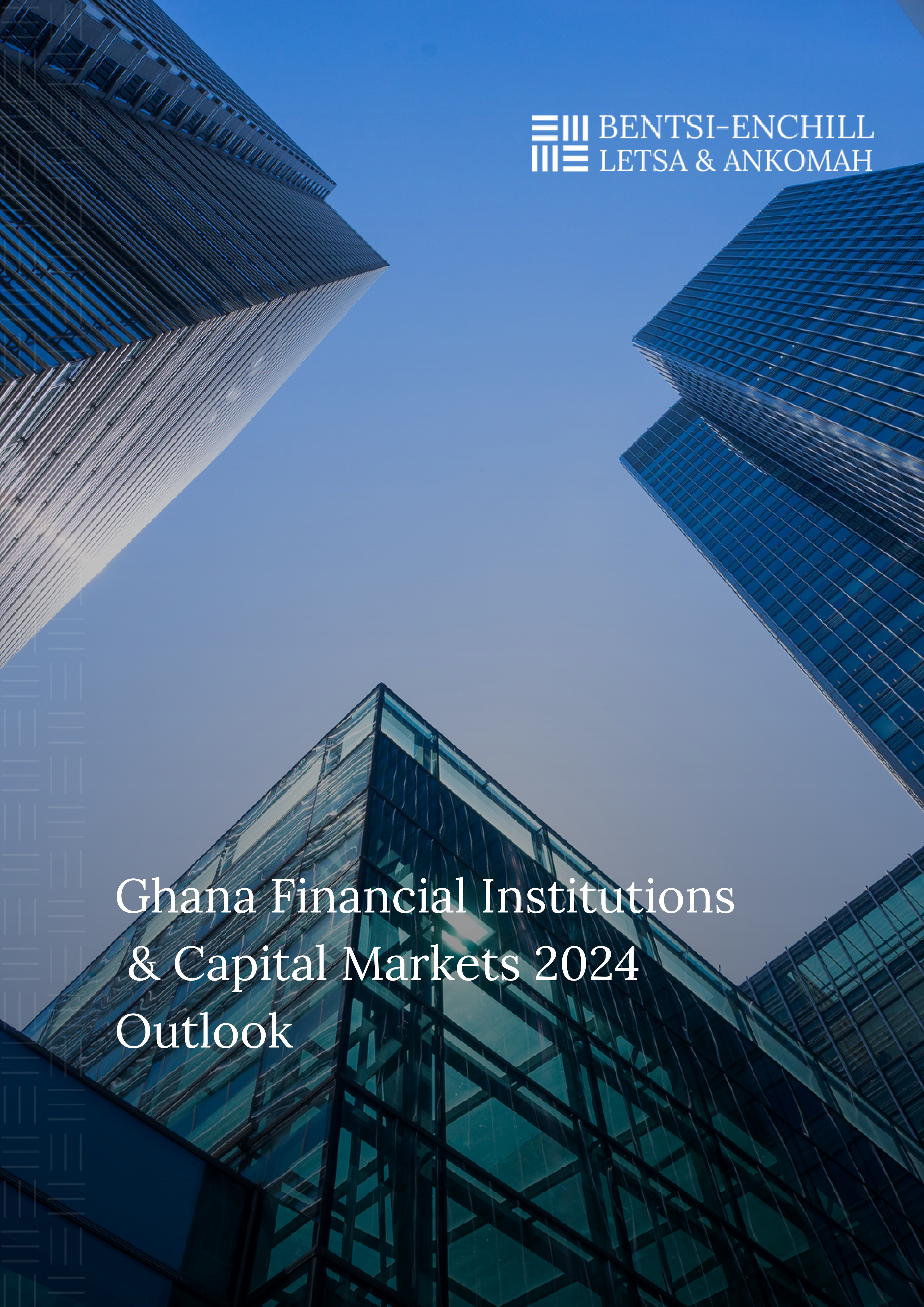


BENTSI-ENCHILL LETSA & ANKOMAH

Ghana Financial Institutions & Capital Markets 2024 Outlook

Content

Introduction

In the 2023 report, we highlighted the legal and regulatory themes which we expected to impact activities within the financial services industry in 2023 and discussed the challenges and opportunities those issues would present. In this 2024 edition, we review the key market and regulatory developments from the 2023 financial year, consider how our projections for 2023 fared, and offer insights into the global and domestic trends which are shaping our outlook for business, legal and regulatory developments within the financial sector in 2024.

2023 Under Review - Turning the Corner

Performance of the National Economy

In our 2023 report, we recounted how global and domestic events bruised and battered the Ghanaian economy in 2022. By year-end 2022, Ghana had commenced a domestic debt restructuring programme (DDEP) and defaulted on its external debt, having announced a suspension on all debt service payments under certain categories of its external debt (including Eurobonds, commercial term loans and most of Ghana's bilateral debt). There were mixed reviews on the outlook for 2023 but the projections largely tilted towards the negative. For instance, Fitch projected a gross domestic product (GDP) growth of 2.9% and gradual slowdown in inflation, while the African Development Bank predicted a GDP growth of 1.7% and a reduced but still elevated inflation rate of 44.7%.

Economic reports indicate that the economy outperformed the dim expectations, with a GDP growth rate of 3.2% as at H1-2023 and a reduced headline inflation rate of 35.2% as at October 2023. Regarding currency stability (which was among the major challenges of 2022), the GHS performed better against its major trading partners, with a cumulative year to September 2023 depreciation of 22.9%, 24.1% and 22.4% against the US Dollar, British Pound Sterling and the Euro respectively, as compared to depreciations of 37.5%, 24.1% and 27.5 percent% respectively in the same period of 2022.

Ghana's total public debt also declined from 73.1% of GDP to 66.4 % of GDP as of September 2023, largely due to the successful completion of the DDEP.

These statistics seem to validate our prediction that the finalisation of Ghana's deal with the International Monetary Fund (IMF) (which was pending for board approval at the time our 2023 report was published) would signal the "turning point" for our national economic misfortunes. The Government of Ghana and the IMF eventually concluded a 36-month USD 3 billion programme for the recovery of our national economy. As at the date of this report, Ghana has received the first tranche of USD 600 million, and (with the IMF executive board having successfully completed its first review of Ghana's performance thus far and reporting that Ghana met all quantitative performance criteria and almost all indicative targets and structural benchmarks) is set to receive a second tranche of USD 600 million.

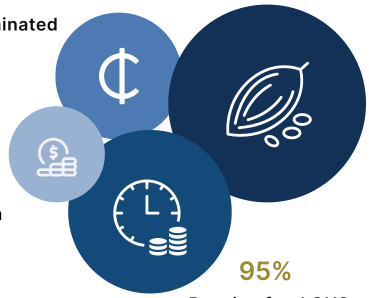
Clearly, the economy is on the mend but 2023 only marked our start on the path to recovery.

Review of key developments and updates to our 2023 legal and regulatory outlook

1. Securities and Investments

Our debt capital market was the centre stage for the DDEP, as the Government, through a series of invitations, requested holders of various treasury and other fixed income securities to exchange their holdings of those debt securities for new bonds with the same aggregate principal amount but aggregate lower coupons and extended average maturities.

The participation rates were as follows:



We anticipated that the DDEP would change investment trends in Ghana and lead to a diversification of investment products, with more focus on investments in the real sector of the economy. Market trends validated our projections. The Ghana Stock Exchange (GSE), led by the equities market (instead of the bond market as has been the case in recent times), experienced a strong rally to emerge as the 3rd best performing stock market in Africa in the period from January to end-August 2023. This marked a sharp turnaround from its status as the worst-performing market in the region at year-end 2022. The GSE Composite Index (GSE-CI) posted a half-year 2023 appreciation of 26.22% on the back of increased domestic investor participation (i.e. 46.4% as compared to 35.9% for the same period in 2022) and increased equity investment allocations by pension funds. The increased trading activity in the equity market was buoyed by demand for non-financial stocks, resulting in a 14.90% growth for the GSE-CI, whereas the GSE Financial Stocks Index reported a 17.57% decline.

In contrast, the Ghana Fixed Income Market (GFIM) saw a 62.69% decrease in trading volumes for January to November 2023, with total trades for the period amounting to GHS 81.67 billion (as compared to total trades of GHS 218.91 billion for the same period in 2022).

2023 saw a flurry of licensing applications aimed at introducing new investment products to the market. The approved applications took the tally of licensees from no licensed real estate investment trusts (REITs) in 2022 to 2 licensed REITs by end of year 2023, and from 2 licensed private funds at the end of 2022 to 7 licensed private funds (constituted by 2 private equity funds, Ghana's first private debt fund, and 1 venture capital fund) by end of year 2023. Our firm advised on the licensing applications of 3 out of the 4 new private funds (and a total of 4 out of the 7 currently licensed private funds) and 1 out of the 2 currently licensed REITs.

We highlighted certain draft legislation which the Securities and Exchange Commission (SEC) had published for public review. The SEC finalised some of these drafts within the course of 2023, leading to the issuance of the following:

Guideline	Purpose
Securities Industry (Registration of Securities) Guidelines, 2023 (SEC/GUI/002/02/2023)	Regulate the registration of securities issued by public companies, closed-end collective investment schemes, statutory bodies, local government authorities and any other entity which issues securities to the public (other than securities which have been issued pursuant to an SEC approved prospectus or offering document)
Securities Industry (Self-Regulatory Organisations) Guidelines, 2022 (SEC/GUI/005/02/2023)	Regulate the recognition, governance and business operations of self-regulatory organisations in the securities industry
Securities Industry (Over-The-Counter Market) Guidelines, 2022 (SEC/GUI/001/02/2023)	Regulate over-the-counter markets in the securities industry

The SEC did not finalise its draft guidelines regarding the offering, marketing or distribution of foreign funds.

The Ghana Fixed Income Market (GFIM)'s intention to launch a commercial paper market to facilitate the issuance, admission and trading of commercial papers (i.e. short-term money-market securities with fixed maturities of between 15 to 270 days) was not realised in 2023. The draft rules for the proposed commercial paper market are being reviewed by the SEC and we expect that GFIM will launch the market in 2024.

2. Banking and Credit

Published 2022 audited financial statements of banks indicate that 2022 was one of the worst years for the banking sector, with the macroeconomic conditions and the DDEP resulting in widespread losses. Even the central bank was not spared, as it reported a loss of approximately GHS 60 billion (GHS 53.1 billion of which was caused by the DDEP).

The Bank of Ghana intervened with regulatory reliefs (among others) reducing the prescribed capital adequacy ratio (CAR) from 13% to 10%, and allowing losses from the DDEP to be reflected in the computation of CAR over a period of up to 3 years. The central bank also revised the cash reserve ratio on local currency deposits for banks downwards from 14% to 12% but this was reversed in the course of the year.

An assessment of the impact of the DDEP on the banking sector has revealed some challenges. For instance, CAR is at its lowest in 3 years, trending at 13.8% by end-September 2023 as compared to 16.4% and 19.9% respectively by the same time in 2022 and 2021.

The picture is the same for non-performing loans (NPLs), which recorded 18% by end-September 2023, as compared to 14.1% and 16.8% respectively by the same time in 2022 and 2021. In real terms, credit to the private sector experienced a significant decline as at end-October 2023, dropping 31.6% as compared to a 3.0% growth during the same period in 2022. Despite these issues, liquidity and profitability ratios across the industry were higher in December 2023 than in the same period in 2022, and key financial soundness indicators remain largely sound. The Bank of Ghana requested all banks with a CAR of less than 10% to submit recapitalisation plans for approval and it is expected that the affected banks will embark on recapitalisation drives in 2024.

Key developments on the regulatory front include the upward revision of the minimum paid up capital (from GHS 500,000 to GHS 6 million) for both existing credit bureaus and potential licensees. Existing credit bureaus have been given up to January 2025 to comply with the increased requirement.

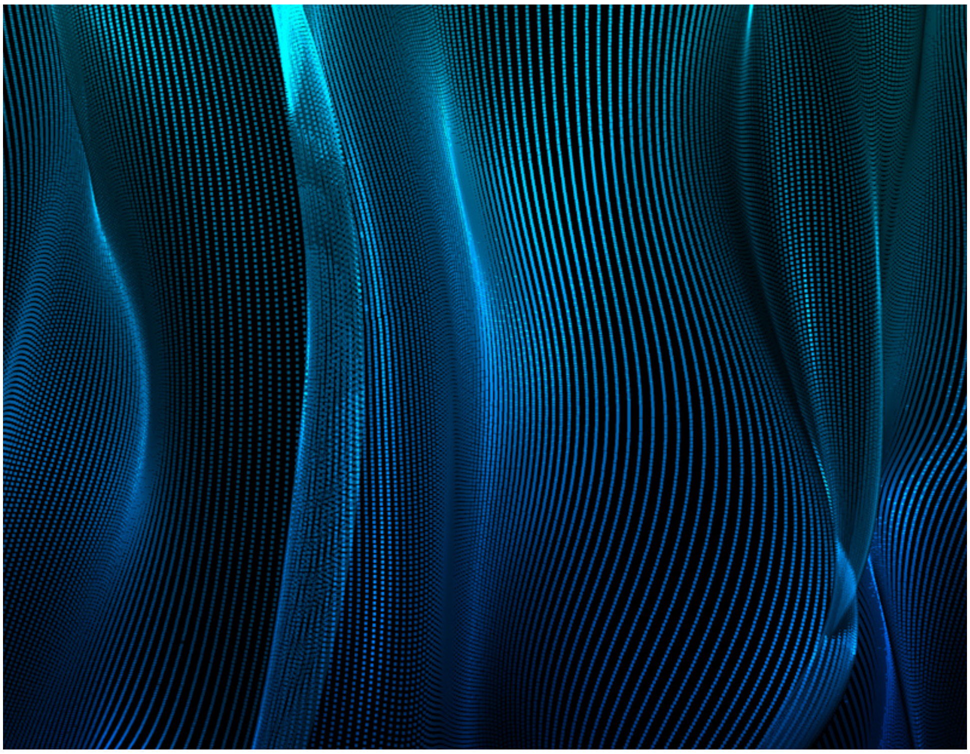
The Bank of Ghana also issued a notice to clarify the legal framework for the enforceability of netting arrangements under eligible financial contracts. Specifically, the Bank of Ghana has confirmed that the period of a temporary stay which it may impose on termination rights between a bank or specialised deposit-taking institution and its counterpart during a receivership will be capped at 2 days, restrictions on set-offs in respect of claims acquired towards banks or specialised deposit-taking institutions during the 3-month period immediately before or after the appointment of a receiver in respect of such banks shall not apply to set offs under eligible financial contracts, and that all eligible financial contracts with banks or specialised deposit-taking institutions are exempt from the netting provisions under the Corporate Insolvency and Restructuring Act, 2020 (Act 1015).

3. Tax

As stated in our 2023 report, the Government implemented its aggressive domestic revenue mobilisation agenda, resulting in the enactment of new tax legislation and some tax disputes, which were heard by the recently constituted Independent Tax Appeals Board.

Regarding new tax legislation:

New Tax Legislation	Purpose
Income Tax (Amendment) Act, 2023 (Act 1094)	To (among others): (a) reform the income tax regime (including a review of the upper limits for vehicle benefits and introducing a minimum chargeable income system and an additional income tax bracket of 35% for individuals) (b) review the law regarding withholding tax for gains on the realisation of assets and liabilities (including a review of the optional rate for capital gains for individuals) (c) increase the concessional income tax rate for specified entities (such as companies which meet the venture capital eligibility requirements) from 1% to 5% (d) replace corporate income tax and VAT on entities in the betting industry with a gross gaming revenue and a withholding tax on winnings
Growth and Sustainability Levy Act, 2023 (Act 1095)	To convert the National Fiscal Stabilisation Levy (NFSL) into a growth and sustainability levy which would require all companies (instead of the specialised entities to which the NFSL applied) to pay between 1%, 2.5% and 5% (depending on the entity) of profit-before-tax
Stamp Duty (Amendment) Act, 2023 (Act 1109)	To increase the nominal rates payable on the stamping of documents
Value Added Tax (Amendment) Act, 2023 (Act 1107)	To (among others) make the supply of non-life insurance policies subject to value added tax (VAT) and impose a flat rate of VAT on the rental of commercial premises and the supply of immovable property by a real estate developer
Income Tax (Amendment) (No. 2) Act, 2023 (Act 1111)	To revise the rates of income tax applicable to individuals



4. Fintech

The Fintech industry continued its growth trajectory, with payment systems providers (PSPs) and dedicated electronic money issuers (DEMIs) leading the way. Reports from the Bank of Ghana have confirmed our projection that reducing the electronic levy from 1.5% to 1% could help restore the attractiveness of mobile payments. Mobile money transactions are said to have surged by a whopping 63% in 2023, with an aggregate transaction value of GHS 199.3 billion as compared to GHS 122 billion recorded in 2022. The significant inroads made by these Fintechs into the traditional inward remittance system and practical implications regarding the settlement of foreign exchange generated by these activities caused the Bank of Ghana to issue updated guidelines for inward remittance services by payment service providers. The update has introduced the following changes:

- DEMIs and PSPs are no longer permitted to hold remittance inflow settlement accounts (i.e. accounts held by the DEMIs and PSPs with their Ghanaian settlement banks for the receipt of the foreign exchange being remitted into Ghana);

- DEMIs and PSPs are required to have a maximum of 3 Ghanaian settlement banks for the purpose of terminating inward remittances;

- DEMIs and PSPs are now required to procure their respective partner money transfer operators to credit remittance proceeds directly to the offshore nostro accounts of their Ghanaian settlement banks; and
- the Ghanaian settlement banks are required to use the Opening Bloomberg USDGHS Regional (REGN) bid or the corresponding currency pair rate on the day the transfer is received (or as prescribed by the Bank of Ghana) for the same day conversion of received remittances into local currency and funds terminated must be reconciled and matched within 72 hours.

Licensed crowdfunding is still yet to come onstream, but remains high on the regulatory agenda, with the SEC issuing revised draft crowdfunding guidelines for public commentary with a view to issuing a final draft based on feedback from stakeholders.

On the back of the successful completion of the piloting stage of the eCedi (Ghana's central bank digital currency) in 2022, last year saw the Bank of Ghana hold a 12-week innovation challenge (dubbed the "eCedi Hackathon") to enable Fintechs to design solutions which explore the various use cases of the eCedi. It is expected that these will lead to further developments in 2024 as the Bank of Ghana rolls out its roadmap for issuing the eCedi.

5. Company Administration

The Companies Regulations, 2023 (L.I. 2473) were enacted within the last quarter of 2023 to facilitate the implementation of the provisions of the Companies Act, 2019 (Act 992) (Companies Act). The regulations provide, among others, legislative support to the prescribed forms to be filed with the Office of the Registrar of Companies, details of the filing requirements under the Companies Act, and provide the process to be complied with to enable a company use the words "Group of Companies" or "Holdings" in its name.

6. Environmental Social and Governance (ESG) Investing

The country continues to notch important strides in its quest to implement a sustainable financing framework and benefit from the global focus on ESG matters. The environmental aspect of ESG investing remains largely in focus. In that regard, Ghana becomes the first country in the world to sign an emission reductions payment agreement (ERPA) under the Lowering Emissions by Accelerating Forest Finance (LEAF) Coalition.

The ERPA, which was entered into between the Forestry Commission (under the auspices of the Ministry of Lands and Natural Resources) and Emergent Forest Finance Accelerator Incorporated, sets Ghana up to receive payments of up to USD 50 million for successfully reducing emissions by up to five million tonnes of carbon dioxide equivalent. The agreed unit price of USD 10 per tonne of carbon dioxide equivalent underscores how lucrative the green market is and the potential benefits which could flow from leveraging ESG investments.

On the domestic front, the SEC issued a draft version of the Securities Industry (Green Bond) Guidelines, which is intended to facilitate the

- allocation of more funds to projects with a positive environmental impact;
- development of a domestic green securities market ; and
- prevention of “green washing” and maintain the credibility of green securities in general through transparency, disclosure, integrity, and quality.

The year ahead – legal and regulatory outlook for 2024

We expect last year's progress to continue in 2024 as improved economic conditions lead to more vibrancy in the financial sector. In the face of decelerating global growth, lowering inflation, increasing conflict (caused by wars such as the ongoing Russian-Ukraine War, the Israeli-Palestinian War, the Red Sea crisis, and other international and domestic flashpoints) and the political risks and uncertainty expected with what is being called "the ultimate election year" (it is reported that 49% of the global population of voters will head to the polls for national elections this year - more voters than ever in history), we project that some existing foreign investors will consider the improving domestic situation as the perfect opportunity to exit their investments, leading to the introduction of new investors. This will result in significant M&A activity, especially in the financial services sector. Our sector specific outlook is as follows.

Securities and Investments

Capital Markets

We expect activities in the GSE's equity market to continue the growth trajectory, fuelled primarily by rights issues and new listings of shares issued by banks seeking to raise funding to improve CAR and meet regulatory capital prescriptions.

In the bonds market, activities on the GFIM should also pick up, as confidence in the national economy leads to more trades involving the bonds issued under the DDEP. We also expect that dropping interest rates, improving macroeconomic conditions and the desire for more diversified investment products will lead to new offerings of corporate debt instruments in 2024.

Trading options in the capital markets is expected to be deepened through the finalisation and issuance of the draft Securities Industry (Financial Resources) Guidelines, which the SEC published in 2023. Among others, the draft guidelines will provide detailed regulatory guidance for the treatment of securities borrowing and lending agreements, securities margin financing, short selling, off-exchange traded derivative contracts, interest rate swap agreements, foreign exchange agreements, and repurchase transactions.

Alternative investments

The fact that the number of licensed private funds doubled in 2023 attests to the burgeoning demand for alternative investments. We expect this interest to bring the regulatory framework for private funds into sharper focus in 2024. Both industry and the SEC are aligned that a light touch legal regime is required, and we anticipate that some changes will be made in that regard. It is our expectation that the licensing of the new private funds will lead to more M&A activity and increased debt financing sources, as fund managers raise equity and debt investments from qualified investors and channel these investments into the real sector. The Venture Capital Trust Fund (VCTF) has already established 2 new funds (the Startup Catalyst Fund and the Strategic Industries Funds) and committed an aggregate of USD 16 million in investments across 4 Ghanaian funds, in furtherance of its agenda to provide SMEs with alternative sources of attractive, long-term financing. SME investments will also receive a major boost with the finalisation of the Securities Industry (Crowdfunding) Guidelines, which is expected to be issued in the course of the year.

Banking and Credit

We expect to see a lot of activity in the banking sector, as banks attempt to increase their capital and restore their CAR to pre-regulatory relief levels. Credit bureaus, which are also regulated by the Bank of Ghana, have to raise capital to meet their increased capital requirements. These may lead to M&A activity in the banking and credit sector in 2024. The Government may increase its stake within the banking industry, given its plans to use its special purpose vehicle (Ghana Amalgamated Trust PLC) to recapitalise banks such as the National Investment Bank, Agricultural Development Bank PLC, Consolidated Bank Ghana LTD, and GCB Bank PLC. If the Ghana Financial Stability Fund is implemented as is currently being proposed, the Government may also acquire shares in any other bank which approaches it for solvency support. As macroeconomic conditions improve and banks are recapitalised, we expect that banks will increase their extension of credit to the private sector, thereby reversing the contraction experienced last year.

Insurance

With the enactment of the recent amendment to the VAT laws, suppliers of non-life insurance products will now be required to account for VAT on their supplies and may recover or deduct input tax equal to the tax fraction of any amount paid during the tax period to indemnify another person under a non-life insurance contract.

The deduction applies where the supply of the non-tax deduction is a taxable supply, the payment is not in respect of the supply of goods or services to (or the importation of goods or services by) the taxable person, the supply of the non-life insurance contract is not zero-rated supply, and the payment does not result from the supply of goods or services to that other person where those goods are situated offshore or the services are physically performed offshore.

Tax

It is expected that the GRA will continue its aggressive domestic revenue mobilisation drive. As usual, this will result in more legislative and administrative steps to increase existing tax rates, introduce or operationalise new taxes, and encourage tax compliance. For instance, the Government intends to operationalise its special voluntary disclosure programme (SVDP) in 2024. The SVDP is intended to deter tax evasion and ensure tax transparency by giving tax payers the opportunity to voluntarily disclose information on accounts and income held abroad to avoid the penalties associated with tax non-compliance on those incomes.

The Ministry of Finance issued administrative guidelines in 2023 to support the implementation of the Exemptions Act, 2022 (Act 1083) (Exemptions Act). However, the guidelines fail to clarify some confusion regarding the wording and interpretation of section 36(3) of the Exemptions Act. The issue relates to the fact that although section 36(2) of the Exemptions Act expressly saves and continues in force any tax exemption arising from (A) a resolution of Parliament, or (B) an agreement signed between the Government and any person on the basis of a tax exemption provision in any law which has now been repealed by the Exemptions Act, section 36(3) of the Exemptions Act requires “the holder of an exemption” to apply to the Minister of Finance within 6 months after the coming into force of the Exemptions Act to continue to benefit from the exemption. The construction of section 36 of the Exemptions Act suggests that the requirement to apply to the Minister of Finance under section 36(3) of the Exemptions Act cannot apply to persons whose tax exemptions have been saved under section 36(2) of the Exemptions Act. However, that is exactly how the GRA is interpreting this provision, thereby denying several institutions such as multilateral corporations and development finance institutions which operate pursuant to international agreements which have already been approved by Parliament the benefit of their contractual and Parliamentary approved tax exemptions. We expect that this issue will be finally resolved in 2024, perhaps through the enactment of the regulations to the Exemptions Act, which is currently at drafting stage.

The GRA also expects to issue practice notes for the implementation of the minimum chargeable income system, which is scheduled for full operationalisation in 2024.

Restructuring, Administration and Insolvency

The increase in NPLs attests to the struggles businesses have endured under the tough macroeconomic conditions and high interest rates of recent years. It is expected that the finalisation and enactment of the subsidiary legislation for the Corporate Insolvency and Restructuring Act, 2020 (Act 1015) will lead to increased deployment of the new legal tools which have been introduced to rescue businesses and liquidate insolvent businesses.

An expected key development in restructuring, administration and insolvency practice will be the enactment of the Chartered Institute of Restructuring and Insolvency Practitioners Bill (which is currently in the early stages of parliamentary review). The new legislation will (among others):

- restructure the existing Ghana Association of Restructuring and Insolvency Advisors into a Chartered Institute of Restructuring and Insolvency Practitioners;
- promote the study of insolvency;
- train and recommend insolvency practitioners for licencing; and
- support the Insolvency Services Division of the Office of the Registrar of Companies in carrying out its regulatory responsibilities within the insolvency industry.

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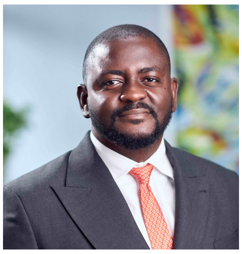

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