well ahead of time. In addition, the TPU holds a series of consultative meetings with the tax payer to plan the audit exercise in order to make the exercise successful. By way of documentation, the taxpayer has to obtain and fill in the necessary forms (returns) and present same to the TPU. The following documents may also be required.

a) A general description of the organisational, legal, and operational structure of the group of associated enterprises of which the taxpayer is a member, as well as any relevant change therein during the taxable period.
b) The group's financial report or equivalent annual report for the most recent accounting period.
c) A description of the group's policy in the area of transfer prices, if any.
d) A general description of the nature and value of the controlled transactions in which the taxpayer is involved or which have an effect on the income of the taxpayer.
e) A description of the functions, assets and risks of group companies to the extent that they affect or are affected by the controlled transactions carried out by the taxpayer, including any change compared to the preceding period.

In addition, the taxpayer must show with respect to each material controlled transaction carried out by the taxpayer, the following:

a) a description of the transfer pricing method used by taxpayer to demonstrate that the prices and other financial indicators associated with the transaction satisfy the requirements of the arm’s length principle and a description of why such methods are the

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187 [Ibid.](#)  
most appropriate transfer pricing methods within the meaning of Regulation 3 of Transfer Pricing Regulation 2012 (LI 2188).

b) A comparability analysis supporting the taxpayer’s application of the most appropriate transfer pricing method prepared in accordance with the provisions of Section 3.

c) Financial data showing the results of controlled transactions sufficient to demonstrate the taxpayer’s compliance with section 1 applying the most appropriate transfer pricing method within the meaning of Section 4, paragraph 1.189

Cases
As of 2015, the GRA had undertaken 250 cases of transfer pricing audits.190 As of April 2018, the audits, had resulted in extra assessment of taxes to the tune of about fifty seven million United States Dollars (USD 56,818,181.8)191 out of which about eighteen million United States Dollars has been paid. The rest of the assessments are still being contested by the tax payers. However, recently, the biggest defaulting company, Ghana Telecommunication Company Ltd (popularly called ‘Vodafone’, thus its brand name), has abandoned its legal challenge. Vodafone was assessed to pay about US$ 36,363,636.4192. Vodafone will pay up now, considering that the legal battle is over.

Literature
Before the enactment of LI 2188, the Minister of Finance in the 2012 Budget Statement made the following observation about tax revenue loss to the country:

‘Madam Speaker, it is estimated that developing countries lose about US$160 billion every year through transfer pricing fraud. Recent studies in the mining sector showed that Ghana loses about US$36 million a year through transfer pricing. Together with the Ghana Revenue Authority we have drafted regulations to strengthen existing tax legislation to deal with taxation of multinational companies and minimize the incidence of abuse of transfer pricing. The regulation will soon be presented to Parliament.”193

Similarly, the next finance minister held similar views. At the launch of the 2012/13 GHEITI report in Accra, the minister of finance was quoted as saying: “transfer pricing in the extractive sector is one major challenge our revenue institutions must overcome because of its negative effect on revenue collections.”194 In a research, Ghana was ranked 93rd out of 145 developing countries in terms of illicit financial flows in 2013.195

Addo, et al196 support the case that ‘….a great number of MNEs take advantage of their size and complexity of structure to influence and subsequently deprive many of these developing nations

191 The local currency equivalent is two hundred and fifty million Ghana Cedis (GHC 250,000,000.00).
192 The local currency equivalent is one hundred and sixty million Ghana Cedis (GHC 160,000,000.00).https://www.ghanabusinessnews.com/2017/09/19/vodafone-ghana-sues-gra-over-gh%2C2%21a2160m-transfer-pricing-assessment/ (last accessed April 4, 2018).
194 Note......Redhead
tax revenues that could be used to advance their development agenda of accelerated and sustainable economic growth. Ghana for example is reported to have lost GBP 74 million between 2005 and 2007 to multinationals of US and EU residence. Addo et al also refer to the case, in which SABMiller Plc., the majority shareholder of Accra Brewery Limited established complex structures that enabled the company avoid paying the required taxes, estimated at GHS2.2 million per annum.

The Global Financial Integrity Report of 2014 indicated that the cost of fraudulent trade invoicing in five African countries amounted to $14.4 billion in revenue in the 10 years to 2011. The tax authorities in the five countries studied by Global Financial Integrity (GFI) - Ghana, Kenya, Mozambique, Tanzania and Uganda – lacked the trade, and tax and deals data to curb the illicit flows. The report further stated that over-invoicing and under-invoicing in the five countries facilitated the illegal inflows or outflows of more than $60 billion during the 10-year period. As reported, advanced countries such as the US have decreased the incidence of TP through transfer pricing rules, enhanced recovery and an apprised citizenry who are supportive. It has been argued that transfer mispricing has been applied to shift profit from one jurisdiction to another - usually from tax jurisdictions where the effective tax rates are higher to tax jurisdiction where the effective tax rates are significantly lower.

Ghana’s journey to put in place transfer pricing rules, has not been a smooth journey. Ghana’s failure to enact transfer pricing rules until 2012, which is twelve years after the Minister of Finance, has been given power to enact the rules in 2000 raises concerns. According to Redhead, one of the precursor laws that sought to introduce TP was not well stated thereby defeating its purpose. Redhead argued, ‘Section 70 of the IRA provided the legal basis for the government to re-characterize transactions not conducted at arm’s length, the Act failed to define “arm’s length,” explain how the arm’s length principle is to be applied, nor did it set out transfer pricing documentation requirements. According to a senior official at the GRA: “When the transfer pricing regulations came out, the petroleum companies said that they didn’t apply to them, but we managed to get them with Section 5 of the PIT.”

Some taxpayers lobbied the government directly or through parliament, with the concern that the regulations would be applied retrospectively and that documentation requirements would be too

URL: https://doi.org/10.15640/ijat.v5n2a6

197 McNair & Hogg, 2009.
199 N 144 p.86
200 Op cit.
onerous. To neutralize these concerns the committee organized a forum with all stakeholders to allay fears and build buy-in.\textsuperscript{205} According to some writers, the LI 2188, has outlined new procedures for documentation, including maintaining the “master file”, the local file, providing an overview of the group activities, detailed in-country operations, as well as the country-by-country reporting template. This calls for a break-down on a country-by-country basis of group data such as revenue, profits, taxes paid, taxes accrued, assets, and employees.\textsuperscript{206}

The successful implementation of transfer pricing regulations essentially depends on the contribution accounting firms and accountants working with MNEs are required to provide additional information on the measurement and data on financial transfers’ different subsidiaries of a multinational group of companies. Tax authorities require this data as part of the processes for addressing Base Erosion and Profit Shifting (BEPS). In this regard, accountants have a duty to ensure full compliance with the transfer pricing regulations.\textsuperscript{207} The LI places a crucial role on accountants to keep accounts in a manner that makes it easy to undertake a transfer pricing audit. Professional accountants are therefore expected to account for profits in a way that aligns with economic activities and value creation otherwise they will face scrutiny and pose a financial risk to the MNEs.

Price Waterhouse Coopers asserts that, although a taxpayer that is to be audited under the rules, has the option to choose its preferred method of calculating the arm’s length transactions and that availability of choices gives some form of comfort to professionals including accountants working with the MNEs\textsuperscript{208} such a choice requires a justification that:

1. none of the approved methods in the LI can be reasonably applied to determine arm’s length conditions for the controlled transaction;
2. such other method yields a result consistent with that which would be achieved by independent persons engaging in comparable uncontrolled transactions under comparable circumstances;
3. the taxpayer asserting the use of a method other than the approved methods shall bear the burden of demonstrating that the requirements listed above have been met.\textsuperscript{209}

Even in the face of these rules, it has been posited that although the transfer pricing rules are commendable, they are not designed to achieve optimal results because among others, the arm’s length methodology adopted in the rules for determining the value of a comparable contract for use in assessing whether a contract between companies within MNEs represents an arm’s length contract, is not fool proof. That methodology is subject to weaknesses such as difficulty in finding a contract that qualifies as a comparable arm’s length contract for the purposes of comparison, requiring an enormous amount of time to find comparable contracts for the large volumes of contracts that MNEs undertake, and the failure of the GRA to provide guidance on the meaning of ‘a contract that provides value’ to a company. The requirement of ‘a contract that provides value’ is one of the threshold requirements for determining whether a company within an MNE has entered into a contract with another company within the MNE, and must be answered in the affirmative together with the other requirements, for such a contract to qualify for comparison with an arm’s length contract.

\textsuperscript{205} Op cit page 6.
\textsuperscript{206} Op cit.
\textsuperscript{207} Op cit
\textsuperscript{209} Op cit.
The GRA itself has seen the need to revise the TP rules to make them more efficient as such and is in the process of engaging stakeholders for their input into the revision of the law. Sometime ago, the head of the Mining Audit Desk at the GRA, stated that ‘the new regulations are not sufficiently specific to the extractive industries, nor does the relevant mining and petroleum legislation explicitly address the requirement for arm’s length pricing.

**OTHER ANTI-AVOIDANCE RULES**

There are other anti-tax avoidance provisions in Act 896. These are the requirement that persons in a controlled relationship must calculate their income and tax payable using the arm’s length standard, rules against thin capitalisation, and income splitting. To curb transfer pricing between or among persons in a controlled relationship, it is required that such persons in a controlled relationship shall calculate their income, and tax payable, according to the arm’s length standard. The arm’s length standard requires persons who are in a controlled relationship, to quantify, characterise, apportion and allocate sums of money to be included in or deducted from income to reflect an arrangement that would have been made between independent persons. Income splitting, is prohibited. The law empowers the Commissioner General to adjust or recharacterise the incomes for the purposes of taxes.

Finally, section 33 limits the debt-to-equity ratio of exempt persons to three-to-one. This means that where in respect of the source of funding of a company, the debt-to-equity ratio exceeds the statutory ratio, the deductible income for interest in excess of this ratio may be disallowed. This is to prevent the situation where taxpayers take advantage of debt financing as a means of avoiding tax.

**CORPORATE DISCLOSURE REQUIREMENTS AND TRANSPERANCY**

**Payments to the Government**

What are the EITI disclosure requirements in Ghana? Are there additional disclosure requirements that complement EITI? Under which legal framework? Key information sources / documents (also check https://eiti.org/ghana; http://www.gheiti.gov.gh/site/; https://eiti.org/validation/ghan/2016;…)

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211 Section 31(1) of the Seventh Schedule of Act 896

212 Section 33(1) of the Seventh Schedule of Act 896

213 Section 32(1) of the Seventh Schedule of Act 896

214 Section 31(1) of the Seventh Schedule of Act 896.

215 Section 32 of Act 896
Beneficial Ownership and Control

There are quite a number of laws on beneficial ownership. These laws are Companies (Amendment Act), 2016 (Act 920), the Securities Industries Act, 2016 (Act 929) and Banks and Specialised Deposit Taking Institutions Act, 2016 (Act 930). For instance, Act 920 requires an applicant who desires to register a company to ensure that where any of the shareholders is not the beneficial owner of the shares he has subscribed to, that share holder must disclose the details of the beneficial owner as follows - full name, and former name, date, and place of birth, telephone number, nationality and proof of identity, residential, postal and email address, if any, place of work and position held, and the nature of the interest including the legal arrangement in respect of beneficial ownership. Where the beneficial owner is a politically exposed person, that person must be identified.

The company must also keep a share register, which must contain details of beneficial owners stated here, if there are any. The law extends to companies and shareholders already in existence. Failure to provide the information is an offence punishable by a fine of not less than one hundred and fifty penalty units (US$ 409.00) and not more than two hundred and fifty penalty units (US$ 681.80) or to term of imprisonment not less than one year and not more than two years or both. Where the company defaults in complying with the law, the company and every officer of the company that is in default is liable to pay to the registrar of companies, an administrative penalty of twenty-five penalty units for each day that breach continues.

The law also makes provision for the creation of a central register, which shall all the information about every company registered including details of beneficial ownership. The register shall be made available in a timely manner upon request to the FIC, EOCO and any other body investigating or prosecuting money laundering, and associated predicate offences and terrorist financing.

Another instructive provision that helps in tracing beneficial ownership is as follows: a bank or other financial institution must furnish the following information about the bank to the BOG twice in a year - organogram including direct and indirect affiliates and associates of the bank or financial institution, the nature of the relationship between the affiliates and associates and any other information required by BOG. Where there is a change in the structure of the company, which does not involve BOG, the company must inform the BOG.

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216 “[..] a beneficial owner is the natural person who is ultimately entitled to the benefits accruing from the beneficial ownership of the securities, and/or has power to exercise controlling influence over the voting rights attached to the shares […]” There are, in general, three groups of natural persons/legal entities for which the disclosure of beneficial ownership information is mandated. The first are directors and chief executives/senior officers required to make disclosure of their interests in the company, regardless of their actual shareholding percentage […]. Secondly, substantial shareholders, which are classified by a minimum shareholding percentage, also need to report their beneficial ownership. Such minimum shareholding is usually fixed at 5% […] but in some jurisdictions at 10% […]. Finally, listed companies in the responding jurisdictions must include information about the names of their major shareholders (not necessarily beneficial owners) in their annual reports”. OECD, Disclosure of Beneficial Ownership and Control in Listed Companies in Asia (OECD, 2016), at https://www.oecd.org/daf/ca/Disclosure-Beneficial-Ownership.pdf

217 Section 27 (a) of Act 179, as amended by Act 920.
218 Section 27 (3) of Act 179, as amended by Act 920.
219 Section 32 (1)(b) of Act 179, as amended by Act 920.
220 Section 32 (2) of Act 179, as amended by Act 920.
221 Section 32 (14) of Act 179, as amended by Act 920.
222 Section 32(15) of Act 179, as amended by Act 920.
223 Section 331A (3) of Act 179, as amended by Act 920.
224 Section 42 of Banks and Specialised Deposit Taking Institutions Act, 2016 (Act 930).
A company that intends to control a bank or financial institution, must apply to the BOG and provide among others the following information and documents:

a) the capital resources, including the original sources
b) the following information about the significant shareholders or persons who will benefit from the significant shareholder directly or indirectly: names, addresses, occupation, business and professional history for the preceding 10 or more by requested by BOG, certified financial positions, and corporate affiliations.
c) Organogram of companies controlled by the applicant.⁵²⁵

In addition, banks are prohibited from opening accounts in fictitious names.

**COCOA-SPECIFIC**

*Sector-specific regulatory authorities and state-owned enterprises*

The cocoa industry in Ghana is fully controlled by the Government of Ghana (GOG), having monopoly over the purchase and export of cocoa beans. The GOG established the Ghana Cocoa Board (COCOBOD) which is mandated to monitor and regulate the operations of the cocoa industry in Ghana. The Ghana Cocoa Board was established under the Ghana Cocoa Board Act, 1984, (PNDCL 81) to replace the Ghana Cocoa Marketing Board. Under the Act, the Board is a corporate body with perpetual succession and a common seal and may thus sue and be sued in its corporate name. The Board is also clothed with the power to acquire and hold movable or immovable property and may dispose of that property and enter into a contract or any other transaction.

The objects of the Board are: to encourage the production of cocoa, coffee and shea; to undertake the cultivation of cocoa, coffee and shea; to initiate programmes aimed at controlling pests and diseases of cocoa, coffee and shea; to purchase, import, undertake and encourage the manufacture of, and distribute and market inputs used in the production of cocoa, coffee and shea; to undertake, promote and encourage scientific research aimed at improving the quality and yield of cocoa, coffee, shea and other tropical crops; to regulate the marketing and export of cocoa, coffee and shea; to secure the most favourable arrangements for the purchase, inspection, grading, sealing and certification, export and sale of cocoa, coffee, and shea; to purchase, market and export cocoa produced in the Republic which is graded under the Cocoa Industry (Regulation) (Consolidation) Act, 1968(2) or any other enactment as suitable for export; to establish or encourage the establishment of industrial processing factories for the processing of cocoa and cocoa waste into marketable cocoa products; to purchase, market and export cocoa, cocoa products, coffee, shea and shea butter produced in Ghana; to assist in the development of the cocoa, coffee and shea industries of the Republic; and to promote the general welfare of cocoa, coffee and shea farmers in the Republic.

Aside the above objectives, the Board is mandated to perform some other functions which include: first, to determine bwith the prior approval in writing of the Minister, the prices to be paid to producers for their cocoa, coffee and shea and to arrange in the manner that the Board thinks fit to notify the prices to the producers. It is also mandated to take steps to pay promptly for the cocoa beans, coffee and shea purchases from producers. These payments are however made by cheque in accordance with the Akufo Cheque System. The use of Akufo cheque (or farmers’ cheque) in the payment of cocoa farmers who opt to be paid through an account rather

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⁵²⁵ Op cit Section 44
²²⁶ Section 1 of PNDCL 81
than cash, has introduced farmers to the formal banking system. This is quite significant, particularly in a country where generally farmers do not use banks. To be paid by this method, a cocoa farmer must necessarily have a bank account. The use of Akufo cheque has therefore resulted in the opening of bank accounts in rural banks by many cocoa farmers who reside in the rural areas. Under this method of payment, farmers were issued with an Akufo cheque by cocoa purchasing clerks against a general account for cocoa farmers in a participating commercial or rural bank called the Akufo Account in return for cocoa beans.

The Board establishes purchasing and marketing organisations and regulates the mode of operation of the organisations and can acquire and hold an interest in the business of a person carrying on functions, whether in Ghana or outside Ghana similar or related to its objects. It also provides seedlings, credit and any other facilities to cocoa, coffee and shea farmers to plant new farms or rehabilitate old ones or redeem pledged farms and with the prior approval of the Minister, it may carry on any other activities as it appears to be conducive or incidental to the attainment of the its objects and functions. The Board may however, with the prior approval in writing of the Minister and subject to the conditions that it may impose, by writing under its common seal delegate any of its functions under mentioned above to a person and may in similar manner revoke the delegation.

The Ghana Cocoa Board Act 1984, (PNDCL 81) established the Ghana Cocoa Board to replace the Ghana Cocoa Marketing Board. Currently, COCOBOD is a relatively slimmer organisation with five main subsidiaries including the Quality Control Company and Cocoa Marketing Company (limited liability companies, which play lead roles in addressing the overall organizational goal of exporting premium and high-quality cocoa). It maintains functionally strong linkages with the critical actors especially its subsidiaries, the licensed buying companies, the Cocoa Research Institute of Ghana, the Cocoa Swollen Shoot Virus Disease Control Unit (CSSVDCU) and the Seed Production Unit (SPU).

A summary diagrams to illustrate entities, relationships and functions (entity-relationship diagram).

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227 FINANCIAL INCLUSION IN GHANA: HOW HAS THE USE OF AKUAFO CHEQUES INTRODUCED COCOA FARMERS TO BANKS? A Research Paper presented by: ADWOA MENSIMA MACNALLY-BOATENG

228 section 5 of PNDCL 81

229 George Owusu Essegbey and Eugene Ofori-Gyamfi; Ghana Cocoa Industry—An Analysis from the Innovation System Perspective.
Transaction Regime (internal marketing)

As indicated above, the marketing and selling of Ghana’s Cocoa is solely controlled by COCOBOD and it is illegal for any other entity to engage in any form of internal and external market without the legitimate approval or authorization by the COCOBOD. As a result, all internal and external marketing and sales of cocoa either locally or abroad are under the direct control of the Cocoa Marketing Company (CMC), subsidiary of the COCOBOD. There is a Board sub-Committee called “Cocoa Sector Marketing Committee (COSMARC)”. Under the Export of Cocoa Regulations, the body known as the Cocoa Sector Marketing Committee (COSMARC) is appointed by COCOBOD in consultation with the Minister responsible for cocoa. The responsibilities of COSMARC includes assessing applicants and making recommendations to COCOBOD for license to participate in the internal marketing of cocoa and assessing applicants and making recommendations to COCOBOD for licensing exporters of cocoa. The membership of COSMARC shall be made up of: COCOBOD Representative – chairperson, Ministry of Finance Representative, a Banker/Financial Analyst, an expert in cocoa marketing, a representative from QCD, Farmers' Representative, and private Sector Representative.

The farm gate prices are set by the Producer Price Review Committee (PPRC) made up of Minister of Finance, Bank of Ghana, Ministry of Trade, COCOBOD, Ghana Revenue Authority, representatives of Farmers, Hauliers and Licensed Cocoa Buying Companies (LBC’s). This committee sets the farm gate price taking into consideration the projected fob price of cocoa for that year, inflation, exchange rate etc.

Cocoa Valuation

Under regulation 3 of the Cocoa Industry (Regulations) Act, 1968 (NLCD 278), a person shall not export or cause or permit to be exported or attempt to export cocoa unless the cocoa has been inspected by an inspector and the inspector has affixed to each bag a seal and grade-mark. To achieve this, the Quality Control Company Ltd (QCC) as a subsidiary Company of COCOBOD is mandated by law to inspect, sample, grade, seal and disinfest cocoa and other produce for Licensed Buying Companies. It has been set up in 1991 to see to the quality check of cocoa beans at the farm gates, depots and the ports by staff of the division (QCD Handbook, 2007). The QCC provides all the inspection, grading and certification services.

First inspection takes place at the society/village level before purchase is done by the LBC’s marketing clerks (MC). A second inspection is carried out at the District depots by QCC before movement to take-over points at Kaase in Kumasi, Tema and Takoradi ports. A third inspection is carried out at the port before the cocoa is taken-over by CMC and a final inspection, before shipment/export. All such quality checks are done to ensure that the quality, as seen during original inspection and certification is maintained and consistent. The QCC therefore checks the quality of the purchased cocoa on three different points in the chain before shipment. If quality compliance fails, the cocoa is sent back to the LBC, using a good system of traceability. This system enables the LBCs to blacklist recalcitrant farmers.

It also carries out the following functions: Prevent the exportation of inferior or infested cocoa, coffee, shea nuts and cashew nuts to any destination in the world; ensure that facilities of licensed

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230 Sections 2 and 5 of PNDCL 81
231 http://www.qccgh.org - accessed on 11 March 2018
232 ADADE GABRIEL KOFI; THE PERCEPTION OF PURCHASING CLERKS IN QUALITY CONTROL MANAGEMENT PRACTICES IN THE COCOA INDUSTRY IN GHANA: THE CASE OF JUABOSO DISTRICT.
buying companies conform to laid down regulations in order to maintain quality of produce in their custody; monitor the operations of Licensed Buying Companies with regard to the safety of produce at all times; and undertake commercial disinfections services. That is, pre-shipment checks ensure that grading is done at the Society Levels before evacuation to Take-Over Centres and before receipt into storage warehouses and before shipment.

*Export Regime*

External marketing of cocoa is carried out by Cocoa Marketing Company Ltd, a subsidiary of COCOBOD. The marketing department of the Cocoa Marketing Company Ltd is responsible for marketing, sales and promotion of Ghana’s cocoa in the international market and to local processing companies in Ghana. It ensures the execution of sales contracts and deals with after sales issues, including claims and arbitration. The marketing department is located in Accra and works directly with the Company’s subsidiary organization in London. It is important to state that the external marketing is carried out under the International Cocoa Organization (ICCO) Rules. Export prices are set using the daily trading pricing through the bidding process in the international commodity market. The ICCO Rules and Guidelines are the benchmark rules.

*Literature Review*

The cocoa sector offers many economic and social advantages to the Ghanaian economy due to the high quality standard of Ghana’s cocoa. As noted by Shashi Kolavalli & Marcella Vigneri, Cocoa in Ghana has not been an unmitigated success. It has gone through cycles – as has the country’s economy – influenced by and influencing policies, but these ups and downs offer interesting lessons. The authors identified four distinct phases in the development of cocoa in Ghana: introduction and exponential growth (1888 to 1937); stagnation followed by a brief but rapid growth following Ghana’s independence (1938 to 1964); near collapse of the sector (1965 to 1982); and the recovery and expansion (1983 to date) starting with the introduction of the ERP (Economic Recovery Programme).

According to Agambedu Abdul-Wahid, cocoa purchasing in Ghana was privatised in 1992 following liberalisation of the cocoa sector. The privatisation brought in its wake intense competition among Licensed Buying Companies (LBCs) in the internal market for cocoa. Issues that bothered on the maintenance of cocoa quality came up in the wake of the privatisation as a consequence of competition. Quality is the secret behind the patronage for Ghana’s cocoa. The role of COCOBOD in maintaining cocoa quality standards is indicated in a lot of literature. It has been argued that the premium quality of Ghana’s cocoa has not changed due to the efforts of COCOBOD and that Ghana still ranks top on the quality score in the international market. That is, the COCOBOD, with support from the government, has the capacity to check any acts or commission by any player along the production chain, to compromise the quality of the produce.

Lundstedt H. and Pärsinnen S. however express a contrary view with regard to the quality standards of cocoa. They are of the view that though the quality level of Ghana’s cocoa is still high, there has been a decline in the quality since the liberalisation of internal marketing.

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234 COCOA IN GHANA: SHAPING THE SUCCESS OF AN ECONOMY
235 Agambedu Abdul-Wahid: Maintaining Quality Standards in the face of internal market competition in Ghana’s Cocoa Industry: A case study of Offinso Municipality - A Thesis submitted to the Institute of Distance Learning, Kwame Nkrumah University of Science and Technology in partial fulfilment of the requirements of COMMONWEALTH EXECUTIVE MASTERS OF PUBLIC ADMINISTRATION.
236 Lundstedt H. and Pärsinnen S; Cocoa Is Ghana, Ghana Is Cocoa Evaluating Reforms of the Ghanaian Cocoa Sector
Canatus and Darkoa observe that since the introduction of liberalisation, the QCC faces major challenges in ensuring quality standards of cocoa due to unhealthy competition among LBCs, who sacrifice quality in their quest to buy more cocoa. They also temper with sealed cocoa and fail to abide by the rules and regulations governing the internal marketing of cocoa.²³⁷

According to E.N.A. Dormon, A. Van Huis, C. Leeuwis, D. Obeng-Ofori and O. Sakyi-Dawson ²³⁸, a caution when using a diagnostic approach that focuses on farmers’ perspectives is that farmers’ perceptions may not always be a balanced or valid reflection of the situation because of inadequate information on certain issues. This was evident in the case of the FOB price. However, it exposed communication gaps between the COCBOD on the one hand and extension workers and farmers on the other. Such communication gaps for instance on how producer prices are determined creates room for mistrust and the objective of motivating farmers with higher producer prices is not achieved as some of them monitor world market prices on the radio. They recommended that it would be beneficial to all stakeholders if COCOBOD takes steps to bridge this gap. Again, they posit that, the crop contributed about 3.4% to total gross domestic product annually and an average of 29% to total export revenue between 1990 and 1999 and 22% between 2000 and 2002. However, production levels have consistently declined from 568,000 Mt in 1965 to its lowest level of 160,000 Mt in 1983²³⁹.

From the 1990s, Ghana’s cocoa pricing policy has refocused on the principle that passing on to producers a higher share of global prices is essential to increase aggregate production, and ultimately sustain the country’s position as a leading player in the cocoa industry. It has been possible to pass on a higher share of global prices to growers because cocoa taxes have declined substantially, from nearly a third in the mid–1990s to less than one twentieth in 2010/11.²⁴⁰ Abdul-Wahid thus observes that the Ghana Cocoa Board Law, the objects of Ghana Cocoa Board (COCOBOD) include to purchase, market and export cocoa produced in Ghana which is graded and sealed under the provisions of Cocoa Industry (Regulation) Consolidation Decree, N.L.C.D 278 (1968) or any other enactment, as suitable to secure the most favourable arrangements for the purchase, inspection, grading, sealing and certification, export and sale of cocoa. (P.N.D.C Law 81, 1984). He further states that in an effort to meet the quality standards of cocoa set at the world commodities market, the Cocoa Industry (Regulation) Consolidation Decree, N.L.C.D. 278, (1968), and the Cocoa Industry Regulations, L.I. 598, (1968), spell out the criteria for achieving the best quality of cocoa produced in Ghana.

The rules regarding the handling and inspection of cocoa for quality, as well as how and where cocoa should be stored, have been outlined under these laws. N.L.C.D. 278, (1968) paragraphs 1 to 7 dealt with the handling and inspection of cocoa to ensure quality, while paragraph 13 outlined penalties for quality standard offenders. N.L.C.D. 278, (1968) paragraph 2 states that “No person other than a grower of cocoa who is transporting his cocoa from the land on which it was grown to his premises for the purpose of fermenting and drying, shall transport cocoa which has not been thoroughly dried”. It is also stated in paragraph 3 that, “No person shall export or cause or permit to be exported or attempt to export any cocoa unless and until the same has been Inspected by an inspector who shall have affixed to each bag a seal and grade-mark.” (N.L.C.D 1968)”²³⁷

²³⁷ David Canatus Anthonio & Emma Darkoa Aikins: Reforming Ghana’s Cocoa Sector: An Evaluation of Private Participation in Marketing
²³⁸ Causes of low productivity of cocoa in Ghana: farmers’ perspectives and insights from research and the socio-political establishment.
²³⁹ Causes of low productivity of cocoa in Ghana: farmers’ perspectives and insights from research and the socio-political establishment.
²⁴⁰ Growth through pricing policy: The case of cocoa in Ghana: Background paper to the UNCTAD-FAO Commodities and Development Report 2017 Commodity markets, economic growth and development.
MINING

Ghana has a long history of mining and is quite rich in minerals, especially gold that is why Ghana used to be called the Gold Coast. An overview of the period 2006-2016, shows that gold was the major mineral export accounting for about 96.6% of the total value of all four major minerals.\(^{241}\) The GFMS Gold Survey (2016) reports that total gold output in Ghana reduced to 95 tonnes in 2015, relative to 107 tonnes recorded in 2014. \(^{242}\) However, Ghana maintained its position as the tenth largest producer of gold in 2015, accounting for three percent of global gold output.\(^{243}\)

Since the third mining boom in Ghana, gold has always brought in much needed foreign exchange which is critical to Ghana’s monetary policy. The forex is supplied to the banking sector. According to the Bank of Ghana, the sector was the leading source of foreign exchange in 2015, contributing in excess of 31 percent of total merchandise exports.

The table below illustrate the point

| TABLE 6.4: EXPORT EARNINGS OF GOLD, DIAMOND, BAUXITE AND MANGANESE, 2006-2016 (US$ MILLION) |
|---------------------------------|----------------|----------------|----------------|----------------|----------------|
| YEAR              | GOLD       | DIAMONDS     | BAUXITE    | MANGANESE    | TOTAL        |
| 2006              | 1,367.00   | 31.28        | 22.6       | 40.65        | 1,461.53     |
| 2007              | 1,733.78   | 28.97        | 18.88      | 32.84        | 1,814.47     |
| 2008              | 2,246.00   | 25.00        | 22.00      | 52.97        | 2,345.97     |
| 2009              | 2,551.37   | 7.34         | 11.08      | 49.11        | 2,618.90     |
| 2010              | 3,803.52   | 11.31        | 15.15      | 58.21        | 3,888.19     |
| 2011              | 4,912.85   | 18.86        | 7.09       | 97.74        | 5,036.54     |
| 2012              | 5,643.27   | 10.38        | 24.62      | 92.37        | 5,770.64     |
| 2013              | 4,965.71   | 6.93         | 32.56      | 133.69       | 5,138.89     |
| 2014              | 4,388.07   | 9.10         | 36.26      | 82.86        | 4,516.29     |
| 2015              | 3,212.59   | 4.22         | 41.06      | 64.74        | 3,322.61     |
| 2016              | 4,919.46   | 2.06         | 38.70      | 100.22       | 5,060.44     |
| Growth in 2014 (%) | -11.63     | 31.31        | 11.36      | -38.02       | -12.12       |

\(^{242}\) Addo-Kufuor K. Address of the President of the Ghana Chamber of Mines, on the occasion of the 88th Annual General Meeting in Accra, 2016.
\(^{243}\) Op cit
Mining is a leading source of fiscal revenue for the country. The industry contributed US$ 306,818,181.00 to the national economy in 2015. This amount represents an eight percent increment over the US$ 281,818,182.00 recorded in 2014. The contribution increased in 2016. Currently, twelve (12) of the mining companies actually produce minerals, mostly gold. There are other companies involved in other mining activities in the value chain such as reconnaissance and prospecting. There are also companies that provide mining support services to the mining companies. These services range from contract mining to blasting services.

The sector is regulated by many institutions in Ghana thereby making it a complex web. The institutions are the president, the ministry of lands, and natural resources, the Minerals Commission (with several internal divisions for specified roles), Geological Survey, the Precious Minerals Marketing Corporation, Environmental Protection Agency, Water Resources Commission, Forestry Commission, the GRA, the BOG, Ghana Immigration Services, and to a smaller extent the district assemblies (city hall) and land owners including traditional authority.

**The President**

All minerals in Ghana are owned by the state and are vested in the president in trust for the people of Ghana. The constitutional trust created has been held be a trust in a higher sense (political trust) not an equitable trust. Hence in practice, all the agreements for the grant of mineral rights (reconnaissance licence, prospecting licence and mining lease among others) are expressed in the name of the government of Ghana and signed by the minister for mining as a representative of the government. However, these agreements must be ratified by parliament or the ratification must be waived by parliament before these agreements can become legally binding and effective.

**Minerals Commission**

It was first established in 1986, under the Minerals and Mining Law, 1986 to regulate the mining sector. However, it was re-established by in 1993, by the Minerals Commission Act, 1993 (Act 450) Which was enacted pursuant to Constitution of the Republic of Ghana, (1992) article 260. The Constitution mandated its establishment by an Act of parliament for the regulation, and management of the utilisation of mineral resources, and the co-ordination of the policies in relation to them. Consequently, Act 450 was promulgated. In order to help the Commission function effectively, Act 450 repeats the Constitutional mandate, creates more functions, and provides for the administrative set up of the Commission.

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<td>Growth in 2016 (%)</td>
<td>53.13</td>
<td>-51.18</td>
<td>-5.75</td>
<td>54.80</td>
<td>52.30</td>
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Source: Minerals Commission, May 2017

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244 Culled from ISSER, The State of The Ghanaian Economy in 2016 p. 135
245 The local currency stated in the speech is GH₵ 1.35 billion Converted to US$ at the prevailing exchange rate of US$ 1 = GH₵ 4.4 in April 2018.
246 The local currency stated in the speech is GH₵ 1.24 billion Converted to US$ at the prevailing exchange rate of US$ 1 = GH₵ 4.4 in April 2018.
250 Adjaye v Attorney-General, High Court, unreported.
The functions of the Commission are stated in the Act 450 as follows. It is responsible for the regulation, and management of the utilisation of mineral resources, and the co-ordination of the policies in relation to them. To achieve that purpose, the Commission is also responsible for formulating recommendations of national policy for exploration and exploitation of mineral resources with special reference to establishing national priorities having due regard to the national economy. It also advises the Minister in charge of lands, mines and natural resources on matters relating to minerals and monitors the implementation of laid down policies of the Government on minerals and reports on this to the Minister. It also monitors the operations of the bodies or establishments with responsibility for minerals and report to the Minister. The Commission also receives and assesses public agreements relating to minerals and report to Parliament among others. The Commission performs very critical regulatory functions in the licensing of companies to undertake any activity in the mining value chain. The regulatory functions were boosted in 2012, with six (6) Legislative Instruments (LIs) some of which were substantial revisions of existing LIs and policies.

**Precious Minerals Marketing Company (PMMC)**
Produced minerals are valued through assay, to determine its quality. Even though a mining company has the right to undertake its own valuation and routinely does so, by law, the Precious Minerals Marketing Company (PMMC) is the official valuer (assayer). Official assaying enables the government to determine the taxes and royalties payable. However in practice, until 2018, the PMMC used to conduct assay for only small scale miners. Recent reforms in 2018, have extended the mandate to large scale miners. Consequently, in practice, starting in January 2018 an officer of the PMMC takes a sample of produced gold for assaying. This is usually done at the time that a mining company smelts its gold in order to convey same to the capital, Accra usually for export. The officer is required to be present in the gold room when a mining company is assaying and smelting its gold.

**Environmental Protection Agency (EPA)**
The EPA was established among others to regulate the activities of companies that have an impact on the environment. Specifically, the part of the EPA’s mandate that constitutes a regulation of mining is power of the EPA to determine whether a mining company should be given an environmental permit to undertake its activities. Without that permit, no mining activity can be undertaken. The EPA also has power to renew these licences periodically and to monitor the activities of mining companies to ensure that they do not pollute the environment.

**Forestry Commission (FC) and Water Resources Commission**
The Forestry Commission and Water Resources Commission also issue licences or permits to mineral right holders whose operations fall within forests and or entails the diversion or use of water within the land which is the subject matter of the mineral rights.

**Bank of Ghana (BOG)**
The BOG regulates the foreign exchange available to a mining company and the banking sector. The foreign exchange regime is very investor-friendly. This is discussed further below.

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253 Section of 2 Precious Minerals Marketing Corporation Act, 1989 (PNDCL 219)
254 Royalties, is a percentage of the gold produced which is paid to the government often in money rather than actual minerals. It ranges from 3%-6% of the production.
It regulates the number of expatriates that mining companies may bring into the country. This is meant to ensure that some classes of jobs are reserved for indigenes.

*District Assembly/Municipal Assembly/ Metropolitan Assembly (City Hall)*

These are the local authorities and are usually empowered to impose local levies as business operating permits, on businesses that operate in their area of authority and other powers that impact mining at the local level.

*Land Owner*

The land owner is also informed if an application for a mineral right, is in respect of that person’s land. The land maybe owned by an individual, family, or a whole community (stool). Where the land is owned by the stool, the chief represents his people.

**ESTABLISHMENT AND OPERATIONS**

*Overview of Registration Requirements*

A mineral right, that is the main mining activities which require a licence are reconnaissance, prospecting, mining and trade in gold. An application for any of these mining activities is made to the Commission. The detailed rules of the requirements an applicant must meet are spelt out in Legislative Instrument 2176. The Commission reviews the application, and makes a decision whether an application should be granted or declined and makes a recommendation to the Minister accordingly. The Minister takes the decision and communicates same to the Commission. Where the application is successful, the Commission drafts an agreement for the minister to sign same for the applicant. Where the application is unsuccessful, the Commission gives notice to the applicant on behalf of the Minister.

For efficient administration of applications, the law provides for the creation of a Priority Register in which an application for a mineral right for a vacant area is recorded chronologically and a unique code issued to the applicant, thus making it easy to determine, priority between applicants. There is also a General Register in which other applications are recorded. The public may access, inspect and make copies of the cadastral maps. The headquarters of the Commission is in Accra, the national capital, where the review of all applications is conducted. However, the Commission has District Offices, where applications for small scale mining may be lodged for onward transmission to, Accra.

For the purpose of establishing mineral rights or mining cadastral, the surface of Ghana is divided into cadastral units consistent with the grid defined by the Gauss geographic coordinates. Typically, where an application is made for any of the mineral rights, an applicant is basically required to furnish the Commission with the following: the mineral in respect of which the application has been made, the details of the applicant or applicant’s representative, and the technical experience of applicant’s team, documentation to show the applicant has been registered a juridical person, a correct identity of the area applied for, its size, and the coordinates supplied are consistent with the geographic and geometric rules prescribed in the LI, a work programme which must involve certain minimum expenditure, the scope of that work programme, evidence of the financial resources available to the applicant for the operations and evidence of payment of the prescribed fees. Once the applicant furnishes all the information, he is given an application certificate as evidence of due submission of the application.

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256 Section 8 of Minerals and Mining Act, 2006 (Act 703).
The Commission in reviewing the application, considers each application to see if the requirements indicated have been met, and also checks if the area applied for does not conflict with other mining rights, pending applications, reserved areas, restricted areas, protected areas or designated sites among others and does not exceed a certain size of area. Where the area applied for conflicts with an existing mineral right for a different mineral in the same area, the Commission shall give notice to the holder of that right, giving that holder the first option to add that mineral to the existing mineral right. In the event the holder does not accept the option, Commission may proceed to a recommendation to the minister for the grant of that mineral right. Whilst the Commission is reviewing the application, it sends notice of the application to the general public, the chiefs and people of the area applied, and a number of institutions.

Award of Mining Licences/Lease

Ghana’s law provides for two systems for the award of licences - first come-first served and tender process. Under the first come-first served procedure, which is by far the most used procedure, an award of a licence is made by the minister to the first applicant to apply for a mineral right in respect of an area, when the Commission, determines that an applicant has met all the requirements and advices the minister to that effect. An open competitive tender procedure is used, where the Commission determines that there exists sufficient mineral information in respect of that area concerned, or the government has carried out prior mineral exploration in respect of that area. In addition, a restricted tender is used where an area becomes available through surrender, revocation, or termination and two or more applications are recorded in the Priority Register within seven (7) days of the area becoming vacant in which case the tender will be restricted to the overlapped applicants and the overlapped area. 257

The guidelines for the tender shall be approved and published by the minister. However LI 2176, has also spelt out the procedure for the tender as follows. The Mineral Titles Department of the Commission shall publish details of the tender, receive the tenders in sealed envelopes, and record the tenders including date and time, and give a tenderer a receipt. The tenders are kept in the safe custody of the Commission. The tenders are subsequently opened in accordance with the rules including in the presence of the tenderers, evaluated for their responsiveness, and qualified tenderers shortlisted. The shortlist is presented to the Tender Committee for their evaluation. The five (5) member committee is composed of three officers of the Commission, one officer of Geological Survey Department and one member from the EPA. Where the area applied for is a forest reserve, a representative of the Forestry Commission will be co-opted. The Tender Committee shall evaluate the tenders to determine the successful tenderer through a vote.

Monitoring

Once the applicant starts operation, the Commission has power to, and does monitor the operations to ensure the operations comply with the laws. The Mines Inspectorate Division of the Commission which has been in existence for several decades is responsible for monitoring the operations to ensure the operations comply with the laws. The head of the Division or his authorised officer has power at reasonable times to enter a reconnaissance, prospecting, or mining area or premises (except a dwelling house) to break up the surface of the land in the area to ascertain the rocks or minerals in or under the land, to take samples or specimen of rocks, ore, or concentrates.

The head can also inspect the explosives magazine on a mine and direct in what manner an explosive shall be stored, inspect the area of mineral operations to ascertain whether a nuisance is created in the area by the mineral operations, examine documents and records required to be kept under this Act, Regulations made under the Act or the terms and conditions of a mineral right

257 Regulation 258 of Minerals and Mining (Licensing) Regulations, 2012 (2176),
and take copies of the documents, enter into or upon land through which it may be necessary to pass for the purpose of a survey, or give directions and effect acts that are incidental or conducive to the attainment of functions of the head of the Inspectorate Division under the law.\textsuperscript{258}

The Division is also required by law to perform other functions for the effective implementation of Act 703. These other functions are stated in LI 2182\textsuperscript{259} as the main law used for monitoring the operations of mining companies. It is a detailed law that regulates mining procedures and operations. Indeed for some of the breaches of the law, the Commission has power to impose fines, without suing in a court of law. Most of the offences for which fines are imposed are in the areas of mine safety and environment. For instance a failure to provide personal protective equipment, failure to dispose of hazardous waste properly.

**Foreign Exchange and Capital Restrictions**

The foreign exchange regime is quite business friendly but regulated.\textsuperscript{260} The BOG is the regulator. Consequently, the BOG licences persons who wish to deal in foreign exchange. The BOG has in place some requirements for applicants who wish to secure or use foreign exchange. The Foreign Exchange Act, 2006, (Act 723) requires all exporters, including mining companies to repatriate proceeds from the sale of their exports on pain of a conviction and payment of a fine or a term of imprisonment for up to ten (10) years, for failing disobeying the law.\textsuperscript{261} The BOG also has power to prescribe rules in the form of a notice to the general public setting out the information required by the BOG from a person licensed to carry out foreign exchange business or foreign exchange transfers between residents and non-residents in respect of foreign currency, the maintenance of bank accounts within or outside Ghana, and the settlement of the payment by a resident or non-resident.

For purposes of supervision and monitoring, the BOG may require a bank or any other person in writing to submit to it any information or data that relates to the assets, liabilities, income and expenditure of that bank and, any of that bank’s affairs at intervals and within the time frame that the BOG may stipulate and that request must be complied with otherwise it the failure constitutes an offence. That defaulter is liable on summary conviction to a fine of not less than US$ 1,363.63\textsuperscript{262} or to a term of imprisonment of not less than four years or to both. Aside the Act 723, the Mining Act, makes provision for a mining company to enter into a stability agreement with the government to hold the effect of certain laws and conditions of at the time an investor makes an investment, constant for a certain number of years often exceeding 10 years. One of the terms that is usually part of the negotiations is easy access to foreign exchange and transferability of same. There are a number of these agreements in force now.

As a result of the business friendly law, mining companies are allowed, easy access to foreign exchange in order to buy mining equipment and parts to undertake their mining business. Similarly, there is easy access to foreign exchange to repatriate their profits and transfer of their dividends out of Ghana. There are no capital restrictions except for thin capitalisation. The beneficial foreign exchange regime is not new. Prior to Act 723, Ghana had similar laws dating back from the early 1980s, when such laws and other incentives, were specially put together to...

\textsuperscript{258} Section 102.
\textsuperscript{259} Minerals and Mining (Health, Safety, and Technical) Regulations, 2012 (LI 2182)
\textsuperscript{260} Foreign Exchange Act, 2006 (Act 723).
\textsuperscript{261} Section 15 (4) of Act 723.
\textsuperscript{262} The minimum penalty units is five hundred and one penalty unit is equivalent to GHC 12. It follows that the minimum is GHC 6,000.00 which translates to US$ 1,363.63 at the prevailing rate of US$ 1 = GHC 4.4 as of April 2018.
help attract mining investors into Ghana.\textsuperscript{263} That period marked the beginning of Ghana’s third mining boom.

One of the beneficial provisions is easy transferability of capital. A holder of a mining lease who earns foreign exchange from mining operations may be permitted by the Bank of Ghana to retain in an account, a portion of the foreign exchange earned, for use in acquiring spare parts and other inputs required for the mining operations, which would otherwise not be readily available without the use of the earnings.\textsuperscript{264} The minister for finance, in consultation with the minister for mining acting on the advice of the Commission may where the net earnings of a holder of a mining lease from the holder's mining operations are in foreign exchange, permit the holder of the lease to open and retain in an account, an amount not less than twenty five percent (25\%) of the foreign exchange for the acquisition of spare parts, raw materials, and machinery and equipment, debt servicing, dividend payment, remittance in respect of quotas for expatriate personnel, and the transfer of capital in the event of a sale or liquidation of the mining operations.\textsuperscript{265} A holder of a mining lease shall be guaranteed free transferability of convertible currency.

\section*{COLLECTION OF TAXES AND ROYALTIES}

\textbf{Competent Authority and Revenue Distribution}

The GRA is legally mandated to collect most taxes in Ghana including mining taxes. The GRA has a specialised unit for collecting mining taxes called ‘Mining Audit Desk. Apart from the GRA, city hall\textsuperscript{266} also levies property rates and some levies as business operating permit pursuant to power granted them under the Local Governance Act. However these fees are not usually significant. Similarly, the Minerals Commission and all the other regulatory bodies discussed above that provide services to mining companies, do charge for their services. These fees are charged pursuant to the laws that govern the activities of those regulatory bodies. In addition, mining companies also pay ground rent for the use of the land on which they operate. Where the land belong to a community (stool), the money is paid to the Administrator of Stool lands, where this money is shared in a stated formula to among different entities- city hall, the traditional authorities and the administrator of the fund.

\textbf{Regulatory framework}

The national taxes that mining companies pay are contained in different laws. However the laws are administered by the same GRA albeit by its sub divisions. For instance the Corporate Income Tax (CIT) and Value Added Tax (VAT) are collected by the Domestic Tax Division of the GRA at the Large Tax Payer Office.

\textbf{Taxes and Quasi-Tax Instruments}

\textbf{a) Corporate Income Taxes (CIT)}

A mining company is required to pay 35\% profit tax, also called corporate income tax.\textsuperscript{267} Mining support services companies are required to pay 25\% profit tax. The companies also pay VAT on services it receives. VAT is quite a huge source of revenue to the government.

\begin{itemize}
\item \textsuperscript{263} Aryee B “Ghana Mining Sector: Its Contribution to the National Economy” Resources Policy, 27, 61-75 (2001) puts it “For four decades up to the 1980s no new mine was opened in Ghana due to a myriad of problems faced by mining sector investors and potential investors alike, as a result of the economic, financial, institutional and legal framework within which the mining sector operated” (2001:62). World Bank, (1992)
\item \textsuperscript{264} Section 30(1) of Act 703.
\item \textsuperscript{265} Section 30(2) of Act 703
\item \textsuperscript{266} Thus District, Municipal and Metropolitan Authorities.
\item \textsuperscript{267} Income Tax Act, 2016, Act 896
\end{itemize}
b) Mineral taxes
There is similarly a long history of government taking a percentage of a mining company’s total output of minerals in a year as natural resource payment or royalty as it is commonly referred to in Ghana. Currently, the law does not prescribe a specific percentage as royalty payment. Hitherto, the royalty had been pegged at a flat rate of 5% of a mining company’s total output for the period March 19, 2010 to December 24, 2015, when Act 900 was enacted to amend it. It is instructive to note that when Act 703 was originally passed in 2006, the rate was pegged at a minimum of 3% and a maximum of 6%. Even though the large scale mining companies do pay their royalty, the situation is different with small scale mining companies. The government does not enforce that payment. Consequently they are rather taxed with the VAT rate at the airport, when they are exporting their product, notably gold.

c) Other taxes and payments
A holder of a mineral right, is required to pay an annual ground rent as may be prescribed to the owner of the land or successors and assigns of the owner. However, where the land is stool land, it must be paid to the Office of the Administrator of Stool Lands, for application in accordance with the Office of the Administrator of Stool Lands Act 1994 (Act 481).

Annual mineral right fees
A holder of a mineral right is also required to pay an annual mineral right fee that may be prescribed to the Commission.

Tax Incentives
A mining company is permitted to capitalise its cost of exploration (reconnaissance and prospecting), and deduct same before tax, where it starts the development of a commercial find. Furthermore, a mineral right holder is exempted from payment of customs import duty in respect of plant, machinery, equipment and accessories imported specifically and exclusively for the mineral operations; exemption of staff from the payment of income tax on furnished accommodation at the mine site; immigration quota in respect of the approved number of expatriate personnel and personal remittance quota for expatriate personnel free from tax imposed by an enactment regulating the transfer of money out of the country.

Recovery of debts
A fee, royalty or other payment which falls due in respect of a mineral right is a debt owed to the Republic and recoverable in a court of law.

MINERAL VALUATION
Produced minerals are valued through assay, to determine its quality. Even though a mining company has the right to undertake its own valuation and routinely does so, by law, the PMMC is the official valuer (assayer). However in practice, until 2018, the PMMC used to conduct assay for only small scale miners. Recent reforms in 2018, have extended the mandate to large scale miners. Consequently, in practice, starting in January 2018 an officer of the PMMC takes a sample of the produced gold for assaying. The officer who is required to be present in the gold room when a

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269 Section 25 of Act 703.
270 Section 23 of Act 703.
271 Section 24 of Act 703.
272 Section 28 of Act 703.
mining company is assaying and smelting its gold for export, takes the sample when the gold has been smelted.

EXPORT REGIME
A person who intends to export gold, must acquire a licence for that purpose from the minister. Licensed exporters acquire the gold from the mining companies. The mining companies are also licenced to export their products. For the large scale companies, in preparation for export, the gold produced is smelted in the mining companies’ gold room by its officers, and in the presence of a customs officer, and a PMMC officer. At the end of the smelting, it is poured into the appropriate containers and sealed. The customs officer, and the PMMC officer also seal it with their respective seals. The gold is transported by air in a helicopter to Accra, and kept in a secure facility at the airport. The Customs and PMMC have an opportunity to check that their seals have not been tempered with, before the export. National Security also check it to be sure it is gold, before it is exported.

There are serious complaints that the failure to assay and certify gold produced by large scale miners before export, has led to smuggling of gold out of Ghana resulting in loss of billions of dollars to the government. Some estimates are that USD 25 billion dollars’ worth of gold was exported between 2010 and 2015 but only USD 3.8 billion was repatriated back to Ghana. Ghana also loses all the by-products when gold is refined outside Ghana.273 These problems are well known to industry. Consequently the Ghana Chamber of Mines274 had earlier signed an MOU with Ghana Standards Authority (GSA) for the GSA to undertake the testing of gold of produced in Ghana. Subsequently, a tussle between PMMC and the GSA for the right to undertake that function by being appointed the government assayer.275 Eventually the government settled on PMMC.

Dr Mahamadu Bawumia, vice-President of Ghana, has denounced the previous system of exporting of gold by large scale miners, without the state assaying the gold which led to the loss of revenue, and lauded the recent appointment of PMMC as the national assayer. He is optimistic that it will help to block the revenue leakage associated with smuggling of gold. In his words, ‘Thankfully, we have now begun conversations on the process of making sure that every single bar of gold leaving our shores is properly weighed, tested, valued and accounted for.’276

LITERATURE REVIEW
Aryee et al argue that the mining sector has had a poor impact on Ghana’s economic development because of a plethora of vulnerabilities in its governance such as incentives problems, an excessively centralised policy-making process, a powerful executive president, strong party loyalty, a system of political patronage, lack of transparency, and weak institutional capacity at the political and regulatory levels. Consequently, these problems must be addressed in order to obtain optimum benefit from the mining sector.277

Aryee et al equally bemoan the GRA’s lack of capacity to value the actual gold produced and control export containers. What we learned during interviews for this study is that the CEPS personnel attached to the mining companies are not necessarily present in the bullion room to authenticate the shipping documents; they are called to validate the records only at the time of

274 A lobby organisation that represents the collective interests of the miners.
sealing the boxes for export. More important, the mining companies get the value of gold from refineries outside Ghana for the purposes of royalty determination. CEPS does not have the facility or capacity to verify the weight and quality (fineness) of gold independently, the authors claimed. On that account, the GRA’s lack of capacity creates more opportunities for transfer pricing in mining companies. It is the case that Gold Fields Ltd, one of the largest producers of gold in Ghana, is a significant shareholder of the refinery in South Africa, where their produce is refined and the results sent to Ghana. Lastly, VAT credit is quite a challenge to the mining companies who are advocating for it to be abolished because government delays in refunding it to mining companies.

<table>
<thead>
<tr>
<th>Institution</th>
<th>Persons interviewed</th>
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<tbody>
<tr>
<td>Minerals Commission</td>
<td>Amponsah Tawiah</td>
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<tr>
<td>BOG</td>
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<tr>
<td>Financial Stability Department</td>
<td>Dr Joseph France and Team</td>
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<td>Anti- Money Laundering Unit</td>
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<tr>
<td>Precious Minerals Marketing Company</td>
<td>Dr. Kwadjo Opare- Hammond</td>
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<td>GRA</td>
<td>Venance Dey</td>
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278 Op cit para 80.
279 Op cit para 82.
Timeline: Ghana Legal Provision
<table>
<thead>
<tr>
<th>Signed Date</th>
<th>Ratified Date</th>
<th>In force for Ghana</th>
<th>Act/Treaty</th>
<th>Summary</th>
<th>Area</th>
<th>Region</th>
</tr>
</thead>
<tbody>
<tr>
<td>27.07.1996</td>
<td>28.10.1998</td>
<td>Yet to enter into force</td>
<td>Protocol A/P2/7/96 Establishing Value Added Tax in ECOWAS</td>
<td>Establishes VAT in ECOWAS Member States</td>
<td>Taxes</td>
<td>ECOWAS</td>
</tr>
<tr>
<td>21.12.2001</td>
<td>18.10.2002</td>
<td>Yet to enter into force</td>
<td>Protocol A/P3/12/01 on the Fight Against Corruption</td>
<td>To eradicate corruption and adopt measures for combating money laundering and to promote transparency, accountability and good governance within their territories</td>
<td>Corruption/AML</td>
<td>ECOWAS</td>
</tr>
<tr>
<td>12.01.2006</td>
<td>Not yet</td>
<td>Yet to enter into force</td>
<td>Protocol A/P1/01/06 Establishing an ECOWAS Criminal Intelligence and Investigation Bureau</td>
<td>To support ECOWAS Member States in their fight against transnational organised crime</td>
<td>Corruption/AML</td>
<td>ECOWAS</td>
</tr>
<tr>
<td>29.07.1992</td>
<td>07.12.1992</td>
<td>28.10.1998</td>
<td>Convention A/PI/7/92 on Mutual Assistance in Criminal Matters</td>
<td>To extend to Member States the widest mutual legal assistance to combat offences of all kinds, particularly of serious crimes, as an effective way of dealing with the complex aspects and serious consequences of criminality in all its forms and new dimensions.</td>
<td>Corruption/AML</td>
<td>ECOWAS</td>
</tr>
<tr>
<td>31.10.2003</td>
<td>13.06.2007</td>
<td>05.08.2006</td>
<td>African Union Convention on Preventing and Combating Corruption</td>
<td>To address the pervasive canker of corruption and impunity on the political, economic, social and cultural stability of the Member States and its devastating effects on the economic and social development of the African people. One of the objectives outlined for the attainment of this goal is the coordination and harmonisation of the policies and legislation among State Parties</td>
<td>Corruption/AML</td>
<td>AU</td>
</tr>
<tr>
<td>1/22/2008</td>
<td>Gazetted 1/25/2008</td>
<td>1/22/2008</td>
<td>Anti-Money Laundering Act, 2007 (Act 749) 25th January, 2008</td>
<td>Set up the Financial Intelligence Centre (FIC) which among other functions receives and analyses STRs from FIs and other entities. The Centre has executed 23 MoUs with foreign counterparts across Africa, Europe, America and Asia and is fully operational.</td>
<td>Corruption/AML</td>
<td>Ghana</td>
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<tr>
<td>Date</td>
<td>Date</td>
<td>Date</td>
<td>Law/Act</td>
<td>Purpose</td>
<td>Responsible Institution</td>
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<tr>
<td>8/19/2016</td>
<td>8/19/2016</td>
<td>8/19/2016</td>
<td>Companies (Amendment Act), 2016 (Act 920)</td>
<td>Beneficial owner disclosed when company registered; the company must keep a register of shareholders</td>
<td>Beneficial ownership Ghana</td>
<td></td>
</tr>
<tr>
<td>9/14/2016</td>
<td>9/14/2016</td>
<td>10/11/2016</td>
<td>Securities Industries Act, 2016 (Act 929)</td>
<td>To revise and consolidate the law governing the securities industries and provide for related matters</td>
<td>Beneficial ownership Ghana</td>
<td></td>
</tr>
<tr>
<td>29.06.2012</td>
<td>29.06.2012</td>
<td>29.06.2012</td>
<td>Criminal Offences (Amendment) Act 2012 (Act 849)</td>
<td>To amend the Criminal Offences Act, 1960 (Act 29) to include the offences of unlawful use of human parts, enforced disappearance, sexual exploitation, illicit trafficking in explosives, firearms and ammunition, participation in an organised criminal group, racketeering and to provide for related matters</td>
<td>Corruption/AML Ghana</td>
<td></td>
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<tr>
<td>12/31/2009</td>
<td>12/31/2009</td>
<td>12/31/2009</td>
<td>Ghana Revenue Authority Act, 2009 (Act 791)</td>
<td>Set up the GRA, which replaced the Internal Revenue Service, the Customs, Excise and Preventive Service and the Value Added Tax Service</td>
<td>Taxes Ghana</td>
<td></td>
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<tr>
<td>01.09.2015</td>
<td>01.09.2015</td>
<td>01.09.2015</td>
<td>Income Tax Act, 2015 (Act 896)</td>
<td>Introduction of strong anti-tax avoidance rules in relation to transfer pricing, income splitting, thin capitalization (sections 31-33 of the of the Seventh Schedule to the Act) GRA power to access and seize books, records, storage devices and matter in determining liability (section 18 Seventh Schedule to the Act)</td>
<td>Taxes Ghana</td>
<td></td>
</tr>
<tr>
<td>7/27/2012</td>
<td>8/29/2012</td>
<td>9/14/2012</td>
<td>Transfer Pricing Regulations, 2012 (LI 2188) and Practice Note on Transfer Pricing Regulations, 2012 (LI 2188)</td>
<td>deals basically with the implementation of the arms length principle in transactions between persons in a controlled relationship, both locally and internationally (although Section 17 of Act 592 contained some provisions against transfer mispricing, it was not vigorously enforced)</td>
<td>Taxes (Transfer pricing) Ghana</td>
<td></td>
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<tr>
<td>N/A</td>
<td>N/A</td>
<td></td>
<td>TPU</td>
<td>After the passage of LI 2188, the GRA set up the Transfer Pricing Unit (TPU) at the Large Taxpayer Office in 2013</td>
<td>Taxes (Transfer pricing) Ghana</td>
<td></td>
</tr>
<tr>
<td>18.05.2015</td>
<td>18.05.2015</td>
<td>11.03.2015</td>
<td>Customs Act, 2015 (Act 891)</td>
<td>Provides for the imposition, collection and accounting of customs duty and for related matters. GRA empowered to conduct customs controls including random checks and to collaborate with foreign customs administrations to carry out joint control activities with the aim of ensuring security in</td>
<td>Customs laws and regulations Ghana</td>
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<td>Date 1</td>
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<td>Date 3</td>
<td>Description</td>
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<td>9/9/2016</td>
<td>9/9/2016</td>
<td>9/9/2016</td>
<td>Customs (Amendment) Act, 2016 (Act 923) provides for the establishment of the National Single Window System (NSWS). The NSWS allows persons involved in trade and transport to lodge standardized information and documents with a single entry point to fulfill all import, export, transit and other customs related requirements. Establishes two very important bodies namely, the National Risk Management Committee (NRMC) and the National Risk Management Team (NRMT). Intended among other things to prevent underinvoicing.</td>
<td>Customs laws and regulations, Ghana</td>
<td></td>
<td></td>
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<tr>
<td>10/7/2016</td>
<td>10/11/2018</td>
<td>1/4/2017</td>
<td>Customs Regulations, 2016 (LI 2248) To qualify as an Economic Operator under the Regulations, and to be able to use the National Single Window System, an applicant must among other things provide a Tax Identification Number (TIN) and provide proof that he or she has filed tax returns in accordance with the relevant law as well as have a computerized accounting system, secured and accessible to the Ghana Revenue Authority for collection of information and data. The Authority is empowered under Regulation 16 to apply different inspections methods to different kinds of goods depending on the risk level as determined by Pre-Arrival Assessment Reporting System. This means that while for some consignments the authorities might carry out only documentary inspections, they might carry out scanning and physical inspection in addition to documentary checks with respect to others to ensure that the right taxes are paid.</td>
<td>Customs laws and regulations, Ghana</td>
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<tr>
<td>8/1/1995</td>
<td>8/1/1995</td>
<td>9/15/1995</td>
<td>Free Zone Act, 1995 (Act 504) established the Free Zones Authority. The Act provides that after the 10 years tax holiday starting from the date of</td>
<td>Free zones, Ghana</td>
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<td>Date</td>
<td>Date</td>
<td>Date</td>
<td>Law Title</td>
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<tr>
<td>4/5/2002</td>
<td>4/5/2002</td>
<td>4/12/2002</td>
<td>Free Zone (Amendment) Act, 2002 (Act 618)</td>
<td>Act 618 amends sub-section (4) of section 34 to provide for the payment of appropriate income tax by foreign employees of a free zone enterprise, subject to any subsisting double taxation agreement between Ghana and the country of origin of that employee</td>
<td>Free zones</td>
<td>Ghana</td>
</tr>
<tr>
<td>2/22/1996</td>
<td>3/8/1996</td>
<td>4/1/1996</td>
<td>Free Zone Regulations, 1996 (LI 1618)</td>
<td>sets out in detail the functions of the Free Zones Authority as well as provides for related matters including the registration procedures and fees</td>
<td>Free zones</td>
<td>Ghana</td>
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<tr>
<td>1/31/2014</td>
<td>1/31/2014</td>
<td>2/5/2014</td>
<td>Excise Tax Stamp Act, 2013 (Act 873)</td>
<td>provides that specified excisable products which are imported or locally produced are required to be affixed with tax stamps, which have specific features before they are released unto the market (deterrent to smuggling)</td>
<td>Taxes</td>
<td>Ghana</td>
</tr>
<tr>
<td>30.06.2016</td>
<td>04.07.2016</td>
<td>03.08.2016</td>
<td>Excise Duty Regulations, 2016 (LI 2242)</td>
<td>provide for the administration and carrying into effect the provisions of Act 878</td>
<td>Taxes</td>
<td>Ghana</td>
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<tr>
<td>30.06.2016</td>
<td>04.07.2016</td>
<td>03.08.2016</td>
<td>Income Tax Regulations, 2016 (LI 2244)</td>
<td>revoked the Internal Revenue Regulations, 2000 (LI 1675).</td>
<td>Taxes</td>
<td>Ghana</td>
</tr>
<tr>
<td>12/20/2016</td>
<td>12/20/2016</td>
<td>12/20/2016</td>
<td>Local Governance Act, 2016 (Act 936)</td>
<td>empowers District Assemblies under section 124 to impose taxes and rates on the income of persons specified in the Twelfth Schedule to the Act</td>
<td>Tax administration</td>
<td>Ghana</td>
</tr>
<tr>
<td>12/29/2006</td>
<td>12/29/2006</td>
<td>12/29/2006</td>
<td>Foreign Exchange Act, 2006,(Act 723)</td>
<td>requires all exporters, including mining companies to repatriate proceeds from the sale of their exports on pain of a conviction and payment of a fine or a term of imprisonment for up to ten (10) years, for failing or disobeying the law</td>
<td>FX</td>
<td>Ghana</td>
</tr>
<tr>
<td>3/22/2006</td>
<td>3/22/2006</td>
<td>3/31/2006</td>
<td>Minerals and Mining Act, 2006 (Act 703)</td>
<td>makes provision for a mining company to enter into a stability agreement with the government to hold the effect of certain laws and conditions of the lease at the time an investor makes an investment, constant for a certain number of years often exceeding 10 years</td>
<td>Mining regulation</td>
<td>Ghana</td>
</tr>
<tr>
<td>3/20/2012</td>
<td>6/15/2012</td>
<td>6/15/2012</td>
<td>Minerals and Mining (General) Regulations 2012, (LI 2173)</td>
<td>To give effect to the Minerals and Mining Act, 2006 (Act 703) with respect to local content in employment, employment; exportation, sale and disposal of mineral and the acquisition of mineral rights among others</td>
<td>Mining regulation</td>
<td>Ghana</td>
</tr>
<tr>
<td>20.03.2012</td>
<td>15.06.2012</td>
<td>15.06.2012</td>
<td>Minerals and Mining (Support Services)</td>
<td>To provide for the registration and regulation of support services to mining companies, including requirements for mining activities, employment, employment; exportation, sale and disposal of mineral and the acquisition of mineral rights among others</td>
<td>Mining regulation</td>
<td>Ghana</td>
</tr>
<tr>
<td>Date</td>
<td>Date</td>
<td>Date</td>
<td>Building and Mining Regulations, 2012 (LI 2174)</td>
<td>To regulate the compensation and resettlement of communities affected by mining</td>
<td>Mining regulation</td>
<td>Ghana</td>
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<tr>
<td>20.03.2012</td>
<td>15.06.2012</td>
<td>15.06.2012</td>
<td>Minerals and Mining (Compensation and Resettlement) Regulations, 2012 (LI 2175)</td>
<td>To provide for the licensing regime governing mining operations, including prospecting, reconnaissance and mining</td>
<td>Mining regulation</td>
<td>Ghana</td>
</tr>
<tr>
<td>3/20/2012</td>
<td>6/15/2012</td>
<td>6/15/2012</td>
<td>Minerals and Mining (Licensing) Regulations, 2012 (2176)</td>
<td>To regulate the use of explosives in mining operations</td>
<td>Minerals regulation</td>
<td>Ghana</td>
</tr>
<tr>
<td>20.03.2012</td>
<td>15.06.2012</td>
<td>15.06.2012</td>
<td>Minerals and Mining (Explosives) Regulations (LI 2177)</td>
<td>To provide for the regulation of technical standards as well as health and safety in mining operations</td>
<td>Mining regulation</td>
<td>Ghana</td>
</tr>
<tr>
<td>1/19/2012</td>
<td>2/17/2012</td>
<td>7/24/2012</td>
<td>Minerals and Mining (Health, Safety, and Technical) Regulations, 2012 (LI 2182)</td>
<td>To establish a precious minerals marketing corporation and to provide for related matters</td>
<td>PMMC mandate extended to large mines</td>
<td>Ghana</td>
</tr>
<tr>
<td>19.04.1989</td>
<td>19.04.1989</td>
<td>14.06.1989</td>
<td>PMMC mandate extended to large mines</td>
<td>To amend the Customs and Excise (Duties and Other Taxes) Act, 1996 (Act 512) to impose import duty on telephone sets, for related matters, review the environmental excise tax on plastic and plastic products and to provide</td>
<td>Customs and Excise (Duties and Other Taxes) Amendment Act, 2013 (Act 863)</td>
<td>Ghana</td>
</tr>
<tr>
<td>12.07.2013</td>
<td>12.07.2013</td>
<td>15/7/2013</td>
<td>Special Import Levy Act, 2013 (Act 861)</td>
<td>To impose a special levy payable on imported goods at the point of entry and to provide for related matters</td>
<td>Special Import Levy Act, 2013 (Act 861)</td>
<td>Ghana</td>
</tr>
<tr>
<td>14.10.2011</td>
<td>14.10.2011</td>
<td>25.10.2011</td>
<td>Ghana Shipping (Amendment) Act, 2011</td>
<td>To amend the Ghana Shipping Act, 2003 (Act 645) to define Ghanaian waters to include the waters in the safety zones around offshore installations and to enable foreign registered ships to trade in Ghanaian waters and for related matters</td>
<td>Ghana Shipping Act, 2003 (Act 645)</td>
<td>Ghana</td>
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<tr>
<td>14.10.2011</td>
<td>14.10.2011</td>
<td>25.10.2011</td>
<td>Ghana Investment Promotion Centre Act, 2013 (Act 865)</td>
<td>To provide for the Ghana Investment Promotion Centre as the agency of Government responsible for the encouragement and promotion of investments in Ghana, 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</td>
<td>Ghana Investment Promotion Centre Act, 2013 (Act 865)</td>
<td>Ghana</td>
</tr>
<tr>
<td>3/22/2006</td>
<td>3/22/2006</td>
<td>3/31/2006</td>
<td>Ghana Minerals and Mining Act 2006 (Act 703)</td>
<td>Royalties vary from 3% to 6% of the total value of minerals produced; 10% State equity in all companies at no cost</td>
<td>Mining regulation</td>
<td>Ghana</td>
</tr>
<tr>
<td>29.05.1982</td>
<td>02.04.1985</td>
<td>05.01.1993</td>
<td>Convention A/P5/5/82 on</td>
<td>Member States agree that their competent authorities shall render to</td>
<td>Convention A/P5/5/82 on</td>
<td>ECOWAS</td>
</tr>
<tr>
<td>Date</td>
<td>Treaty/Agreement</td>
<td>Description</td>
<td>Type</td>
<td>Location</td>
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<tr>
<td>23.07.2008</td>
<td>Mutual Administrative Assistance in Customs Matters</td>
<td>Each other assistance with a view to the prevention, detection and punishment of customs infringements, in accordance with the provisions of the present convention</td>
<td>Taxes</td>
<td>GLOBAL</td>
<td></td>
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<tr>
<td>23.07.2008</td>
<td>Tax Inspectors without Border (TIWB) project</td>
<td>To address widespread tax avoidance by multinationals enterprises in developing countries and as a contribution towards financing the UN's Sustainable Development Goals</td>
<td>Taxes</td>
<td>GLOBAL</td>
<td></td>
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<tr>
<td>29.05.2013</td>
<td>Convention on Mutual Administrative Assistance in Tax Matters</td>
<td>To allow Contracting States provide one another with administrative assistance under the terms set out in this Convention, for the proper application of Customs law, for the prevention, investigation and combating of Customs application of Customs law, for the prevention, investigation and combating of Customs offences and to ensure the security of the international trade supply chain</td>
<td>Taxes</td>
<td>GLOBAL</td>
<td></td>
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<tr>
<td>5/4/2018</td>
<td>Standard for Automatic Exchange of Financial Account Information Act, 2018 (Act 967)</td>
<td>To provide a uniform system of reporting among Members States with respect to automatic exchange of information</td>
<td>Taxes</td>
<td>Ghana</td>
<td></td>
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<tr>
<td>5/4/2018</td>
<td>Multilateral Competent Authority Agreement (&quot;the MCAA&quot;)</td>
<td>The treaty provides a uniform and efficient system for the facilitation of automatic exchange of information with the goal of preventing tax avoidance through the use of off-shore accounts</td>
<td>Taxes</td>
<td>GLOBAL</td>
<td></td>
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</tbody>
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