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Client Alert

The Contracts (Amendment) Act, 2023: Key Changes for Contracts with the Government of Ghana

Introduction

The Parliament of Ghana passed the Contracts (Amendment) Act 2023 (Act 1114) ("**Contracts Amendment Act**") in July 2023, to amend the Contracts Act, 1960 (Act 25) ("**Contracts Act**") which has been in existence for the past sixty-four years. The Contracts Act primarily sets out third-party rights under contracts as well as applicable principles for consideration and contracts of guarantee. On 1 March 2024, the Contracts Amendment Act received presidential assent, which means it is now applicable law. Specifically, the Contracts Amendment Act revises section 17 of the Contracts Act which deals with contracts entered into on behalf of the Government of Ghana.

In this client alert, we highlight the two key revisions under the Contracts Amendment Act and their impact on contracts and/or transactions concluded with the Government of Ghana.

Authorized Signatories for the Government of Ghana

Prior to 1 March 2024, the Contracts Act did not expressly indicate the authorized persons who could legally enter into contracts on behalf of the Government.

As noted by the Deputy Attorney General in the deliberations on the Contracts Amendment Act, the absence of defined signatories under Ghanaian law permitted persons to conclude contracts on behalf of the Government without authorization from relevant sector Ministers with overall responsibility and executive mandate for the subject matter of the contract.¹

The Contracts Amendment Act now specifies the persons authorized to execute contracts and/or transactions on behalf of the Government of Ghana as:

- a. the Minister responsible for the subject matter or department relevant to the contract or transaction;
- b. person(s) authorised by the appropriate Minister; or
- c. any other persons authorised by law.

The amendment therefore serves as notice on execution requirements to persons and entities contracting with the Government of Ghana.

¹ Report of the Committee on Constitutional, Legal and Parliamentary Affairs on the Contracts (Amendment) Bill, 2022 (June 2023).

It is important to note that the authorised signatories set out in the Contract (Amendment) Act apply only for contracts or transactions with the central government and will not apply for transactions with autonomous state-owned companies or statutory entities.²

Prohibition of Compound Interest

Under Ghanaian law, parties are generally entitled to determine the interest payable on sums due under a contract. Such interest may be simple interest (interest calculated on the principal amount only) or compound interest (interest calculated on both the initial principal amount and accumulated interest from previous periods).

Thus, if parties freely and voluntarily agree to charge and pay compound interest, the Ghanaian courts will enforce such terms, provided that the agreement was entered into freely and without any coercion, duress, compulsion or undue influence.³

Previously, the contractual freedom of parties allowed negotiators on behalf of the Government to decide whether to apply simple interest or compound interest on sums payable by the Government. However, the liberalization had given rise to the abuse of discretionary powers by state representatives as well as increased liabilities and judgment debts for the state.

With an overarching policy intention of limiting the Government's liabilities under contracts, the Contracts Amendment Act prohibits the imposition of compound interest on any amount payable to a party under a contract with the Government. Interest payable on any sums contractually due from the Government of Ghana must therefore be simple interest.

A contract that applies compound interest on amounts owed to the Government is illegal and unenforceable. The Contracts Amendment Act further prescribes criminal sanctions for individuals who intentionally conclude contracts with such compound interest. The sanctions may be a fine between GHS 60,000 and GHS 12,000, a term of imprisonment between 10 to 15 years, or both.

Conclusion

The Contracts Amendment Act seeks to provide clarity for state actors and contractual counterparties of the Government on matters which had been subject to contention in disputes, namely, (a) authorised representatives of the Government and (b) application of interest to amounts outstanding from the state. The law therefore effectively serves as notice on these matters to counterparties in all future agreements with the Government of Ghana.

² Felix Klomega v The Attorney General, Ghana Ports and Harbours Authority, Meridian Port Holdings Limited and Meridian Port Services Limited (19 July 2013), Supreme Court, Civil Appeal NO. J1/10/2012.

³ UT Bank v Richard Owusu Ansah (30 May 2010), High Court, Suit No.BFS/101/10.