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TEMPLARS ThoughtLab

Foreign Investment in Ghana: Key Changes Proposed Under the GIPC Amendment Bill, 2023

Introduction

The Ghana Investment Promotion Centre Act, 2013 (Act 865) (the “**GIPC Act**”), which was enacted on 26th August 2013, remains a key legislation and regulatory consideration for foreign individuals or entities entering the Ghanaian market. Among others, the GIPC Act establishes the Ghana Investment Promotion Centre (the “**GIPC**”) to facilitate interactions between companies with foreign shareholding and the relevant Ministries, Departments and Agencies.

The Parliament of Ghana is however currently considering significant amendments of the GIPC Act and an overhaul of the regulatory framework affecting companies with foreign shareholding. Specifically, the Ghana Investment Promotion Centre (Amendment) Bill 2023 (the “**Bill**”) contemplates a change in the nomenclature and functions of the GIPC and proposes changes to remove significant disincentives to foreign investment in Ghana. The Bill further aims to synchronize the GIPC Act with legislations such as the Exemptions Act 2022 (Act 1083) and Public Financial Management Act 2016 (Act 921) which were enacted after the GIPC Act. The subsequent paragraphs discuss the key amendments proposed under the Bill in detail.

Proposed Changes Under the GIPC Amendment Bill

- **Removal of Capital Restrictions for Foreign Investors**

The GIPC Act currently prescribes minimum capital requirements for foreign shareholders of Ghanaian companies. Foreign investors are required to invest the following amounts in cash or capital goods and by way of equity investment: (a) US\$200,000 for joint ventures (with a Ghanaian holding at least 10% equity participation); (b) US\$500,000 for wholly owned foreign companies; and (c) US\$1,000,000 for trading enterprises.

The Bill seeks to eliminate the minimum capital requirements imposed on foreign investors under the GIPC Act. However, the minimum capital requirement for trading enterprises will be maintained to protect the local economy.¹ Thus, foreign individuals and companies will mostly be free to determine the extent of their initial investment or entry into the Ghanaian market.

According to the memorandum to the Bill, the proposed amendment aims to put Ghana at par with other countries in the sub-region without such blanket minimum capital requirement as a way of encouraging foreign investment.

- **Unrestricted Participation in the Ghanaian economy**

The GIPC Act sets out eight (8) business activities that are reserved for Ghanaians and Ghanaian owned enterprises.² These reserved activities include the printing of recharge scratch cards for telecommunication users, retail of finished pharmaceutical products, as well as the production, supply and retail of sachet water.

The Bill however intends to remove this restriction and permit foreign entities to freely invest in all sectors of the Ghanaian economy. The memorandum to the Bill highlights the amendment as necessary because the existing reservation conflicts with relevant legislation and the mandate of several sector-specific regulators.

- **Clarification on registration requirements for external companies**

The GIPC Act requires enterprises with foreign participation to register with the GIPC after incorporation and before commencement of business.³ The definition of 'an enterprise' under the law has however called into question whether external companies⁴ should be required to register with the GIPC. The registration requirement for external companies was also unclear because such companies do not have equity or shareholding, and therefore, foreign investors cannot meet the minimum capital requirements by way of equity participation.

The Bill seeks to clarify the existing confusion and amend the definition of 'an enterprise' to include an external company.⁵ An enterprise is defined to include all body corporates registered under the Companies Act 2019 (Act 992) for profit

¹ The definition of trading enterprise under the Bill has been expanded to mean any enterprise which has the principal activity of purchasing and selling goods, whether imported or not

² Section 27, Ghana Investment Promotion Centre Act, 2013 (Act 865)

³ Section 24, Ghana Investment Promotion Centre Act, 2013 (Act 865)

⁴ External companies refer to companies incorporated outside Ghana and with established places of business in country such as branches or liaison offices.

⁵ Clause 44, Ghana Investment Promotion Centre Bill, 2023.

making. Therefore, external companies would be expected to register with the Authority after incorporation.

The Bill also replaces the biennial renewal of registration with the GIPC with an annual renewal of registration.⁶

- **Amendment of the scope of Technology Transfer Agreements (TTA)**

Ghanaian companies are required under the GIPC Act to register all Technology Transfer Agreements (TTAs).⁷ The existing definition of TTAs under the GIPC Act exempts the assignment, sale and licensing of trademarks, service marks and trade names, provided that such transactions are not part of a technology transfer.

The proposed definition of a TTA under the Bill however seeks to expand the scope of agreements which would qualify as TTAs. Upon the enactment of the Bill, a Ghanaian company which enters into an agreement (*with a duration above 18 months*) related to the assignment, sale or licensing of foreign trademarks and industrial property rights such as service marks, must register the agreement as a TTA. Other existing definitions of TTAs under the GIPC Act have also been simplified for clarity.

The Bill also seeks to limit the initial duration of a TTA to five (5) years compared to the existing duration of ten (10) years under the Technology Transfer Regulation 1992 (LI 1547). The duration of renewals after the initial term will also be five (5) years.

To ensure compliance, the Bill provides that the fees and charges made in relation to **unregistered TTAs cannot be treated as deductible expenses for tax purposes**.⁸ This proposed insertion seeks to depart from the Court of Appeal's position in *Beiersdorf Ghana Limited v The Commissioner General – Ghana Revenue Authority* which held that that companies are entitled to tax deductions for payments made in respect of unregistered TTAs as the GIPC Act was wholly distinct from benefits conferred under the tax laws of Ghana.⁹

- **Introduction of the offence of Fronting**

The Bill introduces the offence of fronting which is defined as 'acting in a particular manner to conceal the fact that an enterprise registered under the GIPC Act is wholly or partly owned or controlled by a non-Ghanaian citizen'.

The proposed penalty for committing the offence upon summary conviction is a fine between GHS24,000 (approx. US \$ 1,541.49) and GHS48,000 (approx. US\$ 3,082.98). These amounts are four times as much as the penalty that is currently provided for under the GIPC Act [GHS 6,000 (approx. US\$ 385.37) and GHS 12,000 (approx. US\$ 770.75)]¹⁰

⁶ Clause 25, GIPC Bill, 2023

Conclusion

As an overarching goal, the GIPC Amendment Bill seeks to create a more conducive atmosphere to attract foreign investment in Ghana by eliminating and clarifying challenging portions of the GIPC Act. The most significant changes under the Bill for foreign investment and their market entry will include the elimination of the minimum capital requirements and the restrictions on engaging in certain business activities. While we expect that the wording of the Bill will undergo several changes as it is being re-considered by the GIPC and the Parliament, it is expected that its primary aim of creating a more conducive investment environment will be maintained until enactment.

⁷ Section 37(2), Act 865

⁸ Clause 37(d), GIPC Bill 2023

⁹ *Beiersdorf Ghana Limited v The Commissioner General – Ghana Revenue Authority* (Suit No.:HI/140/2019) dated 5th December 2019.

¹⁰ Section 41, Act 865